

TOWN OF FREDERICA ORDINANCE NO. 24-03

**AN ORDINANCE AMENDING ARTICLE 3, SECTION 3-2, BOARD OF
ADJUSTMENT, OF THE TOWN OF FREDERICA LAND
DEVELOPMENT ORDINANCE**

BE IT ORDANIED BY THE MAYOR AND COUNCIL OF THE TOWN OF
FREDERICA IN COUNCIL MET:

Section 1. That Article 3, Section 3-2 of the Frederica Land

Development Ordinance shall be amended to read as follows:

Section 3-2. Board of Adjustment

A. Creation; membership; term; hearings.

1. A Board of Adjustment is hereby created which shall hereafter be referred to as "Board." The Board shall consist of five members, who shall be residents of the Town of Frederica with knowledge of the problems of urban and rural development, appointed by the Mayor, and approved by a majority of all the members of the Town Council. No member of the Board at the time of his or her appointment and throughout his or her term of office shall be a candidate for Mayor or for the Town Council, nor shall any member of the Board be the Mayor, a member of the Town Council, or an employee of the Town.
2. Each member of the Board shall be appointed for a term of three years; provided, however, that upon the original appointments, two members shall be appointed for a term of one year; two members for a term of two years; and one member for a term of three years. Any member of the Board may be reappointed for an additional term of three years.
3. If any member of the Board fails to attend three consecutive meetings of the Board, he/she shall be conclusively deemed to have resigned. Any member of the Board may be removed from office for cause after a hearing by a majority vote of all the elected members of the Town Council. Any vacancy occurring other than by expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

4. The Board shall select a Chair and a Vice Chair from its membership, shall appoint a secretary, and shall prescribe rules for the conduct of its affairs. The Chair, or in his or her absence the Vice Chair, shall have the power to issue subpoenas for the attendance of witnesses and the production of records and may administer oaths and take testimony.
5. For the conduct of any hearing, a quorum shall not be less than three members, and a majority vote of the members of the Board present and voting shall be required to overrule any decision, ruling, or determination of the official charged with enforcement of this chapter, or to approve any variance. All meetings of the Board shall be open to the public.
6. Prior to the commencement of any hearing before the Board, each Board member present shall state on the record or sign an affidavit verifying that 1) he or she has no personal or private interest which might tend to impair the independent judgment of an official in the performance of his or her duties in connection with the application or property which is the subject of the hearing; and 2) he or she has not had any ex parte communications with anyone involving the property which is the subject of the hearing.

B. Procedures.

The following shall be the procedures of the Board of Adjustment:

1. Applications for interpretations and variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the Town Manager in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Chair of the Board, or his designee, who shall place the matter on the docket and instruct the Town Manager to advertise a public hearing thereon, and give written notice of such hearing to the parties in interest.
2. An appeal to the Board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the Town affected by any decision of the Town Manager covered under this chapter. Such appeal shall be taken within 30 days after the decision appealed from by filing with the Town Manager a notice of appeal specifying the grounds thereof. The Town

Manager shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Town Manager certifies to the Board that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Town Manager and on due cause shown.

3. The Chair shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within 30 days following the hearing. Any party may appear in person or by agent or by attorney. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Town Manager. Public notice shall be given at least 15 days prior to the hearing specifying the time, place, and nature of the hearing and shall consist of:

- (1) Publication in a newspaper of general circulation in the Town of Frederica; and
- (2) Posting conspicuously on the property in accordance with the rules of the Board; and
- (3) Mailings to property owners of all properties within 200 feet of the exterior boundary of the property which is involved in the hearing.

4. The Board shall keep minutes of its proceedings and other official actions, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the Frederica Town Hall and shall be a public record. All testimony shall be sworn.

C. Powers of the Board.

The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the administration or enforcement of this chapter.

2. To authorize, in specific cases, such variance from the terms of this chapter that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of the chapter will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the chapter shall be observed and substantial justice done, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the chapter.

§ 440-259. Appeals.

In exercising the powers provided in this chapter, the Board may, in conformity with this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may 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.

§ 440-260. Interpretation.

The Board shall have the power, on appeal from an order, requirement, decision, or determination made by an administrative official, or a request by any official, board, commission, or agency of the Town, to decide any of the following questions:

- A. Determination of the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter;
- B. Determination of the exact zoning boundary of a property or zone shown on the Zoning Map;
- C. Variances.

§ 440-261. Variances.

The Board of Adjustment may authorize, in specific cases, such variance from any zoning ordinance, code, or regulation that will not be contrary to the public interest, where, owing to special conditions or exceptional situations, a literal interpretation of the zoning ordinance, code, or regulation will result in unnecessary hardship or exceptional practical difficulties to the owner of property so that the spirit of the ordinance, code, or regulation shall be observed and substantial justice done,

provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of any zoning ordinance, code, regulation, or map. Variances shall be subject to terms and conditions to be fixed by the Board; provided, however, that no such variance shall be granted unless the Board finds:

A. That there are physical conditions, fully described in the findings of the Board, applying to the land or buildings for which the variance is sought, which conditions peculiar to such land or building have not resulted from any act of the applicant or any predecessor in title.

B. That, for reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of all reasonable use of such land or buildings, and the variance granted by the Board is the minimum variance that will accomplish this purpose.

C. That the granting of the variance under such conditions as the Board may deem necessary or desirable to apply thereto will be in harmony with the general purpose and intent of this chapter, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof, and will not be otherwise detrimental to the public welfare.

§ 440-262. Duration of variance approval.

After the Board of Adjustment has granted a variance, the variance so granted shall lapse after the expiration of one year if no substantial construction, site plan, or subdivision plan approval or change of use has taken place in accordance with the plans for which such variance was granted.

§ 440-263. Amendment of variance.

The procedure for 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; except that where the Town Manager determines the change to be minor relative to the original approval, he or she may transmit the same to the Board of Adjustment with the original record without requiring that a new application be filed.

Section 2. Severability. The provisions of this Ordinance are severable, and if any of its provisions or any sentence, clause, or paragraph shall be held

unconstitutional or violate the Laws of the State of Delaware by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Section 3. Effective Date. The Clerk shall certify to the adoption of this Ordinance and cause the same to be published as required by law; and this Ordinance shall take effect and be in force thirty days from and after its approval by Council.

Section 4. Repealer: All ordinances and parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

ORDAINED AND ENACTED INTO THE LAW by a majority vote of the Council Members present at a regular session of Frederica Town Council, Delaware on the 17th day of July, A.D. 2024.

First Reading: July 3, 2024

Public Hearing and Second Reading: July 17, 2024

Published: August 17, 2024



William C. Glanden

Mayor

I do hereby certify that the foregoing is a true and correct copy of the Ordinance passed by the Town Council at its meeting on July 17, 2024 at which meeting a quorum was present and voting throughout that the same is still in full force and effect.


Clerk

SYNOPSIS:

This Ordinance amends Article 3, Section 3-2, Board of Adjustment, of the Land Development Ordinance.