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| F | REMEDIES – WHAT ARE MY OPTIONS IF I AM TOLD MY PROJECT CANNOT BE APPROVED? |
| This section explains various options available to an applicant if a zoning application is denied or if the Zoning Administrator issues an opinion of which the applicant does not agree. | |
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The Zoning Ordinance provides three types of remedies for aggrieved applicants to use in the event that a zoning application is denied by the Zoning Administrator, or the Zoning Administrator renders an opinion, determination, or decision with which an applicant disagrees. Below are detailed descriptions of each remedy and the required application processes.

Variances

A variance allows certain Zoning Ordinance lot or building dimensional requirements (such as setbacks from property lines) to be varied upon demonstration by a property owner that special circumstances or conditions exist which are beyond the property owner’s control and warrant the granting of a variance to the rules. A variance cannot be granted for other types of Ordinance requirements such as to allow a use that is not currently allowed in a zoning district or to vary the requirements of a review process. The Board of Zoning Appeals (BZA) is the approval authority for all variance applications.

The burden of proof is on the applicant to prove that an application meets the standards for a variance as defined in the State Code and in the Zoning Ordinance. The test for the granting of a variance is as follows:

- A variance shall be granted if the evidence shows that the strict application of the terms of the Ordinance would unreasonably restrict the utilization of the property OR that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; AND,
- All of the following five criteria are met:
 1. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
 2. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

GUIDANCE MANUAL TO THE CLARKE COUNTY ZONING & SUBDIVISION ORDINANCES
2024 VERSION

3. 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.
4. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.
5. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the Ordinance pursuant to [Subdivision 6 of Code of Virginia §15.2-2309](#) at the time of the filing of the variance application.

Examples of situations that could warrant approval of a variance include:

- Lot shape or topography that limits where structures can be built.
- Location of well and/or onsite sewage disposal system limits where structures can be built.
- Lot was created under rules that have since been changed and made more stringent.

Situations that do not warrant approval of a variance include:

- Financial reasons including construction costs or property owner's financial hardship.
- Personal preference regarding where a building is proposed to be located.

In order to apply for a variance, a complete variance application including a narrative and/or site sketch which demonstrates the factors causing the need for a variance must be filed with the Planning Department. Once the Zoning Administrator has determined that the variance application is complete and the required fees have been paid, the application will be placed on the next available BZA meeting agenda for consideration. A Public Hearing is also required for all variance applications and will be conducted at the BZA meeting.

In the event that a variance request is denied by the BZA, the property owner may appeal the decision to the Circuit Court of Clarke County within 30 days of the date of the BZA's final decision.

Appeals

The appeal process allows an applicant to appeal any order, requirement, decision or determination by the Zoning Administrator regarding interpretations or enforcement of the Zoning Ordinance to the Board of Zoning Appeals.

In order to apply for an appeal, a complete appeal application including a written statement explaining the reason for the appeal must be filed with the Planning Department.

Once the Zoning Administrator has determined that the appeal application is complete and the required fees have been paid, the application will be placed on the next available BZA meeting agenda for consideration. A Public Hearing is also required for all appeal applications and will be conducted at the BZA meeting. In considering the appeal, the BZA will base their decision

on whether the Zoning Administrator was correct. The burden of proof is on the applicant to prove that the Zoning Administrator's order, requirement, decision, or determination was incorrect. The BZA has the authority to uphold or overturn the Zoning Administrator's decision and may do so in whole or in part, or may also modify the decision. The BZA is required to make its decision within 90 days of the appeal filing date.

In the event that an appeal is denied by the BZA, the property owner may further appeal the decision to the Circuit Court of Clarke County within 30 days of the date of the BZA's final decision.

Text Amendments

The process of proposing a change to the Zoning Ordinance regulations is referred to as the "text amendment" process. A text amendment may be proposed by a County property owner, a contract purchaser of a property with the owner's consent, or an agent authorized to represent a property owner.

A complete text amendment application must be filed along with the applicable fees to the Planning Department. A complete application includes:

- A written description of the purpose for the text amendment including an explanation of how the text amendment is not in conflict with the Clarke County Comprehensive Plan or its implementing component plans.
- A draft of the proposed text amendment.

A proposed text amendment must first be reviewed by one of the following bodies which will determine whether to initiate consideration of the text amendment:

- Clarke County Planning Commission
- Berryville Area Development Authority – for proposed text amendments of Zoning Ordinance provisions which regulate properties in the Berryville Annexation Area
- Clarke County Board of Supervisors

The applicant must state in the text amendment application which of these three bodies they are requesting to initiate consideration.

Prior to filing the text amendment application, a Pre-Application Conference with Planning Department Staff is required. The pre-application conference must be held no less than seven (7) days before the application is filed with the Planning Department for review. The purpose of the pre-application conference is for Planning Staff to provide guidance on any outstanding or incomplete items that the applicant may have. This will help to ensure that the applicant files a complete application and that the review process can begin in a timely fashion.

Once a complete application is received, the Zoning Administrator will forward the application to the body that the applicant requests to initiate consideration of the text amendment. If the body does not take action to initiate consideration of the text amendment, the text amendment

application is considered to be denied and the application fee will be refunded to the applicant. There is no right of appeal to a decision against initiating consideration of a text amendment, and the application cannot be taken to one or both of the other two bodies to initiate consideration.

If the body takes action to initiate consideration, the text amendment application continues through the review process and is reviewed by an advisory body – either the Planning Commission or Berryville Area Development Authority (whichever is applicable). The Zoning Administrator will send the application to any applicable agencies and departments for review and comment. The Zoning Administrator will also place the application on the advisory body’s next regularly-scheduled business meeting agenda following the preceding application filing deadline. The advisory body will conduct an initial review at this meeting and consider action to schedule a Public Hearing at the next monthly business meeting. Once Public Hearing has been held, the advisory body will adopt a formal recommendation to the Board of Supervisors on the proposed text amendment. The advisory body has 100 days from the initial review date of the application to act on a formal recommendation to the Board.

Following action by the advisory body, the process is repeated at the Board of Supervisors level including initial review, scheduling and conducting a Public Hearing, and taking formal action to adopt or deny the proposed text amendment. The Board has one year from the advisory body’s initial review date to act on the proposed text amendment.

The following factors, together with other factors deemed applicable, may be considered by the Commission, Authority, or Board of Supervisors in reviewing a proposed text amendment:

- Consistency with the [Clarke County Comprehensive Plan](#) and any implementing component plans.
- Whether the proposed text amendment conflicts with any current provisions of the [Zoning Ordinance \(Article I\)](#) or the [Subdivision Ordinance \(Article II\)](#).
- For text amendments proposing the addition of a new use:
 - There is no clear intent to exclude such uses in the current Ordinance, and
 - The proposed use is appropriate within the zoning district and would have no more adverse effects on other uses within the district, or on uses in adjoining districts, than would uses of the same general character permitted in the district.

In the event that the Board denies adoption of the text amendment, no new application shall be filed within 12 months of the date of denial.

ZONING ORDINANCE REFERENCES:

- [Section 6.4, Quasi-Judicial Processes](#). Contains Board of Zoning Appeals review processes.
 - [Section 6.4.1](#) – General Procedures – Board of Zoning Appeals
 - [Section 6.4.2](#) – Variance
 - [Section 6.4.3](#) – Appeal

GUIDANCE MANUAL TO THE CLARKE COUNTY ZONING & SUBDIVISION ORDINANCES
2024 VERSION

- [Section 6.3.6 – Text Amendment](#). Contains the review process for proposing a change to the Zoning Ordinance.
- [Section 6.5 – Zoning Administrator Letters](#). Contains descriptions of the various types of written determinations issued by the Zoning Administrator and the effect of those determinations.