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# Ordinance

City Council
City of Wilmington
North Carolina

O-2008-87

**Introduced By:** Thomas C. Pollard, City Attorney **Date:** 11/05/2008

**Ordinance to Amend the Land Development Code Regarding the Board of Adjustment (LDC-01-1008)**

**LEGISLATIVE INTENT/PURPOSE:**

In 2005, N.C.G.S. §160A-388 regarding boards of adjustment was amended, and the Land Development Code became effective, consolidating into one unified ordinance all of the City's major land development and land use regulations.

On September 18, 2008, the BOA adopted Amended and Restated Rules of Procedure to be consistent with the amendments to N.C.G.S. §160A-388 and the Land Development Code, to clarify procedures regarding applications and hearings, to extend the expiration date of a variance and to authorize extensions of the expiration date.

It is necessary to amend Chapter 18, Article 2, Division II of the City Code to bring these provisions into conformity with the amendments to N.C.G.S. §160A-388 and in addition to extend the expiration date of a variance granted by the BOA and allowing the BOA to grant an extension to the expiration date.

**THEREFORE, BE IT ORDAINED:**

SECTION 1. The last sentence of §18-27 of the City Code, "Appeals to the board of adjustment", is hereby amended to read as follows:

"At the hearing, any person may appear in person or by agent or attorney."

SECTION 2. The last sentence of §18-29(b)(2) of the City Code, "Variances", is hereby amended to read as follows:

"Any person may appear at said hearing, in person or by agent or attorney."

SECTION 3. §18-29(b) of the City Code, "Variances", is amended by adding a new subsection (6) to read as follows:

"(6) Any order or decision of the board of adjustment granting a variance shall expire if a building permit for the affected use is not obtained by the applicant within twenty-four (24) months from the date the decision is filed in the Planning Division office or any successor office. One extension of time for the variance, not to exceed twelve (12) months, may be grant by the board of

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Amy Spicer-Sidbury
City Clerk

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adjustment provided an application for such extension is submitted in writing prior to the expiration of the variance."

SECTION 4. §18-29(d) of the City Code, "Voting", is hereby amended to read as follows:

"(d) *Voting.* The concurring vote of four-fifths (4/5) of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the City Manager, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in the application of this chapter."

SECTION 5. The second to last sentence of §18-30 of the City Code, "Appeals from the board of adjustment", is hereby amended to read as follows:

"Any petition for review by the superior court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the board is filed in the planning division office or any successor office, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of the hearing of the case, whichever is later."

SECTION 6. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 7. If any section, subsection, paragraph, sentences, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION 8. This ordinance shall be effective immediately upon its adoption.

Bill Saffo, Mayor

Adopted at a regular meeting
on November 5, 2008

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

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