

## **18.0 ADMINISTRATION**

### **18.1 Planning Administration**

The various provisions of the City of Belmont Land Development Code shall be administered by the City of Belmont Planning Department under the primary direction of the Planning Director. The Planning Director shall maintain a record of all permits and approvals on file in the City Hall, and copies shall be made available on request to interested parties.

### **18.2 Zoning Permit**

#### **1. Permit Required**

No building, sign or other structure (except as otherwise provided for in this ordinance) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within the building change, nor shall any excavation or filling of any lot for the construction of any building be commenced, nor shall any change in the use of a property be commenced until the Planning Director has issued a zoning permit for such work. The fee for a zoning permit shall be established by the fee schedule approved by the City Council. Zoning permits for exterior alteration on structures or properties that are designated as a local landmark shall be coordinated with the Gaston County Historic Preservation Commission for certificates of appropriateness prior to zoning permit issuance.

#### **2. Expiration of Zoning Permit**

Any zoning permit issued in accordance with this Code will lapse and become invalid if the work authorized by it is suspended or abandoned for a period of at least one (1) year or if a building permit for development or improvements authorized by said permit is not secured within six (6) months from the date of issuance. The zoning permit shall also lapse for any development or improvements not requiring a building permit, if such developments or improvements are not started within six (6) months from the date of issuance.

#### **3. Conditions for Approval**

Zoning permits issued on the basis of dimensional plans approved by the Planning Director authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction which differs from that authorized shall be deemed a violation of this ordinance and shall be punishable as indicated in this section.

#### **4. Zoning Permit Not Required**

Notwithstanding any other provisions of this ordinance, no zoning permit is necessary for the following uses:

- A. Street construction or repair
- B. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way
- C. Specific signs exempted in Section 10.
- D. Mailboxes, newspaper boxes, walls, fences, birdhouses, flag poles, pump covers, and doghouses
- E. Interior alterations and renovations which do not alter the footprint or height of an otherwise conforming use and/or structure

### **5. Right of Appeal**

If a request for a zoning permit is disapproved or if a ruling of the Planning Director is questioned, any aggrieved party may appeal such ruling to the Board of Adjustment in accordance with this section.

### **6. Certificate of Occupancy**

No structure hereafter erected, moved, structurally altered or changed in use shall be used or occupied until a certificate of occupancy has been issued by the Gaston County Building Inspection Department. Any certificate of occupancy issued shall state that the structure or portion of a structure is in compliance with the information stated on the zoning permit and with all applicable provisions of this ordinance. A record of all certificates of occupancy shall be kept on file in the office of Gaston County Building Inspection Department and copies shall be furnished, on request, to all interested parties. If a certificate of occupancy is denied, the reasons for such denial shall be specified in writing and provided to the applicant.

## ***18.3 VIOLATIONS AND PENALTIES***

### **1. Complaints Regarding Violations**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis thereof shall be filed with the Planning Director who shall properly record such complaint, immediately investigate, and take action as provided by this ordinance.

### **2. Penalties for Transferring Lots in Unapproved Subdivisions**

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of City of Belmont, thereafter subdivides his land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The City of Belmont may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this ordinance.

### **3. Penalties for Violation**

In case any structure, use, or landscaping is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this ordinance as herein provided, an action for injunction, or mandamus, or other appropriate action or proceeding to prevent such violation may be instituted by the Planning Director, the Gaston County Building Inspector, any other appropriate City authority; or any person who may be damaged by such violation.

**A. Criminal**

Any person, firm, or corporation convicted of violating the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined an amount not to exceed five hundred dollars (\$500) and/or imprisoned for a period not to exceed thirty (30) days. Each day of violation shall be considered a separate offense, provided that the violation of this ordinance is not corrected within thirty (30) days after notice of said violation is given.

**B. Equitable Remedy**

The Planning Director may apply to a court of competent jurisdiction for any appropriate equitable remedy to enforce the provisions of this ordinance. It is not a defense to the Planning Director's application for equitable relief that there are other remedies provided under general law or this ordinance.

**C. Injunction**

Enforcement of the provisions of this ordinance may also be achieved by injunction. When a violation occurs, the Planning Director may, either before or after the institution of other authorized action, apply to the appropriate division of the General Court for a mandatory or prohibitory injunction commanding the defendant to correct the unlawful condition or cease the unlawful use of the property.

**D. Order of Abatement**

In addition to an injunction, the Planning Director may apply for and the court may enter into an order of abatement as part of the judgment in the case. An order of abatement may direct any of the following actions:

1. Buildings or other structures on the property be closed, demolished, or removed;
2. Fixtures, furniture or other moveable property be moved or removed entirely;
3. Improvements, alterations, modifications or repairs be made; or
4. Any other action be taken that is necessary to bring the property into compliance with this ordinance.

**E. Execution of Court Decisions**

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt. The Planning Director may execute the order of abatement and will have a lien on the property in the nature of a mechanic's and materialman's lien for the cost of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and by posting a bond for compliance with the order. The bond must be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned of the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

**F. Stop Work Order Issuance and Revocation of Permits**

Whenever a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of this ordinance, the Planning Director may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped. The stop work order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for cessation and the action(s) necessary to lawfully resume work.

The Planning Director may revoke any permit (e.g. Building Certificate of Occupancy) by written notification to the permit holder when violations of this ordinance have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of this ordinance, or a permit has been mistakenly issued in violation of this ordinance.

**G. Civil Penalty**

In addition to the other remedies cited in this ordinance for the enforcement of its provisions, and pursuant to North Carolina General Statute 160A-175, the regulations and standards in this ordinance may be enforced through the issuance of civil penalties by the Planning Director.

Subsequent citations for the same violation may be issued by the Planning Director if the offender does not pay the citation (except as otherwise provided in a Warning Situation) after it has been issued unless the offender has sought an appeal to the actions of the Planning Director through the Board of Adjustment. Once the ten-day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Planning Director.

The following penalties are hereby established:

Warning Citation	Correct Violation Within 10 Days
First Citation	\$50.00 per violation or per tree (May be applied per tree or shrub for landscaping installation violations) and \$2.00 for every square foot area of vegetation damaged or destroyed
Second Citation For Same Offense	\$500.00
Third and Subsequent Citations for Same Offense	\$1,000.00

If the offender fails to pay the civil penalties within three (3) days after having been cited, the City may recover the penalties in a civil action in the nature of debt.

## H. Replacement of Disturbed and Damaged Vegetation

The disturbance of any landscaped area or vegetation required by this Code shall constitute a violation of the site or master plan. All disturbed landscaped areas and vegetation shall be replanted to meet the standards of this section as well as the approved site or master plan.

Where the vegetation that has been disturbed or damaged existed on the site at the time the development was approved, all replacement vegetation shall meet the standards set forth in this section taking into account any unique site conditions and significant vegetation remaining within the landscaped area. Trees or vegetation that die within one year of construction completion, because of contractor negligence, shall be removed and replaced with new vegetation of equal or greater in size.

Existing vegetation required to be preserved that has been damaged or destroyed during the course of development activity shall be subject to civil penalty and replaced in accordance with the requirements of this section.

A revegetation plan shall be submitted that takes into consideration the development condition of the site, significant vegetation remaining within landscaped areas, and the replacement plant materials. The City of Belmont may require equal amounts of new vegetation to be installed equal to the size of the vegetation removed.

Replacement consists of one or a combination of any of the following measures:

- A. Replant according to the requirements of this Chapter 12. A replanting plan denoting the proposed installation shall be submitted to the City of Belmont for approval. The Planning Director may elect to present the replanting plan to the Technical Review Committee for final approval.
- ~~B.~~ Replace damaged or destroyed significant vegetation in both perimeter and or interior landscaped areas with an equal amount of new vegetation according to the size of vegetation removed. Any tree with a caliper of at least 8 inches that is damaged or removed shall be replaced with one or more trees that have a caliper of at least two and one half inches and a cumulative caliper equal to or greater than the original tree. Trees damaged or destroyed less than 8 inches in diameter shall be replaced to satisfy the performance criteria of this section. Understory plantings may also be required to restore the buffer performance criteria for the disturbed area. A revegetation plan denoting the proposed installation shall be submitted to the Planning Director for approval.
- C. For all other cases where existing vegetation is damaged or removed, the type and amount of replacement vegetation required shall be of the type and amount that is necessary to provide the type of landscaping required under this Section or interior preservation area identified on the landscape plan.

Replanting should be located within the vicinity of the violation. If the area is too small for sufficient growth, a more suitable location on the site may be selected as permitted by the Planning Director.

**18.4 APPEALS AND VARIANCES****Reserved****1. Appeals Procedure**

The Board of Adjustment shall hear and decide appeals from and review any final and binding order, requirement, decision, interpretation or citation made by the Planning Director and apply such interpretation to particular fact situations.

- A. The Board of Adjustment may, after having held a public hearing on the matter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed.
- B. The Board of Adjustment shall have all the powers of the Planning Director in making any order, requirement, decision, interpretation or determination with reference to an appeal.
- C. An appeal of a written decision made by the Planning Director may be made by the City, the owner of the property in question or other qualified party who has standing per NCGS 160A-393(d). Said decision shall be in writing and delivered to the property owner and the person who sought the decision, if different than the property owner. Said delivery shall be via personal delivery, electronic mail or by first-class mail. The owner of the property in question shall have thirty (30) days of receipt of the decision made by the Planning Director to file an appeal.  
Any other person or party with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. One means of providing “constructive notice” shall be if the party(ies) receiving a final decision post notice of said decision for a minimum of ten (10) days on the property in question with a sign containing (1) the words “Zoning Notice” or “Subdivision Notice” in letters at least six (6) inches high and (2) identifying the means to contact a City official for information about the decision. Notwithstanding the timeframe for processing hearing requests contained in Section 18.4(5) herein, the appellant may request for an expedited hearing of the appeal per NCGS 160A-388(b1)(6). If an expedited hearing request is made, a public hearing shall be held within fifteen (15) days of the filing of such request. Applications for appeals shall be on a form issued by the City and shall be filed with the City Clerk. The grounds for making the appeal request shall be stated on the application.
- D. Upon receipt and verification of a valid appeal request, the Planning Director shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the action appealed from is taken. The Planning Director shall also provide a copy of the record to the appellant and to the owner of the property that is subject to the appeal, if the appellant is not the owner.
- E. The City official who made the decision that is being appealed shall be present at the public hearing as a witness. The appellant shall not be limited at the public hearing to matters stated in the appeal notice referenced in Section 18.4(5). The Board of Adjustment shall have the authority to continue a public hearing if it determines that the appellant or the City would be unduly prejudiced by the presentation of matters not presented in the notice of appeal.
- F. The appellant and the City may agree to mediation or other forms of dispute resolution to settle the appeal request.

## 2. Variance Procedure

The Board of Adjustment shall have the power to vary any of the provisions of this ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. (**NOTE:** It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.);
2. The hardship results from the conditions that are peculiar to the property, such as location, size or topography. (**NOTE:** 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.);
3. The hardship did not result from actions taken by the applicant or the property owner. (**NOTE:** 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); and,
4. 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 a variance. The Board of Adjustment, in granting a variance, may prescribe conditions that are reasonably related to the variance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this ordinance and shall be punishable as provided herein. Unless otherwise authorized by the Board of Adjustment and included in its decision to grant a variance, any order of the Board of Adjustment in granting a variance shall expire, if a building permit, or certificate of occupancy (for a use for which a building permit is not required), has not been obtained within one year from the date of its decision.

## 3. Application Procedure

The following regulations apply to all applications submitted to the Board of Adjustment:

- A. Before a petition for an appeal, or, variance is heard and a quasi-judicial public hearing conducted by the Board of Adjustment, an application form provided by the City shall be submitted to the City along with a fee in accordance with fee schedule established by the City Council. Said fee shall be waived for any petition initiated by City officials on behalf of the City of Belmont. All applications shall be accompanied by a map clearly identifying the subject property, all abutting pieces of properties (i.e., all adjacent properties and properties traversed and/or separated by a road, stream, right-of-way, or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant.
- B. With respect to an application for an appeal, the filing of any application stays enforcement of the action appealed from unless the Planning Director certifies to the Board of Adjustment that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or, that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that event, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this 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 of Adjustment may grant a stay of a final decision of permit applications affected by the issue being appealed.

- C. Within five days after having received an application for an appeal or variance, the City official receiving such application shall determine whether the application is complete. If the official determines that the application is not complete, they shall serve a written notice on the appellant or petitioner specifying the application's deficiencies. The City shall take no further action on the application until the deficiencies are remedied. If the City fails to so notify the appellant or petitioner, the application shall be deemed complete.

#### 4. Public Notification

The City of Belmont shall give notice of all Board of Adjustment public hearings. Said notice shall become a part of the record of the proceedings of the Board of Adjustment. Notice shall be given in the following manner:

- A. Notice shall be sent by the City by first class mail to the applicant and to the owners of all parcels of land abutting the parcel of land that is subject to the hearing. Said notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing;
- B. A notice of the public hearing shall be prominently displayed by the City on the site that is subject to the hearing or on an adjacent street right-of-way. Said notice shall be posted at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing; and,
- C. Notice shall also be posted by the City in a conspicuous location in the City Hall at least ten (10) days prior to the date of the public hearing.

#### 5. Decisions

- A. Except as provided in Section 18.4(1)(C), the Board of Adjustment shall hold a public hearing on an application no later than 45 days after a complete application has been filed with the City. The application shall be received by the Board of Adjustment at least fifteen (15) days prior to the Board meeting at which the application is to be considered. The public hearing shall be held in a quasi-judicial manner with either the Chairman or the Board Clerk being authorized to administer oaths to witnesses coming before the Board of Adjustment. The Board of Adjustment shall decide on the matter which was presented at the public hearing within 31 days of the close of the public hearing.

The concurrent vote of four-fifths (4/5) of the Board of Adjustment members [i.e., at least four (4) voting members] shall be necessary to grant a variance. A majority of the Board of Adjustment members [i.e., at least three (3) voting members] shall be required to decide all other matters coming before the Board. For purposes of this subsection, vacant members of 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 alternate members available to take the place of such members. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

- B. Every quasi-judicial decision made by the Board shall be based upon competent, material and substantial evidence in the record. All Board decisions shall be in writing and signed by the Board chair or other duly authorized member of the Board. The written decision shall reflect the Board's determination of contested facts and their application to the applicable

standards. Any quasi-judicial decision of the Board shall become effective upon filing of the written decision with the City Clerk. All decisions of the Board of Adjustment shall be delivered by the Planning Director or his designee 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 effective date of the decision. The person who made such deliveries shall certify that proper notice of the decision as herein provided has been made.

6. Subpoenas

The Board Chairman, or in the Chairman's absence, anyone acting as Chairman, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing per NCGS 160A-393(d), may make a written request to the Chairman explaining why it is necessary for certain witnesses or evidence to be compelled. The Chairman shall issue requested subpoenas that he determined to be relevant, reasonable in nature and scope, and not oppressive. The Chairman shall rule on any motion to quash or modify a subpoena. Decisions made by the Chairman regarding a subpoena may be appealed to the full Board of Adjustment.

### 7. Variance - Effect of Approval

If an application for a variance is approved by the Board of Adjustment, the owner of the property shall have the ability to (i) develop the use in accordance with the stipulations contained in the variance or (ii) develop any other use listed as a "permitted use" for the zoning district in which it is located.

### 8. Appeals of the Board of Adjustment's Decisions

- A. An application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the effective date of the Board of Adjustment's decision. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board of Adjustment, if, in its judgment, such change in facts, evidence or conditions has not been proven. A public hearing shall not be required to be held by the Board of Adjustment to consider holding such a rehearing. Approval of said consideration shall, however, require an affirmative vote of at least three (3) voting members. In the event that the Board of Adjustment finds that a rehearing is warranted, it shall thereupon proceed as in the original hearing except that the application fee shall be waived.
- B. Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one year after the effective date of denial of the original application.

Every decision of the Board of Adjustment under this Section shall be subject to review by the Superior Court Division of the General Courts of Justice of the State of North Carolina by proceedings in the nature of certiorari per NCGS 160A-393. . Any petition for review by the Superior Court shall be duly verified and filed with the Clerk of Superior Court by the later of thirty (30) days of the effective date of the decision, or after a written copy thereof is given in accordance with Section 18.4(5)(B). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.