

ARTICLE 22. - PROVISIONS FOR APPEAL

Section 22-1. - Board of zoning appeals.

22-1-1. A board consisting of five members shall be appointed by the town council.

22-1-2. The term of office shall be for three years except that original appointments shall be made for such terms that the term of one member shall expire each year. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

22-1-3. One of the five appointed members shall be an active member of the planning commission.

22-1-4. Members may be removed for cause by town council upon written charges and after a public hearing.

22-1-5. 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 an interest.

22-1-6. The board shall choose annually its own chairman and vice-chairman who shall act in the absence of the chairman.

22-1-7. The board shall receive such compensation and traveling expenses as the town council may establish.

Section 22-2. - Powers of the board of zoning appeals.

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

22-2-1. 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.

22-2-2. To authorize upon appeal in specific cases such variance from the terms of the ordinance 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 the ordinance shall be observed and substantial justice done, as follows:

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 the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization 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 the ordinance.

No such variance shall be authorized by the board unless it finds:

- (a) That the strict application of the 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.
- (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.

No such variance shall be authorized except after notice and hearing as required by Code of Virginia, § 15.1-431, as amended.

No variance shall be authorized unless the board 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.

In authorizing a variance, the board may impose such conditions regarding the location, character and other features of the proposed structure for use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

Section 22-3. - Rules and regulations.

22-3-1. The board of zoning appeals shall adopt such rules and regulations as it may consider necessary.

22-3-2. The meeting of the board shall be held at the call of its chairman or at such times as a quorum of the board may determine.

22-3-3. The board shall keep minutes of 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 be immediately filed in the office of the board and shall be a public record.

22-3-4. All meetings of the board shall be open to the public.

22-3-5. A quorum shall be at least three members.

22-3-6. A favorable vote of three members of the board 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.

Section 22-4. - Appeal to the board of zoning appeals.

An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the county or municipality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article or any ordinance adopted pursuant thereto. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until such statement is given. Such appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board 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 that by reason of facts stated in the certificate a stay would in his 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 or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

Section 22-5. - Appeal procedure.

22-5-1. Appeals shall be mailed to the board of zoning appeals, c/o the administrator and a copy of the appeal mailed to the secretary of the planning commission. A third copy shall be mailed to the individual, official, department or agency concerned, if any.

22-5-2. All appeals requiring an advertised public hearing shall be accompanied by a certified check for an amount authorized by the town council from time to time payable to the treasurer. If a special hearing is requested, a certified check for an amount authorized by the town council from time to time shall also accompany said appeal.

Section 22-6. - Procedure on appeal.

The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 90 days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. The concurring vote of a majority of the membership of the board 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 the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

Section 22-7. - Certiorari to review decision of board.

22-7-1. 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 county or municipality, may present to the circuit court of the county or city a petition specifying the grounds on which aggrieved within 30 days after the filing of the decision in the office of the board.

22-7-2. Upon the 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 days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

22-7-3. 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.

22-7-4. 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.