Article 5. Board of Zoning Appeals

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Section 501. Purpose and Intent
The Board of Zoning Appeals is a part of the mechanism designed to enforce the Zoning Ordinance. The Board has the authority to make final administrative decisions concerning the Zoning Ordinance, subject to appeal to circuit court, provided that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.

Section 502. Organization
A Board of Zoning Appeals is hereby established.

502.A. **Membership.** The Board shall consist of nine members, the majority of whom shall be residents of the City. Members shall be appointed by the Myrtle Beach City Council for overlapping terms of three years.

Members shall continue to serve until their successors are appointed. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board. The City Council may remove any member of the Board for cause. None of the members of the Board shall hold any other public office or position in the City.

502.B. **Educational Requirements.** Board members are subject to the mandatory orientation and continuing education required by statute.

502.C. **Officers.** The Board shall elect one of its members chairman, who shall serve for one year or until he is re-elected or his successor is elected and qualified. The Board may elect one of its members vice-chairman who shall serve for one year or until he is re-elected or his successor is elected or qualified. The Board shall appoint a secretary who may be an officer of the City or a member of the Board. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses by subpoena.


502.E. **Meetings and Notices.** Meetings of the Board must be held at the call of the chairman and at such other times as the Board may determine.

The Board shall conduct its meetings in public, except when an executive session is authorized by the Freedom of Information Act. Written notice of dates, times and locations of regular meetings shall be given at the beginning of each calendar year. The agenda for regular, called, special or rescheduled meetings shall be posted at the meeting place 24 hours prior to each meeting. The Board shall provide requesting persons, organizations, and news media with requested meeting notifications.

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Public notice of all meetings of the Board, stating the subject matter of the hearing and including notice of the time and place of the meeting, shall be provided by publication in a newspaper of general circulation in the City at least 15 days prior to the date of the meeting. In cases involving variances or special exceptions conspicuous notice, stating the variance or special exception requested and including notice of the time and place of the meeting, shall be posted on or adjacent to the property affected at least 15 days prior to the date of the meeting; with at least one such notice being visible from each public thoroughfare that abuts the property. In cases involving special exceptions the city shall notify by mail all property owners within 300 feet of the proposed special exception not less than 10 days before the public hearing.

502.F. Minutes and Records. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which must be immediately filed in the office of the Board and must be a public record.

502.G. Quorum. A quorum consists of a majority of the membership.

Section 503. Duties and Powers
The Board of Zoning Appeals shall have the following duties and powers:

503.A. Zoning Appeals. The Board shall have the power to hear and decide appeals where it is alleged that there is an error in an order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance. In such cases the Board may reverse or affirm, wholly or in part, or may modify, the order, requirements, decision or determination of said administrative official. The Board has all the powers of the zoning administrator in such cases and may issue or direct the issuance of a permit.

503.B. Variances. The Board shall have the power to hear and decide requests for variance from the requirements of the Zoning Ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. In the consideration of variances, the Board shall be governed by the following:

1. The Board shall have the power to grant a variance in the requirements of the Zoning Ordinance so as to relieve particular hardships in cases when and where the strict application of such regulation or restriction would result in unnecessary hardship. All variances granted shall comply as nearly as possible in every respect with the spirit, intent and purpose of the Zoning Ordinance. It is the purpose of this provision to authorize variances based on a showing of demonstrable and exceptional hardship as distinguished from variances sought by applicants for purposes or reasons of convenience, profit, caprice or self-imposed hardship.

2. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing all of the following findings:
a. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
b. These conditions do not generally apply to other property in the vicinity;
c. Because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
d. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

3. In granting a variance the Board may attach conditions to it. These conditions may address the location, character, or other features of the proposed building, structure or use. The Board may set these conditions to protect established property values in the surrounding area or to promote the public health, safety or general welfare.

4. The Board may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change zoning district boundaries shown on the official Zoning Map.

5. The fact that a property may be used more profitably, if a variance is granted, may not be considered as grounds for a variance.

6. An owner is not entitled to relief from a self-created or self-inflicted hardship. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases property after enactment of a zoning regulation complain that the nonconforming use would work as a hardship upon him.

7. The procedure for the amendment of a variance already approved, or a request for a change of conditions attached to an approval, shall be the same as for a new application. However, where the zoning administrator determines the change to be minor relative to the original approval, he may transmit the same to the Board with the original record without requiring that a new application and filing fee be submitted. In any event, compliance with all required notice provisions of Article 5 – Board Of Zoning Appeals shall be followed for each and every hearing held.

8. Landscaping. In the event that strict compliance with the standards of Article 9 - Landscaping and Tree Protection conflict with existing federal or state statutory or regulatory requirements, the developer may submit to the Construction Services Department a Request for a zoning variance including a specific alternate planting plan. This plan must meet the purposes and standards of Article 9 - Landscaping and Tree Protection, but may suggest measures other than those specified within Article 9 - Landscaping and Tree Protection. In addition, if the developer seeks a modification of planting requirements based upon a contention that the planting required by Article 9 - Landscaping and Tree Protection would pose a threat to health and safety due to a conflict with existing federal or state statutory or regulatory requirements, a modification will only be considered upon receipt of a written explanation of the alleged conflict created
by the planting requirement and a copy of the statute or regulation that creates the conflict.


10. **Airport Hazard Zone.** Refer to section 1803.I - *Permits regarding FAA determination regarding impact to air navigation.*

503.C. **Special Exceptions.** A special exception is a use presumed to have certain characteristics of operation that could, under certain instances, be detrimental to the neighborhood and to abutting property. Review by the Board of Zoning Appeals of the merits of such use is required prior to such use being permitted.

1. The Board shall have the power to permit uses by special exception, subject to the standards and conditions for the uses set forth for such uses in Article 15 – *Conditional And Accessory Uses And Special Exceptions.* Compliance with all required notice provisions of Article 5 – *Board Of Zoning Appeals* shall be followed for each and every hearing held.
   a. If, after public hearing, it is determined that such proposed public use cannot be located in a manner compatible with the surrounding neighborhood, the Board of Zoning Appeals shall have the right to deny the request.
   b. The Board of Zoning Appeals may impose such reasonable restrictions and conditions as in its opinion will accomplish the intent of this Ordinance.
   c. A use listed as a special exception is eligible for location within a district in which it is indicated in Article 14 – *Zoning Districts,* provided it can demonstrate the following conditions exist:
      i. The proposed use will not adversely affect the level of property values or general character or general welfare of the nearby area.
      ii. Adequate provision is made for such items as setbacks, fences, buffer or landscaping strips, to protect adjacent properties from possible adverse influence of the proposed use such as noise, vibration, dust, glare, odor, traffic congestion and similar factors.
      iii. Vehicular traffic and pedestrian movement on adjacent roads will not be hindered or endangered.
      iv. Off-street parking and loading areas and the entrance and exits of those areas will be adequate in terms of location, amount, design and construction to serve the proposed use.
      v. All additional requirements of section 1503 – *Special Exceptions* are met.

2. The procedure for the amendment of a special exception, or a request for a change of conditions attached to an approval, shall be the same as for a new application. However, minor changes may be decided and approved by the Zoning Administrator if the change(s):
   a. Do not alter the concept of the Special Exception;
   b. Do not change the permitted land uses;
   c. Do not reduce the minimum building setback for principal structures;
   d. Do not decrease the number of off-street parking spaces; or
   e. Do not otherwise violate the restrictions applicable within the Special
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Exception.

The Zoning Administrator shall submit all minor changes to a Special Exception to the Board of Zoning Appeals for its information. An applicant may appeal the adverse decision of the Zoning Administrator to the Board of Zoning Appeals.

Section 504. Criteria and Standards

504.A. **Zoning Appeals.** Appeals to the Board may be filed by anyone aggrieved by a decision of the zoning administrator in the administration or enforcement of this ordinance. All appeals must be taken within 30 days from the date the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the zoning administrator. Notice of Appeals shall be filed with the zoning administrator, and shall specify the grounds of the appeal. The zoning administrator shall transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the Board that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In that case, proceedings may not be stayed otherwise than by a restraining order granted by the Board or by a court of record.

504.B. **Variances and Special Exceptions.** Application, including accompanying maps, plans, or other supporting information, shall be made to the zoning administrator for processing in accordance with rules adopted by the Board.

504.C. An application by any property owner to appear before the Board shall be accompanied by a fee as prescribed in the fee schedule as established by the City Council. Fees shall be paid in full at the time of application and no part of such fee shall be returnable to the petitioner.

504.D. Fees shall not be required for appearances before the Board of Zoning Appeals by any governmental agency or body.

Section 505. Procedures

505.A. **Hearings.** The Board shall set a time for the hearing of an appeal or other matter referred to it. At the hearing any party may appear in person or by agent or by attorney. All testimony taken at a hearing shall be given under oath. The chairman of the Board, or in his absence, the acting chairman, shall administer oaths to all witnesses. The Board may subpoena witnesses and in case of contempt may certify this fact to the Circuit Court in and for the County of Horry. In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. A majority of the members present and voting shall be necessary to reverse any order, requirement, decision or determination of the zoning administrator or to decide in favor of the applicant on any matter upon which it is required to pass under the Zoning Ordinance or effect any variance from the Zoning Ordinance.
505.B. **Decisions.** The Board must make a decision regarding each appeal or matter within forty-five days following the hearing. Absentee ballots are not authorized; a member must be present to vote. All final decisions and orders of the Board must be in writing and be filed in the office of the Board. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the Board, which must be delivered to parties of interest by certified mail.

Section 506. **Appeals From Decisions of the Board of Zoning Appeals**

506.A. **Litigation.** A person who may have a substantial interest in any decision of the Board of Appeals, or the City, may appeal from a decision of the Board to the Circuit Court by filing with the clerk of the court. The appeal shall be filed within 30 days after the decision of the Board is postmarked. Within thirty days from the time of notice from the clerk of the appeal, the Board shall file with the clerk a certified copy of the proceedings held before the Board of Zoning Appeals, including a transcript of the evidence heard before it, if any, and the decision of the Board including its findings of fact and conclusions of law.

506.B. **Mediation.** As an alternative to litigation, a property owner whose land is subject to a Board of Zoning Appeals decision may file a notice of appeal accompanied by a request for pre-litigation mediation. A notice of appeal and request for pre-litigation mediation shall be filed within 30 days after the decision of the Board is postmarked. The mediation shall be conducted in accord with the South Carolina Circuit Court Alternative Dispute Resolution Rules and section 6-29-825. A person who is not the owner of the property at issue may petition to intervene as a party in the mediation, and this motion shall be granted if the person has a substantial interest in the Board’s decision. All property owners or representatives and interveners shall be notified and have opportunity to attend the mediation. The mediation may result in either an impasse or a mediation settlement agreement. No settlement agreement shall be effective until approved by City Council in public session and by the circuit court judge. If the mediation results in an impasse or if a settlement is not approved, the property owner has the option to pursue an appeal as described in 506.A - **Litigation.** Such petition for appeal must be filed with the Circuit Court within 30 days of either the report of impasse filed by the mediator or the council or judges failure to approve.