

WHEREAS, certain ordinances of Jackson County failed to assign administrative responsibility to any agency; and

WHEREAS, in the interests of institutional efficiency and expertise the Jackson County Board of Commissioners has by resolution previously assigned responsibility for administering these ordinances to the Jackson County Planning Department; and

WHEREAS, the Jackson County Board of Commissioners now desires to confirm the assignment of administrative responsibility by amending the Jackson County Code of Ordinances; and

WHEREAS, the Planning Board has recommended that the Board of Commissioners enact this Ordinance; and

WHEREAS, this Board of Commissioners finds that this Ordinance is reasonable and in the public interest in light of improved administrative efficiency and decision-making; and

WHEREAS, this Board of Commissioners finds that this Ordinance is neither consistent with, nor inconsistent with, the Jackson County Land Use Plan, but is, rather, of an administrative nature.

THE FOLLOWING IS HEREBY ORDAINED by the Jackson County Board of Commissioners:

Section One. This Ordinance is enacted pursuant to authority delegated in Articles 6 and 18 of N.C.G.S. Chapter 153A and may be cited as the Administrative Procedures Ordinance of 2010. Throughout this Ordinance, additions to existing text in the Jackson County Code are noted by the use of underlining. Deletions to existing text are struck through.

Section Two. Paragraph (a) of Section 1.11 of the Jackson County Code, concerning general penalties, is hereby amended as follows:

Sec. 1-11. General penalty.

- (a) ~~Any~~ Unless a greater amount is specified herein, an act constituting a violation of the provisions of this Code or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$500.00, which includes administrative fees. Unless expressly stated otherwise in a

chapter or appendix, a violation of this Code shall not constitute a misdemeanor pursuant to N.C.G.S. 14-4. If the offender fails to correct this violation within ten days after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.

Section Three. Section 9 of Appendix H of the Jackson County Code, concerning the powers and duties of the Board of Adjustment, is hereby amended as follows:

1 **Sec. 9. Powers and duties.**

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3 The powers and duties of the board of adjustment shall be as stated herein.

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5 9.1 *Administrative ~~review~~ appeals.* The board is empowered to hear and decide
6 appeals from any order, requirement, decision or determination made by
7 the land development administrator in the enforcement of an
8 administrative official charged with enforcing any portion of the Jackson
9 County Code (or any other ordinance) wherein it is provided that appeals
10 may be taken to the board of adjustment. The concurring vote of four-
11 fifths (four) of the members of the board of adjustment shall be necessary
12 to reverse any order, requirement, decision or determination of the land
13 development administrator such administrative official or to decide in
14 favor of the applicant any matter which it is required to pass under any
15 such ordinance or to affect any variation in such ordinance.

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17 9.2 *Variance.* The board is empowered to grant variances from the terms of
18 any portion of the Jackson County Code (or any other ordinance) wherein
19 it is provided that such remedy is authorized when such variance will not
20 be contrary to the public interest, where, owing to special conditions, a
21 literal enforcement of the provisions of such ordinance will, in an
22 individual case, result in practical difficulty or unnecessary hardship, and
23 where the spirit of such ordinance shall be observed, public safety and
24 welfare secured, and substantial justice done. In determining whether to
25 grant a variance, the board of adjustment shall be guided by the following
26 considerations:

1 a. There are extraordinary and exceptional conditions pertaining to
2 the particular place or property in question because of its size,
3 shape or topography;

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5 b. The requested variance will be in harmony with the purpose and
6 intent of the ordinance and will not be injurious to the
7 neighborhood or to the general welfare;

8
9 c. The special circumstances are not the result of the action of the
10 applicant;

11
12 d. The variance requested is the minimum variance that will make
13 possible the legal use of the land, building or structure.

14
15 In granting a variance, the board of adjustment shall make findings that
16 the requirements of this section have been met. In granting any variance,
17 the board of adjustment may prescribe appropriate conditions and
18 safeguards.

19 9.2.1 Standards. Unless different standards are prescribed by
20 provisions of this Code or by ordinance, a variance may be granted by the
21 board of adjustment if it finds the following:

22
23 (a) Strict enforcement of the regulations would result in practical
24 difficulties or unnecessary hardships to the applicant for the
25 variance;

26
27 (b) The variance is in harmony with the general purpose and intent of
28 the applicable ordinance and preserves its spirit; and

29
30 (c) In the granting of the variance the public safety and welfare have
31 been secured and substantial justice has been done.

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33 Such findings shall be based on the following considerations:
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1 (a) The fact that the property could be utilized more profitably or
2 conveniently with the variance than without the variance shall not
3 be considered as grounds for granting the variance.

4
5 (b) The hardship relates to the applicant's property rather than to
6 personal circumstances.

7
8 (c) The hardship results from the application of the applicable
9 ordinance and from no other cause, including the actions of the
10 owner of the property or previous owners.

11
12 (d) The hardship is peculiar to the property in question rather than a
13 hardship shared by the neighborhood or the general public.

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15 9.2.2. Conditions. Reasonable conditions may be imposed in
16 connection with a variance as deemed necessary to protect the best
17 interests of the surrounding property or neighborhood, and otherwise
18 secure the purpose and requirements of the Jackson County Code and
19 other applicable ordinances. Guarantees and evidence may be required
20 that such conditions will be and are being complied with.

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22 9.3 Assignment of Authority to Hear and Decide Administrative Appeals and
23 Variances. Notwithstanding anything in this Code to the contrary, the
24 Board of Adjustment shall be the agency of the County responsible for
25 hearing and deciding administrative appeals and requests for variances,
26 where such are authorized, for the following provisions of the Jackson
27 County Code:

28
29 a. Chapter 14. Flood Damage Protection.

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31 b. Chapter 16, Article I. Land Development Compliance Permits.

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33 c. Chapter 22. Off-Premises Sign Control.

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35 d. Chapter 26, Article III. Outdoor Lighting.

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2 e. Chapter 28. Subdivisions.

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4 f. Chapter 30. Telecommunications.

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6 g. Appendix B. Industrial Development.

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8 h. Appendix D. Manufactured Home Parks.

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10 i. Appendix F. Mountain & Hillside Development.

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12 j. Appendix G. Airport Hazard District.

Section Four. Section 10 of Appendix H of the Jackson County Code, concerning hearings before the Board of Adjustment, is hereby amended as follows:

1 **Sec. 10. Hearings Procedural Requirements.**

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3 These procedural requirements shall govern all proceedings before the board of
4 adjustment unless other requirements are expressly specified in an ordinance or
5 portion of this Code for which the board has been granted review authority.

6
7 a. Variances. A variance proceeding shall be instituted by filing an
8 application therefor with the clerk of the board on a form provided by the
9 county.

10 b. Administrative appeals. An administrative appeal may be taken by any
11 person aggrieved by a decision of any administrative official charged with
12 enforcement of regulations for which the board of adjustment has been
13 granted review authority. Such appeal may only be taken by filing a
14 written notice of appeal with the clerk of the board within 20 days of the
15 date of rendition of such decision.

16
17 c. Hearings. All hearings of the board shall be quasi-judicial in nature and
18 shall comply with the requirements of due process applicable to boards of
19 adjustment. All testimony will be sworn, and parties shall be accorded
20 the right of cross-examination. Notice of the time, date and place of the

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hearing shall be mailed to the appellant, in the case of an appeal, and to the applicant, in the case of a request for a variance, at least fourteen days prior to the hearing date. If the appellant or applicant is not the owner of the affected property, notice shall likewise be mailed to such owner(s). For variances, notice shall also be mailed to the record owners of adjacent properties at least fourteen days prior to the hearing date.

Section Five. Section 10-81 of the Jackson County Code, concerning the establishment of a board of adjustment for the Scott’s Creek Watershed Protection District, is hereby repealed and replaced by the following new Section 10-81, entitled “Appeals and Variances”.

Sec. 10-81 Appeals and Variances. Appeals and requests for variances shall be heard by the Watershed Review Board in accordance with provisions contained in Article VII of this chapter.

Section Six. Section 10-106 of the Jackson County Code, concerning administration of the regulations pertaining to the Scott’s Creek Watershed Protection District, is hereby amended as follows:

Sec. 10-106. Administration.

(a) The county building inspector planning director shall administer all provisions of this article ~~except those specified in division 3 of this article.~~ and in doing so

(b) ~~The county building inspector~~ shall incorporate all necessary steps to insure that development within the Scotts Creek Water Quality Protection District complies with the terms of this article. Said measures shall include pre-development plan review, on-site inspection and post-construction compliance review.

Section Seven. Section 14-65 of the Jackson County Code, concerning the designation of the local administrator for flood damage prevention regulations, is hereby amended as follows:

Sec. 14-65. Designation of local administrator.

The county building inspection department is hereby appointed planning director, or designee thereof, is delegated the authority and responsibility to administer and implement the provisions of this chapter.

Section Eight. Section 16-4 of the Jackson County Code, entitled "Requirement for land development compliance permit", is hereby amended as follows:

Sec. 16-4. Requirement for land development compliance permit.

From and after the effective date of the ordinance from which this chapter is derived, it shall be unlawful for any person or entity to undertake development, as defined herein, without first obtaining a land development compliance permit from the land development compliance officer. The land development compliance officer shall issue a land development compliance permit only upon determining that the development activity complies with all ordinances and regulations of the county and all other applicable requirements. Decisions of the land development compliance officer may be appealed to the Board of Adjustment pursuant to the provisions of Appendix H of the Jackson County Code. Undertaking development, as defined herein, without a valid land development compliance permit shall constitute a misdemeanor as provided in G.S. 14-4 and shall be punishable by a ~~fine or~~ civil penalty not to exceed \$500.00. Each week's continuing violation shall be a separate and distinct offense. Violations of this chapter shall not constitute a misdemeanor as provided in N.C.G.S. 14-4.

Section Nine. Section 16-29 of the Jackson County Code, concerning definitions related to determinations of vested rights, is hereby repealed.

Section Ten. Section 16-32 of the Jackson County Code, concerning establishment of the vested rights advisory committee, is hereby repealed.

Section Eleven. Paragraph (2) of Section 16-33 of the Jackson County Code, concerning the planning director's decision regarding vested rights, is hereby amended as follows:

- (2) *Planning director's decision.* The planning director shall make a determination of vested rights in accordance with the standards contained in this section. The planning director, in his discretion, may call a meeting

~~of the vested rights advisory committee to assist and advise in making that determination and may request the applicant to appear before the committee.~~ The planning director shall notify the applicant in writing of this decision regarding the request for determination of vested rights, setting forth in said notice the reasons for the decision.

Section Twelve. The introductory paragraph of Section 22-103 of the Jackson County Code, concerning the administration of regulations pertaining to off-premise advertising signs, is hereby amended as follows:

Sec. 22-103. Administration.

The land ~~development compliance officer~~ planning director shall function as the sign enforcement officer and shall be responsible for the administration and enforcement of this chapter. ~~The board of commissioners shall appoint a sign enforcement officer to administer and enforce this chapter.~~ The sign enforcement officer shall have the following authority.

The remaining provisions of Section 22-103 are not amended by this ordinance.

Section Thirteen. Section 22-104 of the Jackson County Code, concerning appeals from decisions of the sign enforcement officer, is hereby repealed and replaced by the following new section:

Sec. 22-104. Appeals.

Decisions of the sign enforcement officer under this chapter may be appealed to the Board of Adjustment pursuant to the provisions of Appendix H of the Jackson County Code.

Section Fourteen. Sec. 22-106 of the Jackson County Code, concerning variances from the regulations pertaining to off-premise advertising signs, is hereby repealed and replaced by the following new section:

Sec. 22-106. Variances.

Where, by reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions existing on a piece of property, the

strict application of the regulations of this chapter pertaining to sign setbacks and sign heights would result in practical difficulty or unnecessary hardship, a variance may be granted by the Board of Adjustment pursuant to the procedures and standards contained in Appendix H of the Jackson County Code. The remaining regulations of this chapter pertaining, without limitation, to sign area, sign spacing, total number of sign faces, directional flow of traffic and sign illumination shall not be subject to a variance.

Section Fifteen. Article III of Chapter 26 of the Jackson County Code, concerning outdoor lighting standards, is hereby redesignated as Chapter 24 of the Jackson County Code, entitled “Outdoor Lighting”. Sections 26-65 through 26-74 are renumbered as Sections 24-1 through 24-10, respectively.

Section Sixteen. Section 26-75 of the Jackson County Code, concerning variances from the regulations pertaining to outdoor lighting, is hereby repealed and replaced by the following new section:

Sec. 24-11. Variances.

Where practical difficulties or unnecessary hardships would result from strict application of the regulations contained in this Chapter 24, a variance may be granted by the Board of Adjustment pursuant to the procedures and standards contained in Appendix H of the Jackson County Code.

Section Seventeen. Section 26-76 of the Jackson County Code, concerning appeals from decisions pertaining to outdoor lighting, is hereby repealed and replaced by the following new section:

Sec. 24-12. Appeals.

Decisions of the Planning Director, or designee, under this Chapter 24 may be appealed to the Board of Adjustment pursuant to the provisions of Appendix H of the Jackson County Code.

Section Eighteen. Sections 26-77 of the Jackson County Code, pertaining to procedures for variances and appeals under the outdoor lighting standards, is hereby repealed.

Section Nineteen. Sections 26-78 of the Jackson County Code, pertaining legal limitations relating to outdoor lighting standards, is hereby repealed as not necessary for codification. Such repeal shall not impair the legal effect of said section.

Section Twenty. The introductory paragraph of Section 300 of Appendix B of the Jackson County Code, concerning permitting standards for industrial development, is hereby amended as follows:

Sec. 300. Permitting standards.

A permit is required from the Jackson County Planning ~~Department~~ Director, or designee, for any industry regulated by this ordinance. A permit fee, to be set by the Jackson County Commissioners, shall be paid at the time of the application for the permit. No permit shall be issued ~~by the planning department~~ until the appropriate federal and state permits have been issued.

The remaining provisions of Section 300, Appendix B, are not amended by this ordinance.

Section Twenty-One. The title of Article IV of Appendix B of the Jackson County Code, is hereby amended as follows:

ARTICLE IV. ~~FEES, PENALTIES ADMINISTRATION~~ AND ENFORCEMENT.

Section Twenty-Two. Section 405 of Appendix B of the Jackson County Code, concerning appeals from decisions under Appendix B (Industrial Development), is hereby created to read as follows:

Sec. 405. Appeals.

Decisions of the Planning Director, or designee, under this Appendix B may be appealed to the Board of Adjustment pursuant to the provisions of Appendix H of the Jackson County Code.

Section Twenty-Three. Section 406 of Appendix B of the Jackson County Code, concerning variances from the requirements of Appendix B (Industrial Development), is hereby created to read as follows:

Sec. 406. Variances.

Where practical difficulties or unnecessary hardships would result from strict application of the regulations contained in this Appendix B, a variance may be granted by the Board of Adjustment pursuant to the procedures and standards contained in Appendix H of the Jackson County Code.

Section Twenty-Four Section 301 of Appendix D of the Jackson County Code, concerning administration of regulations pertaining to mobile home parks, is hereby amended as follows:

Sec. 301. Ordinance Administrator.

The planning office director, or designee, shall bear the responsibility of administering and enforcing the manufacture home park ordinance.

Section Twenty-Five. Section 305 of Appendix D of the Jackson County Code, concerning administrative review, variances and appeals under Appendix D (Manufactured Home Parks), is hereby repealed and replaced with the following new section:

Sec. 305. Appeals.

Decisions of the Planning Director, or designee, under this Appendix D may be appealed to the Board of Adjustment pursuant to the provisions of Appendix H of the Jackson County Code.

Section Twenty-Six. Section 306 of Appendix D of the Jackson County Code, concerning variances of the requirements of Appendix D (Manufactured Home Parks), is hereby created to read as follows:

Sec. 306. Variances.

Where practical difficulties or unnecessary hardships would result from strict application of the regulations contained in this Appendix D, a variance may be granted by the Board of Adjustment pursuant to the procedures and standards contained in Appendix H of the Jackson County Code.

Where a request for a variance concerns the buffer requirements from adjoining residential properties, the ordinance administrator shall provide the owner(s) of such properties with at least fourteen days' notice of the time, date and location of the hearing on such request. Where a request for a variance concerns the expansion and/or development of an existing manufactured home park, the ordinance administrator shall post notice of the time, date and location of the hearing thereon at one or more conspicuous locations within or adjacent to the park.

Section Twenty-Seven. Paragraph D, Section V, of Appendix G of the Jackson County Code, concerning variances from the regulations pertaining to airport hazard zoning, is hereby repealed and replaced with the following new section:

D. Variances. Where practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Appendix G, a variance may be granted by the Board of Adjustment pursuant to the procedures and standards contained in Appendix H of the Jackson County Code.

Section Twenty-Eight. Section IX of Appendix G of the Jackson County Code, concerning airport hazard zoning, is hereby repealed and replaced with the following new section.

Sec. IX. Appeals.

Decisions of the Planning Department under this Appendix G may be appealed to the Board of Adjustment pursuant to the provisions of Appendix H of the Jackson County Code.

Section Twenty-Nine. Section X of Appendix G of the Jackson County Code, concerning judicial review for airport hazard zoning, is hereby repealed. The remaining sections of Appendix G are renumbered accordingly.

Section Thirty. If any article, section, subsection, clause, phrase, or portion of this Ordinance is for any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section Thirty-One. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing land use violations.

Section Thirty-Two. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section Thirty-Three. This ordinance shall be in full force and effect from and after the date of its adoption.

Section Thirty-Four. The Jackson County Board of Commissioners hereby adopts and enacts the preceding articles and sections of this Ordinance.

Adopted this the ____ day of _____, 2010.

Brian Thomas McMahan, Chairman

ATTEST:

Clerk to Board of Commissioners