

ARTICLE IV. APPEALS, VARIANCES AND INTERPRETATIONS**Section 43: Appeals**

- (a) An 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 or any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this ordinance. The appellant shall file with the administrator and the board a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the board when delivered to the town office, and the date and time of filing shall be entered on the notice by the town.
- (b) An appeal shall be taken within 30 days after the date of the decision or order appealed from.
- (c) Whenever an appeal is filed, the administrator shall transmit to the board all 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 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 such case, proceedings shall not be stayed except by order of the board or a court of record, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.
- (e) The board of zoning appeals may reverse or affirm (wholly or partly) or may modify the order, requirement, decision or determination appealed from.

Section 44: Variances

- (a) An application for a variance shall be submitted to the board by filing a copy of the application with the administrator. A copy of such application shall be transmitted to the planning commission, which may send a recommendation to the board or appear as a party at the hearing.
- (b) A variance may be granted by the board if it concludes that the literal enforcement of the ordinance would result in unnecessary hardship for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. No variance shall be authorized by the board unless it finds that:

- (1) 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 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 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; and
 - (2) The strict application of the ordinance would produce undue hardship to the applicant; and
 - (3) The hardship relates to the applicant's land, rather than personal circumstances; and
 - (4) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 - (5) The hardship is not the result of the applicant's own actions; and
 - (6) 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; and
 - (7) The board finds that the condition or situation of the property concerned 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.
- (c) In granting a variance the board may impose such reasonable 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.
- (d) The nature of the variance and any conditions attached to it shall be entered on the zoning permit (or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information). All such conditions shall be enforceable in the same manner as any other applicable requirement of this ordinance.

Section 45: Interpretations of Zoning Map

- (a) The board is authorized to hear and decide applications for interpretations of the Zoning District Map where there is any uncertainty as to the location of a district boundary. Other disputed questions of district boundary lines and similar questions may be determined by the board as provided in Section 43, if such questions arise in the context of an appeal from a decision of the administrator.
- (b) An application for a map interpretation shall be submitted to the board by filing a copy of the application with the administrator. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- (c) Where a dispute exists as to the boundaries of districts as shown on the Zoning District Map, the following rules shall apply:
 - (1) Boundaries indicated as approximately following or being at right angles to the centerlines of alleys, streets, highways or streams shall be construed to follow such center lines;
 - (2) Boundaries indicated as approximately following lot lines, town limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;
 - (3) Boundaries indicated as following rivers, creeks and streams or other body of water shall be construed to follow the centerline at low water or at the limit of the jurisdiction, and, in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.
 - (4) Where a district boundary divides a lot or where distances are not specifically indicated on the Zoning District Map, the boundary shall be determined by measurement, using the scale of the Zoning District Map;
 - (5) Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.
- (d) In exercising its authority, the board shall interpret the map in such way as to carry out the intent and purpose of this ordinance 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 ordinance.

Section 46: Board Action on Appeals and Variances

- (a) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reason or findings of fact that support the motion.
- (b) A motion to grant a variance shall make findings as required by this ordinance and shall state with specificity the facts pertaining to the application on which it is founded.
- (c) A motion to deny a variance may be made on the basis that any one or more of the criteria set forth in Section 44 is not satisfied or that the application is incomplete. Such a motion shall include a statement of the specific reasons or findings of fact that support it.

Section 47: Board of Zoning Appeals Hearing Required, Notice

- (a) No appeal, variance or interpretation shall be decided until a public hearing has been held on such request.
- (a) The administrator shall schedule a public hearing by the board of zoning appeals upon receipt of a properly filed application for appeal, variance or interpretation. Notice of the public hearing shall be given as required by Title 15.2-2204, Code of Virginia, 1950 (as amended). Due notice shall be given to the parties in interest. (Amended 5/14/98)

Section 48: Requests to be Heard Expeditiously

The board shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as practicable, but not later than 90 days after a complete application is filed, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 47, and obtain necessary information to make sound decisions.

Section 49: Decision 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 town, may present to the circuit court of Loudoun County a petition specifying the grounds on which aggrieved within 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 petitioner'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.
- (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. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons 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.

Section 50: Proffer Appeals to be Heard by Council

As provided in Section 32(c) of this ordinance, appeals from a decision of the zoning administrator regarding interpretations of proffered conditions shall be decided by the town council in accordance with the requirements of Title 15.2-2301, Code of Virginia, 1950 (as amended). (Amended 5/14/98)

Sections 51 through 54: Reserved