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7 APPEALS, VARIANCES, INTERPRETATIONS, AND MODIFICATIONS

(12/4/07)

7-A APPEALS, VARIANCES, AND ZONING MAP INTERPRETATION

7-A-1 Board of Zoning Appeals

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

7-A-1-a Membership

The Board shall consist of either five or seven residents of the Town of Boyce, appointed by the Circuit Court of Clarke County. Members of the Board shall hold no other public office in the locality except that one may be a member of the Boyce Town Planning Commission.

7-A-1-b Officers

With the exception of its secretary and the alternates, the Board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Board may elect as its secretary either one of its members or a qualified individual who is not a member of the Board, excluding the alternate members. A secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.

7-A-1-c Alternate Members

The Boyce Town Council may request the Circuit Court of Clarke County to appoint not more than three alternates to the board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chair twenty-four hours prior to the meeting of such fact. The chair shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

7-A-1-d Terms of Office

The terms of office for members of the Board shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the Board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

7-A-1-e Quorum

(3/2/2010)

For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board.

7-A-1-f Procedures

The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth.

- 7-A-1-g Record
The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.
- 7-A-1-h Employees
Within the limits of funds appropriated by the Town Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
- 7-A-1-i Compensation
Members of the Board may receive such compensation as may be authorized by the Town Council.
- 7-A-1-j Removal
Any Board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days notice.
- 7-A-1-k Meeting Schedule
The Board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Virginia Code Section 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.
- 7-A-2 Administrative Appeal
- 7-A-2-a The Board shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.
- 7-A-2-b An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality 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, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to Virginia Code Section 15.2-2286. Any written notice of a zoning violation or a written order of the Zoning Administrator 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 the statement is given. The 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.

- 7-A-2-c 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.
- 7-A-2-d 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 60 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 60-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.
- 7-A-2-e The Board shall fix a reasonable time for the hearing of an application for appeal, give public notice thereof as well as due notice to the parties in interest and make its decision within 90 days of the filing of the application for appeal.
- 7-A-2-f In exercising its powers the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from.
- 7-A-2-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 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.
- 7-A-2-h 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.
- 7-A-2-i The chair of the Board, or in his or her absence the acting chair, may administer oaths and compel the attendance of witnesses.
- 7-A-2-j Such hearing and decision shall occur after public notice and hearing as provided by Virginia Code Section 15.2-2204 is provided. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
- 7-A-3 Variance
Members of the BZA shall hold no other public office in the Town except that one member may be a member of the Planning Commission.
- 7-A-3-a The Board shall authorize, upon appeal or original application in specific cases, variance from the terms of this ordinance. A variance is a reasonable deviation from those provisions of this ordinance regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a

variance would not be shared generally by other properties, and provided such variance is not contrary to the intended spirit and purpose of the ordinance, and would result in substantial justice being done. A variance shall not include a change in use which change shall be accomplished by a rezoning or by a conditional zoning.

Before authorizing a variance, the Board shall find that:

7-A-3-b

(3/2/2010)

1. such a variance 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, and
2. either:
 - a. 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 the 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
 - b. the granting of the variance will alleviate a clearly demonstrable hardship 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, and
3. the strict application of the ordinance would produce undue hardship; and
4. the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
5. the authorization of the 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
6. 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.

7-A-3-c

Any property owner, tenant, government official, department, board or bureau may make an application for a variance. Applications 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.

7-A-3-d

The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

7-A-3-e

The Board will not consider substantially the same application within one year of previous Board action.

7-A-3-f

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 ensure that the conditions imposed are being and will continue to be complied with.

7-A-3-g No variance shall be authorized except after public notice and hearing as required by Virginia Code Section 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7-A-4 Zoning District Map Interpretation

The Board shall 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 the question, and after public hearing with notice as required by Virginia Code Section 15.2-2204, 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, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. Any member of the BZA shall disqualify himself from voting or participating in any matter before the Board where disqualification would be required by Section 2.1-352, Code of Virginia.

7-A-5 Not Empowered to Rezone Property

No provision of this section shall be construed as granting the Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of local ordinances duly adopted by the Board of Supervisors.

7-B MODIFICATIONS

7-B-1 The Zoning Administrator may grant a modification from any provision contained in the Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the Administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.

7-B-2 Before the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice.

7-B-3 The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph.

7-B-4 The decision of the Zoning Administrator may be appealed to the Board as provided by this section. Decisions of the Board may be appealed to the Circuit Court as provided by this section.

7-C CERTIORARI TO REVIEW DECISION OF BOARD

- 7-C-1 Any person or persons jointly or severally aggrieved by any decision of the Board, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the clerk of the circuit court for the county or city a petition specifying the grounds on which aggrieved within 30 days after the final decision of the Board.
- 7-C-2 Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than 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.
- 7-C-3 The Board 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 the portions thereof as may be called for by the 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.
- 7-C-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 evidence as it may direct and report the evidence 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.
- 7-C-5 In the case of an appeal from the Board to the Circuit Court of an order, requirement, decision or determination of a Zoning Administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to Virginia Code Section 15.2-2286, the decision of the Board shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the Board that the Board erred in its decision. Any party may introduce evidence in the proceedings in the court.
- 7-C-6 In the case of an appeal by a person of any decision of the Board that denied or granted an application for a variance, the decision of the Board shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the Board applied erroneous principles of law, or where the discretion of the Board is involved, the decision of the Board was plainly wrong and in violation of the purpose and intent of the Zoning Ordinance.
- 7-C-7 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 the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the Board may request that the Court hear the matter on the question of whether the appeal was frivolous.

7-D PROCEEDINGS TO PREVENT CONSTRUCTION OF BUILDING IN VIOLATION OF ZONING ORDINANCE

Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the Board of Zoning Appeals.