

ARTICLE XVII – BOARD OF ZONING APPEALS, VARIANCES AND APPEALS

17-1. THE BOARD OF ZONING APPEALS:

- 17-1.1 This board, consisting of five (5) members, who are residents of the Town of Wytheville, shall be appointed by the Judge of the Circuit Court of Wythe County, Virginia. The board shall serve without pay. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term. At the request of Town Council, up to three alternate members may be appointed and are able to vote at board meetings in a member's absence or a member's need to abstain from voting.¹⁰⁶
- 17-1.2 The term of office shall be for five years. Members may be reappointed to succeed themselves. In any case a member shall serve until a successor is appointed and qualifies.
- 17-1.3 Members may be removed for cause by the court which appointed them upon written charges and after a public hearing held after at least 15 days' notice.
- 17-1.4 Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.
- 17-1.5 The board shall choose its own chairman and vice chairman who shall act in the absence of the chairman. A qualified individual who is not an appointed member of the board may serve as secretary but shall not be entitled to vote on matters before the board.¹⁰⁶
- 17-1.6 Members of the board shall hold no other public office except that one member thereof may be a member of the Town's Planning Commission.

17-2. POWERS AND DUTIES OF THE BOARD OF ZONING APPEALS:

Boards of Zoning Appeals shall have the following powers and duties:

- 17-2.1 To hear and decide appeals from any order, requirement, decision, or determination made by the zoning administrator or¹⁰⁶ an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
- 17-2.2 To grant, upon application in specific cases, a variance provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standard for a variance as defined in [§ 15.2-2201](#) of the Code of Virginia and the criteria set out in this section.¹⁰⁶

- A. 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 the physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and¹⁰⁶
- (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;¹⁰⁶
 - (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;¹⁰⁶
 - (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; and¹⁰⁶
 - (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.¹⁰⁶
- B. No such variance shall be authorized except after notice and hearing as required by Section § 15.2-2204 of the Code of Virginia of 1950, as amended.⁷⁴ However, when giving any required notice to the owners, their agents, or occupants of abutting 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.¹⁰⁶
- C. 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.¹⁰⁶

17-2.3 To hear and decide applications for interpretation of the official zoning map where there is any uncertainty as to the location of a district boundary. After notice and public hearing 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.¹⁰⁶

17-2.4 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 Town Council.¹⁰⁶

17-3. RULES AND REGULATIONS:

17-3.1 The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary.

17-3.2 The meeting of the board shall be held at the call of its chairman or at such times as a quorum of the board may determine.

17-3.3 The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses by issuing subpoenas.

17-3.4 The board shall keep minutes of its proceedings. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

17-3.5 A quorum shall be at least three (3) members.

17-3.6 A favorable vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant on any matter upon which the board is required to pass.

17-4. APPEAL TO THE BOARD OF ZONING APPEALS:

17-4.1 An appeal to the board may be taken by any person aggrieved or by any officer, department or board of the Town affected by any decision of the zoning administrator. Such appeal shall be taken within ten days after the decision appealed from by filing with the zoning administrator, and with the secretary of 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 appeals was taken. An appeal shall stay all acts and 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 reasonable notice to the zoning administrator and for good cause shown.

17-5. APPEAL PROCEDURE:

17-5.1 Notice of appeals shall be mailed to the Board of Zoning Appeals c/o the zoning administrator, and a copy of the appeal shall be mailed to the secretary of the Planning Commission. A third copy should be mailed to the individual, official, department or agency concerned, if any.

17-5.2 Appeals requiring an advertised public hearing shall be accompanied by cash or a check payable to the Town of Wytheville according to a schedule of fees adopted by the Town Council which may from time to time be amended.¹⁸

17-6. PUBLIC HEARINGS:

17-6.1 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 decide the same within sixty days. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify, the order, requirement, decision, or determination appealed from.

17-6.2 The non-legal staff of the Town Council 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.¹⁰⁶

17-7. WRIT OF CERTIORARI TO REVIEW DECISION OF BOARD OF ZONING APPEALS:

17-7.1 Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayers or any officer, department, or board of the Town, may present to a court of competent jurisdiction a petition specifying the grounds on which aggrieved within thirty days after the filing of the decision in the office of the board.

17-7.2 Upon the presentation of such petition, the court shall allow a writ certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten 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.

17-7.3 The Board of Zoning Appeals 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 such portions thereof as may be called for by such 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.

17-7.4 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 such evidence as it may direct and report the same 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.

17-7.5 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.

106
106
106
106
106
106
106
106
106
74
106
106
106
106
18
106