

## **22.0 BOARD OF ZONING APPEALS**

### **22.1 BOARD OF ZONING APPEALS: APPOINTMENT AND ORGANIZATION**

A Board of Zoning Appeals (BZA), consisting of five (5) members, shall be appointed in accordance with the provisions of section 15.2-2308 of the Virginia Code, and shall have such powers and duties as set forth in section 15.2-2309 of the Code.

Within the limits of funds appropriated by the Town Council, the Board of Zoning Appeals may employ or contract for such secretaries, clerks, legal counsel, consultants and other technical and clerical services as the Board of Zoning Appeals may deem necessary for transaction of its business.

Any Board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed him, after hearing held after at least fifteen (15) days notice.

The Board of Zoning Appeals shall have the authority to request the opinion, advice or other aid of any officer, employee, board, bureau or commission of the Town within the scope of his/her or its respective competence.

The Board of Zoning Appeals may, from time to time, adopt such rules and regulations consistent with the ordinances of the Town and laws of the Commonwealth as it may deem necessary to carry out the duties imposed by this ordinance. The meetings of the Board shall be held at the call of its chairman or at such times as a quorum of the Board may determine. The Board shall choose annually its own chairman and vice-chairman, who shall act in the absence of the chairman. The chairman, or, in his/her absence, the acting chairman, may administer oaths and compel the attendance of witnesses. The Board 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. All records of official actions shall become part of the permanent records of the Board. A quorum shall be a majority of all the members of the Board.

### **22.2 POWERS AND DUTIES OF THE BOARD OF ZONING APPEALS**

The Board of Zoning Appeals shall have the following powers and duties in accordance with section 15.2-2309 of the Virginia Code.

- a. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this ordinance or of any regulation adopted pursuant hereto.
- b. To authorize upon appeal or original application in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, when owing to special conditions a literal enforcement of the provision will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:
  1. When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by

the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance.

2. No such variance shall be authorized by the board of zoning appeals unless it finds:
    - (a) that the strict application of this ordinance would produce undue hardship;
    - (b) that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
    - (c) that the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
  3. No such variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia.
  4. No variance shall be authorized unless the Board of Zoning Appeals finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
  5. In authorizing a variance, the Board of Zoning Appeals may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.
- c. To hear and decide appeals from the decision of the Zoning Administrator.
  - d. To hear and decide applications for interpretation of the zoning map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by section 15.2-2204 of the Code of Virginia, the Board of Zoning Appeals may interpret the map in such way as to carry out the intent and the purpose of this ordinance for the particular section or district in question. The Board of Zoning Appeals shall not have the power, however, to rezone property or substantially to change the locations of district boundaries as established by this ordinance and the zoning map.

### 22.3 APPEAL TO THE BOARD OF ZONING APPEALS

Appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator, and with the Board of Zoning Appeals, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Zoning Appeals that by reason of facts stated in the certificate a stay would in his/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 of Zoning Appeals or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

## 22.4 APPLICATION FOR VARIANCES

Application for variances may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the Zoning Administrator in accordance with the provisions of this section and with rules adopted by the Board of Zoning Appeals. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the Board of Zoning Appeals who shall place the matter on the docket to be acted on by the Board of Zoning Appeals. No such variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia. The Zoning Administrator shall also transmit a copy of the application to the Planning Commission which may send a recommendation to the Board of Zoning Appeals or appear as a party at the hearing.

## 22.5 PROCEDURE

Appeals and applications for variances shall be filed with the Zoning Administrator, together with a fee as set forth in section 25, *Fees*.

The Board of Zoning Appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof pursuant to section 15.2-2204 of the Code of Virginia, as well as due notice to the parties in interest and decide the same within sixty (60) days. In exercising its powers, the Board of Zoning Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from this ordinance.

## 22.6 DECISION OF BOARD OF ZONING APPEALS

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer, or any officer, department, board or bureau of the Town, may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board of Zoning Appeals, which petition shall proceed in accordance with section 15.2-2314 of the Code of Virginia.