

Article XIX Board of Zoning Appeals

Pursuant to Sections 15.2-2308 through 15.2-2314 of the State Code of Virginia, as amended, there is hereby created a board of zoning appeals.

Sec. 70- 192 Membership Generally

(a.) The board of zoning appeals shall consist of five (5) members who are residents of the town and who shall be appointed by the circuit court of Shenandoah County.

(b.) Appointments shall be for five (5) years each. The secretary of the board shall notify the circuit court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. A member whose term expires shall continue to serve until his successor is appointed and qualifies. Members may be reappointed to succeed themselves.

(c.) Appointments to fill vacancies other than by expiration of term shall, in all cases, be only for the unexpired portion of the term.

(d.) Members of the present board of zoning appeals, duly appointed under the zoning ordinance in effect immediately preceding the enactment of this chapter, shall remain in office for the balance of the term for which each was originally appointed under the prior ordinance.

(e.) A member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court after a hearing is held, no less than fifteen (15) days after a written notice of charges is sent to such member. Such notice shall be mailed certified, return receipt requested.

(f.) Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has a legal interest.

(g.) No board members shall hold any other office in the town, except that one may be a member of the planning commission.

(h.) Members of the board shall receive such compensation as may be authorized by the town council.

Sec. 70- 193 Organization

(a.) The board shall elect a chairman and vice-chairman from its own membership, who shall serve annual terms and who may succeed themselves. The chairman shall preside at all meetings of the board and, in his absence, the vice-chairman shall preside.

(b.) Within the limits of funds appropriated by the town council, the board of zoning appeals may employ or contract for secretaries, clerks, legal council, consultants, and other technical and clerical services.

Sec. 70- 194 Rules of Procedure

(a.) The board of zoning appeals shall adopt such rules of procedure as it may deem necessary in order to carry into effect the provisions of this chapter. These rules shall be in writing, and a copy shall be available to the public in the office of the zoning administrator.

(b.) The meetings of the board shall be held at the call of the chairman and at such other times as a quorum of the board may determine.

(c.) The chairman, or in his absence, the vice-chairman may administer oaths and compel the attendance of witnesses.

(d.) 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. It shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board, and shall be a public record.

(e.) All meetings of the board shall be open to the public.

(f.) A quorum shall be at least three (3) members.

(g.) The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass under this chapter, or to effect any variance from this chapter.

(g.) The board shall submit a report of its activities to town council at least once a year.

Sec. 70- 195 Powers and Duties

The board of zoning appeals shall have the following powers and duties:

(a.) To hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator or by any other administrative officer in the administration or enforcement of this chapter, or of any ordinance adopted pursuant thereto. No such appeals shall be heard except after notice and hearing, as required by the Code of Virginia, Sec. 15.2-2204, as amended.

(b.) To authorize upon appeal or original application in specific cases such variance from the terms of this chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this chapter 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 chapter, or where by reason of exceptional topographic conditions or other extraordinary situations or conditions of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this chapter 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 chapter.

2. No such variance shall be authorized by the board unless all of the following conditions are found to be true:

- a. That the strict application of this chapter would produce undue hardship; and
- b. That such hardship is not shared generally by all 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 Sec. 15.2-2204 of the Code of Virginia, as amended.

4. No variance shall be authorized unless the board finds that the condition or situation of the property concerned is not so general or recurring in nature as to make reasonably practicable the formation of a general regulation to be adopted as an amendment of this chapter.

5. In authorizing a variance, the board 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.

6. The existence of a nonconformance in the same or other zoning districts shall not, in or of itself, be considered grounds for the granting of a variance.

7. The previous approval of a similar variance is insufficient grounds for the granting of a variance. In determining whether a variance for a particular piece of property shall be granted, the board must consider each case on its own peculiar facts or merits.

8. Although it is an element to be taken into consideration, financial loss, standing alone, cannot establish an extraordinary or exceptional situation or hardship approaching confiscation sufficient to justify the granting of a variance.

9. Self-inflicted hardship, whether deliberately or ignorantly incurred, affords no basis for the granting of a variance.

(c.) To hear and decide applications for interpretation of the official zoning map where there is uncertainty as to the location of a district boundary. After notice to the owners of the

property affected by such question, and after public hearing with notice as required by Sec. 15.2-2204 of the Code of Virginia, as amended, the board may interpret the map in such a way as to carry out the intent and purpose of this chapter for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by this chapter.

(d.) Zoning is a purely legislative function, and is not within the authority of the board of zoning appeals. No provision of this Section shall be construed as granting the board the power to rezone property.

(e.) All provisions of this chapter relating to the board of zoning appeals shall be strictly construed. The board, as a body of limited jurisdiction and possessing only those powers expressly conferred upon it, shall act in full conformity with all the provisions of this chapter and in strict compliance with all limitations contained herein.

Sec. 70- 196 Application for Variances

Applications for variances may be made by any property owner, tenant, governmental official, department, board or bureau.

(a.) Application shall be made to the zoning administrator on the prescribed application form of that office, and in accordance with the rules adopted by the board. The application shall be accompanied by the required fees, as established in this chapter, and by such maps, site plans or other reasonable information as may be required by the zoning administrator, including: shape and size of property; location, size and shape of proposed or existing structures; yard dimensions, including the proposed or existing structure's distance from the public street or highway and from adjoining property; road names and/or route numbers; and other such information regarding abutting property as directly affects the application. The application shall also be accompanied by a list of names and complete mailing addresses of the owners, their agents or the occupants of all abutting property and property immediately across the street from the property affected.

(b.) The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board of zoning appeals. The zoning administrator shall transmit a copy of the application and materials to the planning commission, which may send a recommendation to the board or appear as a party to the hearing.

(c.) The secretary shall place the matter on the docket to be acted upon by the board. No such variance shall be authorized except after notice and hearing as required by Sec. 15.2-2204 of the Code of Virginia, as amended, as well as due notice to the parties in interest. The board shall decide the same within sixty (60) days from the date of such hearing, and they shall follow the procedural requirements as set forth in this Article.

(d.) Any property owner, or his appointed agent, shall not initiate action for a hearing before the board related to the same parcel of land more often than every twelve (12) months without specific approval by the board.

(e.) Any petition for a hearing before the board may be withdrawn prior to action thereon by said board upon written request by the applicant to the secretary of the board. Upon withdrawal of an application, fees will be refunded provided that no expenditures have been made for publicizing or conducting the public hearing at the time the notice is received.

Sec. 70- 197 Appeal Procedure for Administrative Review

Request for a hearing before the board of zoning appeals for administrative review shall observe the following procedures:

(a.) An appeal to the board may be taken by any person aggrieved by, or by any officer, department, board or bureau of the town affected by any decision of the zoning administrator, or any other administrative official charged with the implementation of the provisions of this chapter, within thirty (30) days after the decision.

(b.) Applications for appeals, accompanied by the required fees, shall be mailed to the board of zoning appeals, in care of the zoning administrator. The zoning administrator shall promptly refer the application to the board, and a copy of the application shall be mailed to the planning commission. A third copy shall be mailed to the individual, official, department or agency concerned, if any. Such applications shall specify the grounds for the appeal.

(c.) The zoning administrator or appropriate administrative official shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(d.) An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that, by reasons stated in the certificate, a stay would, in his opinion, cause imminent peril of 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 zoning administrator and for good cause shown.

(e.) The board shall fix a reasonable time for the hearing of appeals; the board shall consider appeals only after public notice and hearing as required by Sec. 15.2-2204 of the Code of Virginia, as amended, as well as due notice to the parties in interest.

The board shall decide the same within sixty (60) days from the date of such hearing, and they shall follow the procedural requirements set forth in this Article.

(f.) In exercising the powers granted to the board in this Article, the said board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from and, to that end, shall have all the powers of the zoning administrator and may issue or direct the issuance of a zoning permit.

(g.) Any application for appeal before the board may be withdrawn prior to action thereon by said board upon the written request of the applicant to the secretary of the board. Upon withdrawal of an application, the fee required will be refunded, provided that no expenditures have been made for publicizing or conducting the public hearing at the time the notice is received.

Sec. 70- 198 Judicial Review of Decision of the Board of Zoning Appeals

(a.) Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any tax payer or any other officer, department, board or bureau of the municipality or county 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.

(b.) Upon presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay the proceedings upon the decision appealed from; but the court may, upon application, on notice to the board, and on due cause shown, grant a restraining order.

(c.) The board of zoning appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(d.) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law , which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(e.) Costs shall not be allowed against the board unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.