

ARTICLE 20

BOARD OF ZONING APPEALS

SECTION 20-1. COMPOSITION, APPOINTMENT, AND ORGANIZATION.

20-1-1 There shall be created a Board of Zoning Appeals, which shall consist of five (5) residents of the City, appointed by the Circuit Court of the City. Their terms of office shall be five (5) years each except that original appointments shall be made for such terms that the term of one (1) member shall expire each year. The Secretary of the Board shall notify the Court at least thirty (30) days in advance of the expiration of any terms of office, and shall notify the Court promptly if any vacancies occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be re-appointed to succeed themselves. Members of the Board shall hold no other public office in the City except that one (1) may be a member of the Planning Commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies.

20-1-2 With the exception of its secretary, the Board shall elect from its own membership its officers, who 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. A secretary who is not a member of the Board shall not be entitled to vote on matters before the Board. For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board. Except for matters governed by §15.2-2312 of the Code of Virginia, as amended, 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 county or municipality 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 City Council at least once each year. (10/11/83, Case 83-06, Ord. No. 034-83; 7/15/09, Case TA-09-66, Ord. No. 2009-18; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

20-1-3 Within the limits of funds appropriated by the City Council, the Board may employ or contract for secretaries, clerks, legal consultants, and other technical and clerical services. Members of the Board may receive such compensation as may be authorized by the City Council. Any Board member may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the court which appointed him, after hearing is held after at least fifteen (15) days' notice.

20-1-4 ALTERNATE MEMBERS.

At the request of the Common Council of the City of Winchester, the Circuit Court of the City may appoint not more than three (3) alternates to the Board of Zoning Appeals. The qualifications, terms and compensation of alternate members shall be the same as

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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. (7/15/09, Case TA-09-66, Ord. No. 2009-18)

SECTION 20-2. POWERS OF THE BOARD OF ZONING APPEALS.

- 20-2-1 The Board of Zoning Appeals shall have the following powers and duties:
- 20-2-2 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 pursuant thereto.
- 20-2-3 To authorize upon appeal in specific cases such variance from the terms of the ordinance as 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, as follows:
- 20-2-3.1 When 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 such piece of property, or of the use 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, 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. (7/15/09, Case TA-09-66, Ord. No. 2009-18)
- 20-2-3.2 No such variance shall be authorized by the Board unless it finds:
- a. That the strict application of this Ordinance would produce a clearly demonstrable hardship. (9/13/05, Case TA-05-03, Ord. No. 026-2005)
 - b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - c. 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.
- 20-2-3.3 Repealed. (10/13/92, Case TA-92-02, Ord. No. 016-92)

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- 20-2-3.4 No variance shall be authorized unless the Board finds that the condition or situation of the property 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.
- 20-2-3.5 In authorizing a variance the Board may impose such conditions regarding the location, character, and other features of the proposed structure for 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.
- 20-2-4 To hear and decide appeals from the decision of the Zoning Administrator. (10/13/92, Case TA-92-02, Ord. No. 016-92)
- 20-2-5 Repealed. (9/13/05, Case TA-05-03-05, Ord. No. 026-2005)
- 20-2-6 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 owner of the property affected by any such question, the Board shall interpret the map in 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 the Ordinance. (3/15/88, Case TA-87-17, Ord. No. 014-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

SECTION 20-3. PROCEDURES.

- 20-3-1 An application or 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 Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance, or any modification of zoning requirements pursuant to §15.2-2286 of the Code of Virginia, as amended. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the 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 §15.2-2311 of the Code of Virginia, as amended, 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 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 application or appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator, and with the Board, a notice of appeal specifying the grounds thereof.

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The Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. 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 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 Administrator and for good cause shown. (10/13/92, Case TA-92-02, Ord. No. 016-92; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

20-3-2 All applications or appeals to the Board shall be made to the Administrator on a form provided for such purpose, and shall be accompanied by a filing fee as per Section 23-8, evidence of delinquent tax payment per Section 23-9, and disclosure of real party interest per Section 23-10 of this Ordinance. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. Except as provided for below, the time period for appeal shall be no less than thirty (30) days from the date of receipt of the Notice of Violation sent by the Administrator, pursuant to § 15.2-2311 and § 15.2-2286, Code of Virginia, et seq.: (3/13/90, Case TA-89-12, Ord. No. 008-90; 10/13/92, Case TA-92-02, Ord. No. 016-92; 8/16/02, Case TA-02-04, Ord. No. 014-2002; 3/11/09, Case TA-08-14, Ord. No. 2009-09; 9/14/10, Case TA-10-334, Ord. No. 2010-39)

- a. An appeal period of ten (10) days shall be provided for violations of this Ordinance pertaining to maximum occupancy of residential dwellings.

20-3-3 PUBLIC NOTICE AND HEARING.

No such applications or appeals shall be considered by the Board except after notice and hearing as per Section 23-7-1 of this Ordinance. Written notice shall be provided per Section 23-7-2 of this Ordinance. For the hearing by the Board, the applicant shall place notification signage as per Section 23-7-3 of this Ordinance. The Board shall fix a reasonable time for the hearing of an application or appeal, and decide the same within sixty (60) days of receipt of application or appeal made in compliance with this Ordinance. In exercising its powers, the Board may reserve or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reserve any other requirement, decision, or determination of any 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. (3/15/88, Case TA-87-17, Ord. No. 014-88; 10/13/92, Case TA-92-02, Ord. No. 016-92)

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Where a building permit has been issued and the construction of the building for which such permit is subsequently sought to be prevented, restrained, corrected, or abated as a violation of the Zoning Ordinance, by suit filed within fifteen (15) 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 Administrator to the Board of Zoning Appeals.

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