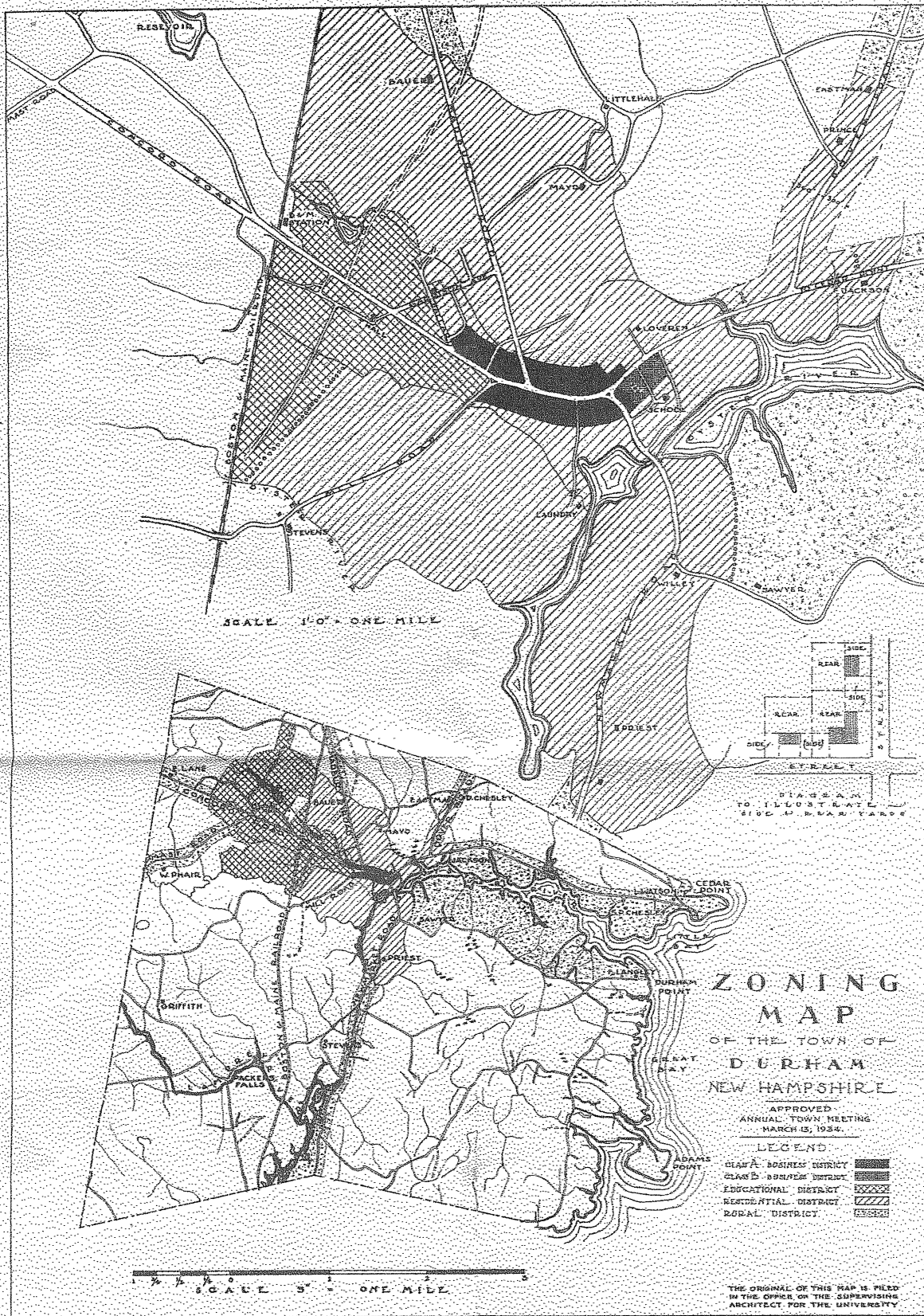


Zoning
Ordinance



Town of Durham
New Hampshire

Approved March 13, 1934



**FINAL REPORT
DURHAM ZONING COMMISSION**

Submitted at Town Meeting

March 13, 1934

INTRODUCTION

At Town Meeting a year ago it was voted that the Moderator, with the advice of the Selectmen, should appoint a Zoning Commission of seven members to study the zoning needs of the Town and prepare an ordinance in accordance with the New Hampshire State Enabling Act of 1925. The Moderator and the Selectmen met shortly after the meeting and appointed the Commission, composed of Mrs. O. V. Henderson, Mrs. James Chamberlin and Messrs. Edward E. Davis, E. T. Huddleston, James Sawyer, Leon Watson and George W. Case. Mr. Sawyer has been unable to attend most of the meetings on account of illness and Mr. Davis has attended only the first meeting. Both men asked to be relieved of serving, but their resignations have not been formally accepted.

This Commission has had numerous meetings. It has studied the State Law under which it was appointed and the zoning ordi-

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The Durham Print Shop

nances of a number of small cities and communities in this and other states. It has followed the movement in this state to have a state plan, which is now being prepared by the State Planning Board. Its members have attended state meetings in order to get the spirit of this work, which has for its purpose the furthering of the welfare of the state and to learn of the plans into which its proposals should fit. The State Planning Board in its publication, entitled *Town and City Zoning and Planning Primer*, emphasizes the fact that the New Hampshire Zoning Enabling Act provides that the 235 towns and cities may divide themselves into districts for the purpose of promoting the health, safety, morals and general welfare of the community. There has been important activity also by the State Development Commission to advance the interests of property values and opportunities for owners to realize on these values. In the ordinance, which we submit as our report, we have tried to meet the desires of those who wish to preserve the character of our New England community and at the same time give as great liberty as possible to individual land owners in the use they make of their property.

The Zoning Commission, after notifying voters, held four public hearings to explain the terms of this proposed ordinance, and has made revisions from time to time to meet objections to wording and restrictions contained in the first draft. These hearings

were held in accordance with the State Law, which requires them, in order to give citizens of the Town an opportunity to register objections before the Town Meeting at which the proposed ordinance is to be submitted for approval and vote.

ZONING ORDINANCE
TOWN OF
DURHAM, NEW HAMPSHIRE

To promote the health, safety, convenience, and general welfare of the community by regulating and restricting the use of land and the construction of buildings thereon in the Town of Durham, and for said purposes dividing the town into districts the following ordinance is hereby enacted by the voters of the Town of Durham, New Hampshire in official annual town meeting convened:

ARTICLE I

Establishment of Districts

Section 1. For the purpose of this ordinance the Town of Durham is divided into districts of five classes, as defined below, and as shown on the Zoning Map dated March 13, 1934, and filed with the Town Clerk.

1. **Class A Business District.** Class A Business District extends along the north side of Main Street in the Village of Durham from the east side of Rosemary Lane easterly to the projection of the east line of the Town Hall property, to a depth of 300 feet, and from there on easterly to the east line of the Mars-ton property to a depth of 100 feet, and on the south side of Main Street from the east side of Mill Road easterly to the east line of the Town Hall property to a depth of 300 feet.
2. **Class B Business District.** Class B Business District extends along the south side of Dover Road in an easterly direction from the east line of the Town Hall property to the intersection of Landing Road with the Dover Road, and to a depth of 300 feet.
3. **Educational District.** The Educational District is made up of the campus and farm property of the University of New Hampshire lying along Main Street of the village of Durham and out along the Concord Road, and which extends from Mill Road on the south side of Main Street and Ballard Street on the north side of Main Street, and to the north of the brook entering Mill Road about 300 feet south of Main Street, in a westerly direction, to an extent as shown on the Zoning Map.
4. **Residential District.** The Residential District of the Village of Durham in-

cludes the areas lying along the principal streets of the Village and within the Fire District as defined by the Underwriters, and as shown on the Zoning Map, excluding the areas assigned to other districts. This District is approximately located as the area along Mill Road to the point where Oyster River crosses Mill Road; out along Madbury Road to the point where the brook, immediately north of the George Bauer property, crosses Madbury Road; out along the Dover Road to a point about half way between the Gale Eastman property and the Dan Chesley Property; out along the Bridge Road to the east line of the C. F. Jackson property; out along the Durham Point Road to the west line of the Sawyer property; and out along the Newmarket Road to the point where the brook crosses the main road immediately south of the Priest property, and with irregular boundaries as shown on the Zoning Map.

5. **Rural District.** The Rural District referred to in this ordinance extends along the main highways intersecting in the Village of Durham, and extending from the Educational District on the Concord Road east to the town line between Durham and Lee, and along the Mast Road from the Educational District to this same town line, both areas having a depth of 300 feet back from the road. This District also extends along the New-

market Road from the intersection of the brook immediately south of the Priest property to the town line between Durham and Newmarket; and along the Dover Road from a point midway between Durham and Newmarket; and along the Dover Road from a point midway between the Eastman and Chesley property to the line between Dover and Madbury, both areas having a depth of 300 feet each side of the road. Also this District includes the area lying between the Bridge Road from the Jackson property to the line between Durham and Madbury; and the Durham Point Road from the Sawyer property to the intersection where a branch of this Road extended would intersect with the shore line of Great Bay; and a width of 300 feet along the north side of the Bridge Road extending from the Jackson property to the Madbury line, all of which is shown on the Zoning Map.

ARTICLE II Definitions

Section 1. Where the following terms appear in this ordinance, their meanings shall be in accordance with these definitions.

1. **Street Line.** A street line is a front line of abutting property, and defines the legal width of a street on which a lot abuts.
2. **Lot Area.** The area of a lot on which one building and its accessories are lo-

cated, provided that the area shall be measured to the street line only, and provided further that the portion of the lot farther back from the front street line than a distance of four times the average width of the lot shall not be included in the lot area.

3. **Building.** An erection intended for use and occupation as a habitation or for some purpose of trade, manufacture, ornament or use.

Any structure affording shelter to persons, animals, or chattels, including a wall, solid fence or hedge over four feet high.

4. **Building Area.** The aggregate of the maximum horizontal cross-section area of the building or structure excluding open porches or balconies.
5. **Automobile Service Station.** A building designed primarily for supply of motor fuel, oil and accessories to motor vehicles.
6. **Sign.** Any structure or part thereof over six square feet in extent, primarily designed for the display of lettered or pictorial matter for advertising purposes.
7. **District.** A district includes all buildings and lots within certain designated boundaries, as indicated on the Zoning Map.
8. **Private Garage.** A building or any portion thereof used for the storage of one or more automobiles used by the owner or tenants of the lot on which

it is erected for a purpose accessory to the use of the lot; and, or for the storage of not exceeding four additional automobiles owned or used by others for the same purpose.

9. **Public Garage.** A building other than a private garage, one or more stories in height, used for the storage, maintenance, or repair of automobiles.
10. **Lot.** One duly recorded plot or section of ground. The land occupied or to be occupied by a building or accessory building, including the open spaces required under this Ordinance. A lot shall not include any part of a street or other public highway upon which it fronts or abuts.
11. **Depth of Lot.** The mean distance from a street line at the front of the lot to the extreme rear line of the lot measured parallel to the mean direction of the side lines thereof.
12. **Street.** A public road or highway or a private road or highway which constitutes or is designed to constitute the main access to more than one dwelling house.
13. **Set-Back.** The distance between the street line and the nearest part of any building on the lot, excluding chimneys, balconies, steps, terraces, cornices, eaves, or gutters projecting not more than thirty inches, one-story porches and bay windows not extending through

more than one story and not projecting more than five (5) feet.

14. **Structure.** Any erection or piece of work artificially built up, or composed of parts joined together in some definite manner. A building of any kind.
15. **Structural Alteration.** Any change in the supporting or structural members of a building or structure, such as the bearing walls, supporting partitions, columns, beams or girders.
16. **Use of a Building.** Any and every use conducted within a building or accessory thereto.
17. **Yard.** An open unoccupied space on the same lot with a building, open and unobstructed from the ground to the sky.
18. **Side Yard.** The required open space extending along the side lot lines from the street line to the rear of the main building, except for a corner lot, where the side yard restriction of adjacent lots shall apply, as shown on the Zoning Map.
19. **Rear Yard.** Required open space extending across the whole width of the lot in the rear of the main building, except for a corner lot, where it is the area at the rear of the side yards.

ARTICLE III

Business District Uses

Section 1. Class A Business—In the Class A Business District no land shall be used

and no building shall be erected, altered or used for any purpose injurious, noxious or offensive to a neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration or noise or any other cause, or for any of the following specified uses unless the Board of Adjustment shall rule that such use under such conditions and in such a building as it may prescribe will not be detrimental nor injurious to the neighborhood:

1. Factory or industry;
2. Filling station;
3. Public repair garage;
4. Junk yard or dump;
5. Lumber or coal yard.

Section 2. Class B Business—In the Class B. Business District land may be used and buildings erected, altered or used for any purpose permitted in the Class A Business District, and in addition filling stations and public repair garages, except that no internal combustion engine shall be operated unless objectionable noise and vibration be eliminated, and unless it is equipped and supplied with an effective muffler or silencer.

ARTICLE IV

Educational District Uses

Section 1. In an educational district no land shall be used and no building shall be erected, altered or used for any purpose except:

1. Any use permitted in the general residence district, described under Article V.

2. Educational use incidental to and controlled by an educational institution, except on land owned by such an institution lying in areas in which this restriction does not properly protect adjacent property. In such areas restrictions applying to adjacent property shall prevail.

ARTICLE V

Residential District Uses

Section 1. In a residential district, land may be used and buildings and structures may be erected, altered or used, for residence and accessory use.

The following uses are not permitted in the Residential District:

1. Commercial and industrial uses permitted in and excluded from Classes A and B Business Districts.
2. General educational uses permitted in Educational District.
3. Rooming houses and structures used for transient lodgers except when occupied in part by the family renting rooms and space in such structures.
4. Accessory use in this Ordinance shall not include:
 - (1) Any use injurious, noxious or offensive to the neighborhood.
 - (2) Any use not on the same lot with the building to which it is accessory.
 - (3) Sale of produce not raised on the premises.
 - (4) Signs except those pertaining to the

lease, sale or use of a lot or building on which placed and not exceeding a total area of eight square feet.

Section 2

- (1) The building area shall not exceed 33.1-3 per cent of the lot area.
- (2) The set-back shall be at least thirty feet from any street, and no building or structure shall be erected so that it projects nearer to the street line than the average set-back of other buildings within 300 feet, each way on both sides of the street.
- (3) Any building or structure hereafter erected within the residential district shall have a side yard, on each side, of width not less than 10 feet, and for an interior lot a rear yard of not less than 20 feet.
- (4) A building or structure for accessory use shall be located in the rear yard and placed at least three (3) feet from the rear and the side lot lines of the lot upon which the main building or structure is located.

ARTICLE VI

Rural District Uses

Section 1. In the Rural District of the Town of Durham, as defined on the Zoning map, land shall be used for residence and farm purposes with the same restrictions as specified under Article V for the Residential District, and for the following additional purposes:

1. Land may be used and buildings and structures erected, altered or used for minor business operations, when operated by residents of the property, and provided that building and development plans have been submitted to and approved by the Adjustment Board. In such cases the Adjustment Board shall base its decision upon the effect such operations are likely to have on the value and use of other property in the neighborhood.
2. Land may be used and buildings or structures erected, altered or used for the sale of farm produce raised in the Town of Durham.
3. Building lots shall have frontage of not less than one hundred (100) feet.
4. Signs shall be permitted which pertain to the lease, sale or use of the land or buildings on which placed, and when they do not exceed a total area of twelve (12) square feet.

ARTICLE VII

Administration

Section 1. Applications and permits.

1. It shall be the duty of the Board of Selectmen, and the Board is hereby given power and authority, to enforce the provisions of this Ordinance.
2. The Board of Selectmen shall require that the application for a building permit include a plot plan and contain all necessary information to enable it to

ascertain whether the proposed building or structure and its intended use comply with the provisions of this Ordinance.

3. No building permit shall be issued until the Board of Selectmen has certified that the proposed building and its intended use comply with the provisions of this Ordinance.
4. It shall be unlawful for any person to commence work for the erection or alteration of any building or structure until a permit has been duly granted for such erection or alteration by the Board of Selectmen.

ARTICLE VIII

Board of Adjustment

Section 1. The Moderator, with the advice and consent of the board of Selectmen, shall appoint a Board of Adjustment consisting of five members as provided for in the State Enabling Act of 1925, each to be appointed for a term of three years and removable for cause by the appointing authority upon written charges and after public hearing. (On the first Board one member shall be appointed for one year, two for two years and two for three years to obtain overlapping terms.) Vacancies shall be filled by the Board for an unexpired term.

Section 2. 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, re-

quirement, decision, or determination made by an administrative official in the enforcement of said Enabling Act or of this Ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of this Ordinance.
3. To authorize, upon appeal, in specific cases, such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done.
4. The Board of Adjustment shall make rules as to the manner of filing appeals or applications for special exceptions or for variance from the terms of this Ordinance. A payment of the estimated cost of giving notice is herein required.
5. Upon filing an appeal or an application for special exception from the terms of this Ordinance with the Board of Adjustment, the Board shall fix a reasonable time for the hearing of the appeal or the application for special exception, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time.
6. The said notices shall state the location of the building or lot, and the general nature of the question involved.
7. In exercising the above-mentioned powers the Board may, in conformity with

the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, or decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

8. The concurring vote of four members of the Board shall be necessary to reverse any action of administrative officials or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

ARTICLE IX Amendments

Section 1. The regulations, restrictions, and boundaries as provided in this Ordinance, may from time to time be amended, supplemented, changed, modified, or repealed by a resolution, adopted at a regular meeting of the Town, setting forth the proposed amendment. A public hearing shall be held thereon, after notice as required by law, and prior to the Town Meeting at which the amendment is to be proposed. Such amendment shall not become effective except by the favorable vote of the majority of the voting members attending and voting at a regular or special meeting of the Town.

ARTICLE X

General Provisions

Section 1. Validity. Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole or of any other part thereof.

Section 2. Interpretation. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the health, safety, morals and general welfare of the Town of Durham and its citizens.

Section 3. Penalties. For any and every violation of the provisions of this Ordinance, the owner, general agent, or contractor of a building or premises where such violation has been committed or shall exist, or the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, or the architect, builder, or any other person who knowingly commits, takes part, or assists in any such violation, or who maintains any building or premises in which any such violation shall exist, shall be liable on conviction thereof to a fine or penalty not exceeding Ten Dollars (\$10.00) for each and every offense and whenever such person shall have been notified by the Board of Selectmen, or by service of summons in a prosecution, or in any other way, that he is committing such violation of this Ordinance, each day, that

he shall continue such violation after such notification, shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected.

Section 4. This Ordinance shall take effect immediately upon its passage.

Respectfully submitted,

GEO. W. CASE,

Chairman.

(Approved March 13, 1934).

Following Paragraphs of Chapter 92 of New Hampshire Laws of 1925, Submitted with Final Report of Durham Zoning Commission, which was approved at Annual Town Meeting, March 13, 1934.

**AN ACT TO EMPOWER
MUNICIPALITIES TO ADOPT
ZONING REGULATIONS**

Be it enacted by the Senate and House of Representatives in General Court convened:

**Cities and Towns Authorized to Adopt
Building Regulations**

Section 1. Grant of Power. For the purpose of promoting health, safety, morals, or the general welfare of the community the legislative body of cities and towns is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied; the size of yards, courts, and other open spaces; the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

**Purposes of Regulations
Exceptions and Exemptions**

Sect. 3. Purposes in View. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the

overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

A regulation made under this act shall not apply to existing structures nor to the existing use of any building, but it shall apply to any alteration of a building to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration. A building used or to be used by a public service corporation may be exempted from the operation of any regulation made under this act, if upon petition of the corporation the public service commission shall after a public hearing decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

Method of Procedure

Sect. 4. Method of Procedure. The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time

amended, supplemented, or changed.

Amendment of Regulations, etc.

Sect. 5. Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such changes, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred feet therefrom, or of those directly opposite thereto extending one hundred feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

Appeals to Board of Adjustment

Sect. 7. Appeals to Board of Adjustment. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality effected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall

forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

Injunction Against Violation of Regulations

Sect. 8. Remedies. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

**Inconsistent Legislation Repealed;
Takes Effect on Passage**

Sect. 10. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect upon its passage.

(Approved April 16, 1925.)

Adjustment Board:

Appointed April 2, 1934

Evelyn E. W. Cortez (Mrs. E. A.), Sec.

Perley I. Fitts, Chairman

W. Guy Smart

Leon Watson

Charles Wentworth