

BOARD OF ZONING APPEALS AGENDA

WEDNESDAY, JUNE 8, 2016

6:30 P.M.

CITY HALL – 1st FLOOR CONFERENCE ROOM

BOARD MEMBERS

Robert W. Schilpp, Chairman

James T. Nejfelt, Vice Chairman

Robert Fox, Secretary

James Fletcher

I. CALL TO ORDER

II. ROLL CALL AND DETERMINATION OF QUORUM

III. ELECTIONS

IV. APPROVAL OF MINUTES – July 15, 2015

V. OTHER BUSINESS

- Adoption of Updated Rules of Procedure

VI. ADJOURNMENT

**MINUTES
REGULAR MEETING
CITY OF MANASSAS
BOARD OF ZONING APPEALS**

July 15, 2015

Members Present: Robert Schilpp – Chairman
 James Nejfelt – Vice-Chairman
 James Fletcher – Member
 Frederick McKelvey – Alternate Member

Members Absent: Robert Fox – Secretary
 Mohamed Hassan – Member
 Vacant Position – Alternate Member

Staff Present: Matthew Arcieri – Planning and Zoning Services Manager
 Donna Bellows – Boards and Commissions Clerk

CALL TO ORDER

The Chairman called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

DETERMINATION OF A QUORUM

Clerk called the roll, and a quorum was determined.

APPROVAL OF MINUTES – May 13, 2015

Mr. Nejfelt motioned to approve the minutes as submitted. Mr. McKelvey seconded the motion. The MOTION WAS APPROVED UNANIMOUSLY BY VOICE VOTE.

PUBLIC HEARING

Chairman Schilpp explained the Right of Appeal and how the Board of Zoning Appeals is a quasi-judicial body and all members are appointed by the Circuit Court. Therefore, any decisions that are rendered can be appealed to the Circuit Court by either side in the proceeding; and if they choose to do so, this would have to be done within 30 days of this meeting. He also read the affidavit of the publication and advised the public that they would be put under oath and that Mr. Arcieri is under an ongoing oath.

Chairman Schilpp asked if there were any Board members that were in conflict with the application and whether it would preclude them from voting on the issue. None commented.

BZA #2015-01
Eric Heltzel
8903 Cherry Street

Mr. Arcieri presented the case to establish setbacks on a non-conforming lot of record pursuant to Sections 130-162 and 130-660(3) of the Zoning Ordinance. The proposed setbacks are 15 feet (front) and ten feet (both sides and rear).

The proposed setbacks are consistent with other similar lots in the area and do not unreasonably restrict the utilization of the lot. Staff recommends approval subject to the following conditions:

- Any single-family detached dwelling that is constructed will be in general architectural conformance with the Quarry Road and Prescott Avenue neighborhood.
- Street frontage improvements, including a five-foot wide sidewalk and curb and gutter, shall be provided along Cherry Street.

BZA Discussion

- Parking requirements
- Concern about footprint on redline exhibit, including requested sidewalk setbacks

Applicant, Eric Heltzel, was sworn in by the Chairman and stated that his intent is not to put a large house on the lot. He agreed to a 25 foot combined setback on the two sides of the property.

Citizens' Comments

None came forward to speak.

Mr. Fletcher motioned to close the public hearing. **Mr. Nejfelt** seconded the motion.

Roll Call by Clerk:

Roll Call	
Mr. Fletcher	Y
Mr. Nejfelt	Y
Mr. McKelvey	Y
Chairman Schilpp	Y

The MOTION PASSED UNANIMOUSLY.

BZA Deliberation

- Extension of the sidewalk

Mr. Nejfelt motioned to approve BZA #2015-01 for the front and rear yard setbacks, as recommended by the staff. Mr. Fletcher seconded the motion.

Roll Call by Clerk:

Roll Call	
Mr. Nejfelt	Y
Mr. Fletcher	Y
Mr. McKelvey	Y
Chairman Schilpp	Y

The MOTION PASSED UNANIMOUSLY.

OTHER BUSINESS

Mr. Arcieri informed the Board that significant changes to the variance standards were made by the General Assembly, and a zoning text amendment was initiated. Once the draft is received from the City Attorney, he will share the draft with the Board.

Mr. McKelvey invited the Board to a debate on July 20, regarding the new state requirements and stated that he would email the information to those interested in attending.

ADJOURNMENT

Mr. Nejfelt so moved. Mr. Fletcher seconded the motion. The meeting was adjourned at 8:05 P.M.

Donna Bellows, Board of Zoning Appeals Clerk

Date

Robert Fox, Secretary

Date



Board of Zoning Appeals

RULES OF PROCEDURE

ADOPTED XX, 2016

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ARTICLE 1. GENERAL GOVERNING RULES

Section 1-1. Creation

The Board of Zoning Appeals (BZA) shall be governed by the provisions of all applicable state statutes, local laws, ordinances, and these rules.

Section 1-2. Membership

Membership is as provided in Section 130-522 of the Code of Manassas. Regular members and alternates are collectively referred to as “voting members” in these rules.

Section 1-3. Alternate Members

Alternate members are encouraged to attend all meetings, and will be placed on a rotating schedule established by the Board Chairperson for the purposes of voting in the absence of a regular member. If both alternates are needed for a given meeting, the schedule will resume as if the two alternates were not required. It is the intent of the Board to maintain a full Board of five (5) voting members for each meeting.

Section 1-4. Official Actions Minimum Requirements

The minimum vote for BZA action is as provided in Sections 15.2-2308(c) and 15.2-2312 of the Code of Virginia.

Section 1-5. Election of a Chairperson Pro Tem

If neither the Chairperson nor Vice Chairperson can preside at a public hearing, the remaining members shall, as the first order of business, by an affirmative vote, elect a voting member to preside, who shall have the power to administer oaths and compel attendance of witnesses for the purposes of that hearing only.

ARTICLE 2. OFFICERS AND DUTIES

Section 2-1. Chairperson and Vice-Chairperson

The Board shall elect annually from its regular members by a majority vote a Chairperson and Vice-Chairperson, who may be elected to succeed himself/herself. The Chairperson, or in his/her absence or incapacity the Vice-Chairperson, shall decide all points of order or procedure and may administer oaths, and compel the attendance of witnesses.

Section 2-2. Secretary and Clerk

The Board shall elect annually, by a majority vote, a Secretary who may be elected to succeed himself/herself. The Secretary signs all orders of the Board. The Clerk, who is a member of City Staff delegated to work with the Board, shall keep all records, conduct all correspondence of the Board and oversee the clerical work of the Board. The Clerk shall keep a minute book of the proceedings of each meeting and each hearing, which shall include the vote of each member on each question (or if absent or failing to vote, indicating such a fact), the name and addresses of all witnesses, a summary of the facts on which the decision is based, the decision rendered, and other official actions of the Board.

Section 2-3. Robert's Rules of Order

Unless otherwise stated herein, all questions and issues related to procedural matters shall be governed by Robert's Rules of Order as adapted to small boards.

ARTICLE 3. MEETINGS

Section 3-1. Quorum

So long as the BZA continues to consist of five regular members, a quorum shall consist of three voting members of the Board. If the BZA should be expanded to seven voting members, its quorum shall increase to four voting members.

Section 3-2. Time of Meeting

Regular meetings shall be held on the second Wednesday of each month at 7:30 P.M. or at such other time as the Chairperson may designate. The first regular meeting in January, if possible, shall constitute the annual organization meeting of the Board.

Special meetings may be called by the Chairperson or any three members at any time provided that at least three (3) working days' notice shall be given to each member and the public before a special meeting is held. The call of the special meeting shall state the business to be considered at that meeting.

Section 3-3. Cancellation of Meetings

Whenever there are no appeals for variances or other pertinent business to be considered at a regular meeting, the Chairperson may dispense with such meeting by so notifying each member and the public at least 48 hours prior to the time set for such meeting.

Section 3-4. Order of Business

The order of business shall be:

1. Call to Order
2. Roll Call and Determination of Quorum
3. Approval of Minutes
4. Public Hearings
5. Action on Public Hearing Items
6. Old Business
7. Other Business
8. Adjournment

ARTICLE 4. PUBLIC HEARINGS

Section 4-1. Matters Requiring Public Hearings

A public hearing shall be held if required by Section 15.2-2309 of the Code of Virginia.

Section 4-2. Notice of Hearings

No appeal shall be decided until due notice has been given and a public hearing has been held thereon. Due notice of a public hearing shall be as provided for in the Code of Virginia. A copy of such notice may be transmitted to the governing body for its information.

Section 4-3. Conduct of Public Hearings

Any person may appear in person, by agent or attorney, at any public hearing. The order of proceedings in the hearing of each case at a public hearing shall be as follows:

1. Conflict of interest disclaimer, if any.
2. Reading of the public notice and affidavit of publication of the hearing by the Chairperson.
3. Notation for the record that all members of the Board have made a personal inspection or are familiar with the property prior to the public hearing.
4. Reading of pertinent written comments, reports and staff presentation concerning the appeal and/or incorporation into the record by reference.
5. Applicant's presentation and response to staff's presentation.
6. Open the public hearing.
7. Witnesses in favor of the appeal.
8. Witnesses in opposition to the appeal.
9. Close the public hearing.
10. Rebuttals by staff and applicant.
11. Discussion by the Board and action on the application.

The Chairperson or any member of the Board may require any witness to swear or affirm that his or her statements of fact are true. The Chairperson, or in his or her absence the Vice-Chairperson, may compel the attendance of witnesses.

ARTICLE 5. APPEALS/VARIANCES

Section 5-1. Filing of Appeals and Variances

The applicant shall file their appeal or variance application with the Clerk of the Board on forms available at the office of the Zoning Administrator. Applications shall be accompanied by a statement of appeal and an accurate and intelligible plan drawn to suitable scale. A nonrefundable fee as shown on the current City fee schedule shall be paid to the City of Manassas upon filing an application or appeal. Applications shall be signed by the property owner(s) or a designated agent.

Section 5-2. Calendar

The application shall be placed on the calendar of the Board for a public hearing on the next available agenda that meets advertising regulations. The Board will hear and decide each case within the statutory deadline (within 90 days of the filing of the application or appeal).

If the Board feels that the information received is lacking or inadequate to develop a decision, and there is sufficient time left before the deadline to have another meeting, the Board will notify the applicant or appellant in writing as to the nature and extent of such deficiency. The application shall be retained in an open status as intent to appeal or apply until the close of the next regularly scheduled meeting at which time the applicant shall provide the requested information, or the BZA will act upon the record before it.

Section 5-3. Withdrawals

On written request from the applicant or authorized agent, an appeal or application may be withdrawn at any time before the Board makes its decision in the case.

ARTICLE 6. PUBLIC HEARING DECISIONS

Section 6-1. Forms of Decisions

All decisions of the Board shall be by formal motion and roll call vote. The minutes shall reflect the basis for the determination of each appeal and a detailed summary of the facts upon which the determination was made; and, in the cases of variances, the unreasonable restrictions or unusual hardship upon which the appeal was based and which the Board found present. The decision shall also state what, if any, conditions and guarantee or bond are required. Additional procedures to be followed are:

1. Variance Granted: The Chairperson will execute a formal Order and Memorandum of Decision evidencing the grant of a variance to the applicant and transmit copies of the Order to the Zoning Administrator, and/or other parties as deemed appropriate.
2. Variance Denied: The Chairperson will furnish the applicant a letter of decision followed by a Memorandum of Decision evidencing the denial of a variance application and the reasons therefore, together with information of the applicant's right to appeal to the Circuit Court.
3. Appeals from Decision of Administrative Official: Form of decision will be the same as listed above.
4. Requests for Interpretation of the Zoning Map: Interpretations will appear in the Memorandum of Decision form.

Section 6-2. Filing of Decision

The decision of the Board shall become final on the date of its pronouncement. Such Order and Memorandum of Decision shall be signed by the Chairperson and Secretary of the Board and a written copy of its decision shall be made available to the applicant or his or her designated agent.

ARTICLE 7. AMENDMENTS

These rules may be amended at any regular meeting by an affirmative vote of not less than three voting members of the Board, provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken. Contemporaneous notice shall be provided to the BZA Secretary, City Attorney, and Clerk.

ADOPTED: January 8, 1992

AMENDED: August 14, 2002, June 14, 2006, June 8, 2016

Robert W. Schilpp, Chairperson

Date

Robert Fox, Secretary

Date

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office 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. Members of the board shall hold no other public office in the locality except that one may be a member of the local planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may 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 chairman twenty-four hours prior to the meeting of such fact. The chairman 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.

B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals that shall consist of two members appointed from among the residents of each participating jurisdiction by the circuit court for each county or city, plus one member from the area at large to be appointed by the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of office of each member shall be five years except that of the two members first appointed from each jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other provisions of this article.

C. 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. Notwithstanding any other provision of law, general or special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body. Except for matters governed by § 15.2-2312, no action

of the board shall be valid unless authorized by a majority vote of those present and voting. 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. 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.

D. Within the limits of funds appropriated by the governing body, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the respective governing bodies. 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.

E. Notwithstanding any contrary provisions of this section, in the Cities of Portsmouth and Virginia Beach, members of the board shall be appointed by the governing body. The governing body shall also appoint at least one but not more than three alternates to the board.

Code 1950, §§ 15-825, 15-850, 15-968.8; 1950, pp. 176, 489; 1952, c. 688; 1962, c. 407, § 15.1-494; 1975, c. 641; 1976, c. 642; 1977, c. 172; 1982, c. 3; 1989, c. 27; 1992, c. 47; 1997, cc. 570, 587; 1998, cc. 346, 520, 528; 1999, c. 838; 2002, cc. 205, 545; 2007, c. 813; 2009, c. 734; 2010, c. 705; 2015, cc. 406, 407, 597.

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

2015, c. 597.

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To 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 determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, 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 (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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; and (v) 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 § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by § 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.

In granting 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. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 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.

4. 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 the question, and after public hearing with notice as required by § 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.

5. No provision of this section shall be construed as granting any 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 governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 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. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 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. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. 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 § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264; 2008, c. 318; 2009, c. 206; 2015, c. 597.

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2310. Applications for special exceptions and variances

Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau. 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. No special exceptions or variances shall be authorized except after notice and hearing as required by § 15.2-2204. The zoning administrator shall also transmit a copy of the application to the local planning commission which may send a recommendation to the board or appear as a party at the hearing. Any locality may provide by ordinance that substantially the same application will not be considered by the board within a specified period, not exceeding one year.

Code 1950, §§ 15-828 through 15-830, 15-832, 15-833, 15-850, 15-968.10; 1950, p. 176; 1962, c. 407, § 15.1-496; 1966, c. 256; 1975, cc. 521, 641; 1989, c. 407; 1997, c. 587.

§ 15.2-2311. Appeals to board

A. 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 § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, 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 zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the zoning administrator that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section. 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. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. 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.

C. 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 errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424; 1997, c. 587; 2005, cc. 625, 677; 2008, c. 378; 2010, c. 241; 2011, c. 457; 2012, cc. 400, 550, 606.

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 22. Planning, Subdivision of Land and Zoning

§ 15.2-2312. Procedure on appeal

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 make its decision within ninety days of the filing of the application or appeal. In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from. 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. 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. The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

1975, c. 521, § 15.1-496.2; 1983, c. 444; 1986, c. 483; 1997, c. 587.

ARTICLE X. BOARD OF ZONING APPEALS

Sec. 130-521. Creation and authority.

The Board of Zoning Appeals (BZA), created pursuant to authority contained in the Code of Virginia, §15.2-2308 through §15.2-2314, as amended, shall continue in force under the provisions of this article. The BZA shall have all powers and duties as enumerated in the Code of Virginia, except for the issuance and revocation of special exceptions.

Sec. 130-522. Membership.

- (a) The BZA shall consist of five regular members and two alternate members, who are residents of the city.
- (b) Alternate members shall serve on the BZA only when there is an absence of or abstention by a regular member and shall rotate in accordance with the adopted schedule as established by the BZA.

Sec. 130-523. Organization.

- (a) The BZA shall conduct an annual organizational meeting in the month of January, if possible, to elect its officers.
- (b) Any officer vacancy on the BZA may be filled by the BZA through a special board election.
- (c) The BZA shall adopt in December or January the official BZA calendar for the next calendar year identifying scheduled meetings and close of docket.
- (d) The BZA may, by resolution, fix certain days on its calendar to which meetings shall be continued, if the Chairperson or Vice Chairperson finds and declares that weather conditions are such that it is hazardous for members to attend the meeting. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required, provided the resolution setting the schedule is inserted in a newspaper having general circulation in the locality at least seven days prior to the first meeting held pursuant to the adopted schedule.
- (e) Meetings of the BZA shall be held in accordance with the official calendar unless canceled by the Chairperson due to lack of business.
- (f) Special meetings of the BZA shall be held at the call of its Chairperson, or Vice Chairperson, and at such times as the majority of the BZA may determine.

Sec. 130-524. Administration.

- (a) All meetings of the BZA shall be open to the public and shall otherwise conform to the Virginia Freedom of Information Act.

- (b) The BZA shall keep minutes of its proceedings, which shall reflect the vote of each member upon each question, noting if absent, or failing to vote.
- (c) In addition to minute books, the BZA shall keep records of its examinations, public hearings, public advertising, and other official actions, all of which will be immediately filed in the office of the BZA. BZA records constitute a public record.
- (d) An appeal shall be made by filing an application with the Zoning Administrator and the Board of Zoning Appeals. An appeal shall specify the grounds thereof, together with the filing fee in the sum set forth by uncodified ordinance of the City Council. The application and accompanying maps, plans, and other documentation constituting the record upon which the action appealed was taken from shall be scheduled for the next available docket as set forth in the adopted calendar.
- (e) All advertisements for public hearings and other notices shall conform to the requirements of the Code of Virginia and this chapter.
- (f) Upon final action to approve an appeal, the BZA shall record an order with the land records of the City and shall send a copy to the applicant, to the Zoning Administrator, and to such other parties as necessary.

Sec. 130-525. Records and reports.

In addition to records required by §130-524, the BZA shall submit an annual report of the previous fiscal year's activities to the City Council within 30 calendar days of its annual organizational meeting.

Secs. 130-526—130-690. Reserved.