

## **CHAPTER 7 APPEALS**

### **§ 7-100 Board of Zoning Appeals.**

a. Board established. A board of zoning appeals is hereby established which shall consist of five (5) members appointed by Town Council for staggered terms of three (3) years. A vacancy shall be filled for the unexpired term in the same manner as the original appointment. Members of the board may be removed by Council for cause.

b. Officers. The board shall elect or reelect one of its members as chairperson for a term on one year. The board may elect other officers as provided by its rules of procedure. The board shall appoint a secretary who may be an officer of the Town approved by the Town Administrator or a member of the board.

c. Rules of procedure. The board shall adopt rules of procedure for the conduct of its meetings and hearings. A majority of the board shall constitute a quorum. Meetings of the board shall be held at the Town Hall at the call of the chairperson or at such times as the board may determine. Public notice of all hearings shall be published in a newspaper of general circulation in the Town and shall be posted on the bulletin board at Town Hall. Notice of hearings on appeals for variances or special exceptions shall also be posted on or adjacent to property affected, with at least one notice visible from each public street abutting the property. The chairperson may administer oaths and compel attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote by reason of conflict, and shall keep records of its examinations and other official actions filed in the office of the secretary of the board as public records.

### **§ 7-101 Powers and Duties of Board of Zoning Appeals.**

The board of zoning appeals has the following powers:

1. Appeal from Zoning Administrator. Any person aggrieved by a decision of the Zoning Administrator may appeal that decision to the board of zoning appeals in writing on a form provided by the Zoning Administrator within fifteen (15) days after actual notice of the decision. An appeal stays the implementation of the decision of the Zoning Administrator unless he certifies to the board that a stay would cause imminent peril to life or property. The board may affirm or reverse, wholly or in part, or may modify the decision by a written order separately stating findings of fact and conclusions of law.

2. **Variances.** An owner or authorized agent may appeal to the board on a form provided by the Zoning Administrator for a variance from the requirements of the zoning ordinance when the strict application of regulations would result in unnecessary hardship. A variance may be granted if the board makes all of the following findings and conclusions in a written order:

- (a) there are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (b) these conditions do not generally apply to other property in the vicinity;
- (c) because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
- (d) the authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance;
- (e) the effect of the variance would not allow the establishment of a use not otherwise permitted in the zoning district; would not extend physically a nonconforming use of the land; and would not change the zoning district boundaries shown on the official zoning map.

The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance. In granting a variance, the board may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare. Failure to begin or complete an action for which a variance is granted within the time limit specified as a condition of the variance shall void the variance.

3. **Special exceptions.** An owner or authorized agent may appeal to the board on a form provided by the Zoning Administrator for a special exception for a use permitted by district regulations as a special exception after review, subject to applicable criteria. The board shall consider the following factors in determining whether a special exception should be granted, in addition to specific criteria in district regulations: (1) traffic impact; (2) vehicle and pedestrian safety; (3) potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property; (4) adverse impact of proposed use on aesthetic character of the area; and (5) orientation and spacing of improvements or structures. The board may prescribe appropriate conditions and safeguards to relieve or reduce adverse impact of a special exception and to protect the character of the area.

**§ 7-102 Fees for appeals to Board.**

A fee of \$150.00 shall be paid for each appeal to the Board of Zoning Appeals from a decision of the Zoning Administrator, for a variance or special exception.

**§ 7-103 Appeal to Circuit Court.**

A person having a substantial interest in a decision of the board of zoning appeals, or an officer of the Town authorized by Town Council, may appeal to circuit court by petition for review on grounds that the decision is contrary to law, filed with the clerk of court and secretary of the board within thirty (30) days after the decision of the board is mailed. Within thirty (30) days after receipt of notice of filing a petition, the Zoning Administrator or secretary of the board, with assistance of the Town Attorney, shall file with the clerk of court a certified copy of the board proceedings, including a transcript of evidence and findings and conclusions of the board.