

Article 18. Provisions for Appeal and Variance

Sec. 22-18-1. Board of zoning appeals.

(a) A board consisting of five (5) members shall be appointed by the Circuit Court of Fluvanna County. Members of the board may receive such compensation as may be authorized by the governing body. Members shall be removable for cause by the appointing court after hearing held after at least fifteen days' notice. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

(b) The term of office shall be for five (5) years, except that of the first five (5) members appointed, one (1) shall serve for five (5) years, one (1) for four (4) years, one (1) for three (3) years, one (1) for two (2) years and one (1) for one (1) year. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies. Members of the board shall hold no other public office in the county, except that one of the five appointed members may be an active member of the planning commission.

(c) 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.

(d) The board shall choose annually its own chairman and vice chairman who shall act in the absence of the chairman. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board.

Sec. 22-18-2. Powers of the Board of Zoning Appeals.

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 an administrative officer in the administration or enforcement of this ordinance or of any ordinance adopted pursuant thereto.

(b) To authorize upon appeal or original application 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:

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 the 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 the 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 the ordinance.

2. 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; 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, as amended; however, notice of such hearing may be given via first-class mail rather than registered or certified mail pursuant to Section 15.2-2309 of the Code of Virginia.

4. 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.

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 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. No such appeal shall be heard except after notice and hearing as provided by Section 15.2-2204 of the Code of Virginia; however, notice of such hearing may be given via first-class mail rather than registered or certified mail pursuant to Section 15.2-2309 of the Code of Virginia.

(d) To hear and decide applications for interpretation of the district 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 may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, notice of such hearing may be given via first-class mail rather than registered or

certified mail pursuant to Section 15.2-2309 of the Code of Virginia. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

(e) No provision of this section shall be construed as granting any board the power to rezone property.

Sec. 22-18-3. Rules and regulations.

(a) The Board of Zoning Appeals may adopt, alter and rescind such rules and regulations for its procedures, consistent with to ordinances of the county and the general laws of the Commonwealth, as it may consider necessary.

(b) Meetings of the Board shall be held at the call of its chairman or at such times a quorum of the Board may determine.

(c) The chairman, or, in his absence, the acting 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 be immediately 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 a majority of the membership 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 or to effect any variance from the ordinance.

Sec. 22-18-4. Applications for variances, appeals to the Board of Zoning Appeals.

(a) Applications 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 rules adopted by the board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the board who shall place the matter on the docket to be acted upon by the board. The

zoning administrator shall also transmit a copy of the application to the local commission which may send a recommendation to the board or appear as a party at the hearing. Substantially the same application will not be considered by the board within one year after the decision of the board.

(b) An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by such 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, a notice of appeal specifying the grounds thereof. Pursuant to Section 15.2-2311 of the Code of Virginia, the zoning administrator shall attach to any written notice of a zoning violation or any written order a statement informing the recipient that he may have a right to an appeal within thirty days, and that the zoning administrator's decision shall become final and unappealable if not filed within thirty days. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed 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. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after sixty days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The sixty-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical or other nondiscretionary errors.

Sec. 22-18-5. Appeal procedure.

(a) Applications for variance and appeals shall be filed with the board of zoning appeals in care of the zoning administrator.

(b) Appeals and applications for variance requiring an advertised public hearing shall be accompanied by a filing fee as determined by a fee schedule adopted by resolution of the governing body. (Ord. 9-21-05)

(c) All other procedural requirements of Section 15.2-2312 of the Code of Virginia shall be observed by the board of zoning appeals.

Sec. 22-18-6. Public hearing.

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 ninety days. In exercising its powers, the board may reverse or affirm wholly or partly, or may modify, the order, requirement, decision or determination of an administrative officer or 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.

Sec. 22-18-7. Certiorari to review decisions of board of zoning appeals.

(a) 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, 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 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 (10) 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.

(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 as may be called for by such writ. The return shall concisely set forth such 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. In the event the

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decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or person who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari.