

APPEALS AND VARIANCE PROCEDURE

Heard by the Greenville-Spartanburg Airport Environs
Area Board of Zoning Appeals Only

STATEMENT OF PURPOSE

The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals will hear only applications for appeals and variances to the Greenville-Spartanburg Airport Environs Area Zoning Ordinance. All requests for variances to the zoning or land use plans of the relevant municipalities or counties shall be heard by the local land use or zoning authority, and the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals has no jurisdiction over such matters.

- I. The Board of Zoning Appeals has the Following Powers:
 - A. to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the zoning ordinance;
 - B. to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship;
 - C. the board may grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in the Airport Environs Area zoning district, provided all of the required findings for the granting of a variance request are made by the Board of Zoning Appeals;
 - D. the fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance by the Board of Zoning Appeals;
 - E. in granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare;

- F. to permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in Table A (Airport Environs Area Land Use Compatibility Table) of the Zoning Ordinance;
- G. in exercising its power, the board of appeals may reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The board in the execution of its duties may subpoena witnesses and in case of contempt may certify this fact to the circuit court having jurisdiction.

II. Appeals of Administrative Decisions

- A. Appeals to the board may be taken by any person aggrieved by a determination relating to the requirements of the Greenville-Spartanburg Airport Environs Area Zoning Ordinance, or by any officer, department, board, or bureau of either the airport commission, the county, or the municipality in which the parcel in question is located.
- B. Appeals must be filed within thirty days from the date the appealing party has received actual notice of the action from which the appeal is taken.
- C. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In that case, proceedings may not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
- D. Appeals from administrative decisions shall be submitted in writing on forms supplied by the Environs Area Compliance Coordinator.

- E. The application fee for an appeal of an administrative decision is \$65.00.

III. Variances:

- A. Public interest. With respect to uses of land, applicable building standards, and other provisions included herein relating to the Airport Environs Area, the Greenville-Spartanburg Airport Environs Area Zoning Ordinance and the Uniform Land Use Plan adopted by the Airport Environs Commission define the public interest as required by General Assembly of the State of South Carolina in the Act. The intent of this ordinance will not be observed by any variance which permits a use not generally permitted or permitted upon review in the Airport Environs Area or any use expressly or by implication prohibited by the terms of this ordinance in the Airport Environs Area, unless all of the required findings for the granting of a variance request contained in the appeals and variance procedures are made by the Board of Zoning Appeals.

- B. Variance Process.
 - 1. Summary - All applications for a variance or a special exception from the Greenville-Spartanburg Airport Environs Area Zoning Ordinance shall be made to the Environs Area Compliance Coordinator. The Environs Area Compliance Coordinator shall within thirty (30) days determine whether a variance is required and if required, a variance hearing will be held by the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals. The applicant should be notified in writing whether or not a variance will be required, and if so, why it is required.

 - 2. Procedure for requesting a variance or a special exception to the Greenville-Spartanburg Airport Environs Area Zoning Ordinance.
 - a. A party who wishes to obtain either special exception approval or a variance to the Greenville-Spartanburg Airport Environs Area Zoning Ordinance shall submit a written application on the forms supplied by the Environs Area Compliance Coordinator.

- b. The application fee for a special exception or a variance request is \$65.00.
- c. Within thirty (30) days of receipt of an application for a special exception, or a variance which allows a use prohibited by the Greenville-Spartanburg Airport Environs Area Zoning Ordinance within the Airport Environs Area, the Environs Area Compliance Coordinator shall determine whether a variance is required, and if required, a variance hearing must be held by the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals.

3. Required Findings for the Granting of a Variance Request.

The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals may grant a variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the board makes and explains in writing the following findings:

- a. there are extraordinary and exceptional conditions pertaining to the particular piece of property, parcel, structure or building involved;
- b. these conditions do not generally apply to other property, parcels, structures, or buildings in the Airport Environs Area;
- 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 literal interpretation of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the Airport Environs Area;

- d. the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, the character of the Airport Environs Area will not be harmed by the granting of the variance, and there will be no substantial detriment to the goals and uses of the Airport Environs Area as expressed in the ordinance;
- e. that the granting of the variance will not violate Federal Aviation Administration guidelines and will not create an airport hazard; and
- f. that the granting of the variance will not interfere with either present or projected uses of the Greenville-Spartanburg Airport.

C. When Variance Becomes Effective

A variance to the Greenville-Spartanburg Airport Environs Area Zoning Ordinance which allows a use prohibited within the Airport Environs Area becomes effective only if:

- 1. The Environs Area Compliance Coordinator has determined, within thirty (30) days of receiving the variance request, that a variance is required; and
- 2. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals, grants the variance in the manner set forth herein; or
- 3. The appropriate court of law orders such a variance to be granted.
- 4. Before any variance to the Greenville-Spartanburg Airport Environs Area Zoning Ordinance can become effective the owner of the Parcel in question must also meet the following additional requirement:

- a. An Avigation easement must be executed by the owner of the Parcel and recorded in the chain of title.
- b. The form of the Avigation Easement is set forth in Exhibit "A" of the Greenville-Spartanburg Airport Environs Area Zoning Ordinance.

D. Appeal of Decisions of the Board of Zoning Appeals

A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority, including the Airport environs Committee as a whole or any of its member bodies individually or collectively, including the Greenville-Spartanburg Airport District, may appeal from a decision of the board to the circuit court in and for the county involved by filing with the clerk of the court a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within thirty days after the decision of the board is mailed.

IV. Procedural Requirements for a Variance Hearing Before the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals.

- A. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of the Greenville-Spartanburg Airport Environs Area Zoning Ordinance. Meetings of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall be held at the call of the chairman and at such other times as the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- B. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall keep minutes of its

proceedings, 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 immediately filed in the office of the Environs Area Compliance Coordinator and shall be a public record.

- C. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall fix a reasonable time for hearing each appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.
- D. In scheduling the public hearing on the variance, the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall publish two (2) notices in newspapers of general circulation in all areas of the Airport Environs Area effected by the proposed variance. The notices shall be published once at least thirty (30) and not more than thirty-five (35) days prior to the meeting and once at least fifteen (15) days prior. Each notice shall state the date, time and place of the hearing, shall be blocked in, and shall have an appropriate descriptive title. The location and county tax map reference numbers of all affected properties shall also be given.
- E. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall provide the original variance applicant or his or her designated representative with an adequate number of notice of public hearing signs to allow the applicant or his designated representative to properly post and maintain on the property a notice of public hearing at least eighteen (18) days prior to the date of the public hearing. Only the signs provided by the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall be posted and all signs must be placed in a conspicuous place or places on the affected premises. Failure to comply with the posting requirements will result in the denial of the variance and removal of the application from the public hearing agenda. All signs must be removed within thirty (30) days after the public hearing.

F. Meetings

1. Time and Place - An annual schedule of regular meetings shall be adopted, published and posted at the designated meeting place for the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals in December of each year. Special meetings may be called by the chairman upon twenty four (24) hours notice, posted and delivered to all members and the local news media. Meetings shall be held at the place stated in the notices, and shall be open to the public.
2. Agenda - A written agenda shall be furnished by the secretary to each member of the Board and the news media, and shall be posted at least five (5) days prior to each regular meeting, and at least twenty four (24) hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by a majority vote.
3. Rules of Order - Robert's Rules of Order shall govern the conduct of meetings except as otherwise provided by this ordinance.

G. Record of Decision.

1. All final decisions and orders of the board shall be in writing and permanently filed in the office of the Environs Area Compliance Coordinator as a public record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board and shall be delivered to parties of interest by certified mail.
2. The Airport Environs Area Board of Zoning Appeals shall keep minutes of all meetings where zoning matters are discussed.
3. All research reports and recommendations made by the Environs Area Compliance Coordinator to the Airport Environs Area Board of Zoning Appeals shall be kept and also made available to the public upon request.

V. Membership of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals:

- A. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall consist of five (5) members, at least two (2) of whom must be residents and taxpayers of Greenville County and at least two (2) of whom must be residents and taxpayer of Spartanburg County. All five (5) must be residents and taxpayers of either Greenville County or Spartanburg County.
- B. No member of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall also be a member of the Airport Environs Commission. No member shall hold any other position within any agency or department set up to oversee the Greenville-Spartanburg Airport Environs Area.
- C. The members shall be appointed and approved by the Airport Environs Commission.
- D. Members shall serve without compensation.
- E. The term of office shall be for three (3) years. Of the members first appointed, one from Greenville County and one from Spartanburg County shall be appointed for a term of three (3) years, one from Greenville County and one from Spartanburg County shall be appointed for a term two (2) years, and the fifth member shall be appointed for a term of one (1) year.
- F. Members may be removed for cause by the Airport Environs Commission upon written charges. Vacancies shall be filled for the remaining term of the appointment.
- G. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall elect its own chairman and vice-chairman, who shall each serve for one (1) year. The Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall also appoint as its recording secretary the Environs Area Compliance Coordinator.

- H. The Chairman of the Greenville-Spartanburg Environs Area Board of Zoning Appeals shall be a voting member of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals and shall:
1. Call meetings of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals;
 2. Preside at meetings and hearings; and swear in witnesses;
 3. Act as spokesperson for the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals;
 4. Sign documents for the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals;
 5. Have orders of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals served on parties; and
 6. Perform other duties as approved by the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals.
- I. A majority of members of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall constitute a quorum.
- J. A member may serve no more than 4 terms, and shall serve until his successor is appointed.
- K. The Environs Area Compliance Coordinator as Secretary of the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals shall:
1. Provide and publish notice of appeals and meetings;
 2. Assist the chairman in preparation of the agenda;
 3. See that property involved in appeals for variances or special exceptions is properly posted;
 4. Keep recordings and minutes of meetings and hearings;

5. Maintain the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals records as public records;
6. Serve the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals decisions on parties;
7. Attend to the Greenville-Spartanburg Airport Environs Area Board of Zoning Appeals correspondence; and
8. Perform other duties normally carried out by a secretary.