

**BY-LAWS AND PROCEDURES  
WASHINGTON COUNTY, VIRGINIA  
BOARD OF ZONING APPEALS**  
Adopted July 17, 2003

**ARTICLE 1. OFFICERS AND BOARD ADMINISTRATION**

- 1.1 On an annual basis, the Board shall review and adopt its by-laws and elect a Chairperson and Vice-chairperson in the month of January.
- 1.2 The Vice-chairperson shall assume the duties of the Chairperson in the Chairperson's absence.
- 1.3 The County Zoning & Subdivision Official shall serve as the Secretary to the Board. In the absence of the County Zoning & Subdivision Official, the County Planner or County Administrator shall serve as Acting Secretary.
- 1.4 For purposes of these rules, the term, "Chairperson" shall mean Vice-chairperson when the Vice-chairperson is acting in the absence of the Chairperson and "Secretary" shall mean Acting Secretary when such is acting in the position of Secretary in the Secretary's absence.
- 1.5 The Chairperson shall preside at all meetings and hearings of the Board; shall decide all points of order or procedure; and shall appoint any committees that are found to be necessary. Committees of the Board shall be comprised of no more than two Board members.
- 1.6 The Secretary shall handle all official correspondence subject to these rules at the direction of the Board; shall send out all notices required by these rules of procedure; shall keep the minutes of the Board's proceedings; and shall keep a file on each case which comes before the Board.
- 1.7 Annually, the Secretary shall file a report to the Planning Commission and Board of Supervisors on all matters heard and decided by the Board.
- 1.8 The Board shall annually make a request to the Board of Supervisors for funding in accordance with procedures established by the County. The Secretary shall be responsible for filing the funding request in a timely manner.
- 1.9 The Board, at its discretion, may retain the services of legal counsel and other consultants, as allowed by law, to assist in its operations and to represent its interests subject to the limits of funding for such services appropriated by the Board of Supervisors. The Board may request supplemental appropriations from the Board of Supervisors if budgeted funding is less than actual or anticipated needs.

**ARTICLE 2. MEETINGS**

- 2.1 A regular meeting of the Board for the hearing of applications and appeals shall be held monthly on the last Thursday at 7 p.m. in the Board of Supervisors Meeting Room, County Administration Building, 205 Academy Drive, Abingdon

unless no cases are pending, in which case the Secretary shall notify each member that no meeting shall be held. Unless otherwise notified, however, members should plan to attend the regular meetings on a monthly basis.

- 2.2 In the event that a regular meeting date falls on a County holiday, the meeting will be held on the next to last Thursday of that month.
- 2.3 Special meetings shall be called at the request of the Chairperson, Secretary, or Zoning Administrator or at the request of a majority of the membership. Any such special meeting shall be held only after notice as required by the Virginia Freedom of Information Act.
- 2.4 When necessary to make site visit(s) as a group, site viewings will be held on last Thursday of each month at 4:00 p.m. on the same day of the hearing of the case or cases pending. The Secretary shall notify members if site viewing is required.
- 2.5 A quorum shall consist of a majority of the Board. If a majority of the Board fails to attend within fifteen minutes after the time appointed for the meeting, the Secretary shall enter in the minute book the names of the members present and the adjournment for want of a quorum.
- 2.6 The conduct of business at all regular meetings of the Board shall follow Robert's Rules of Order.
- 2.7 The Board may recess a regular meeting to a subsequent date prior to its next regular monthly meeting if all applicants or appeals cannot be disposed of on the day set, and no further public notice shall be necessary for continuation of such meeting.
- 2.8 The order of business for a meeting shall be as follows, unless the members of the Board agree otherwise by consensus:
  - 2.8.1 Call to Order by Chairperson
  - 2.8.2 Determination of quorum
  - 2.8.3 Review and approval and/or modification of agenda
  - 2.8.4 Review and approval of minutes of previous meeting
  - 2.8.5 Hearings on variance applications
  - 2.8.6 Hearings on appeals from Zoning Administrator determinations.
  - 2.8.7 New Business
  - 2.8.8 Unfinished Business
  - 2.8.9 Adjournment
- 2.9 No action of the Board shall be valid unless authorized by a majority vote of those present and voting. All votes shall be recorded in the meeting minutes.

- 2.10 The Secretary shall set the proposed agenda for a Board meeting. The Chairperson and Zoning Administrator may direct the Secretary to place items on the agenda. No question or matter will be considered that is not on the agenda, unless the majority of the Board agrees by approving and/or modifying the agenda.
- 2.11 Any application, appeal, motion, or rehearing may be dismissed for failure of the applicant to comply with these rules.

### **ARTICLE 3. EX PARTE CONTACT PROHIBITED.**

- 3.1 No applicant or other party in interest, and no attorney for an applicant or party in interest, shall initiate any contact with a member of the Board for the purpose of conducting a private discussion, in person or by telephone, concerning the merits of any application, appeal, or other matter pending before the Board.
- 3.2 No member of the Board shall participate in any such private discussion.
- 3.3 Site visits or similar contacts initiated by the Secretary or by members of the Board shall not constitute such ex parte contacts.
- 3.4 This Rule shall be reproduced on all application and appeal forms, and in other notices as appropriate, in order to inform all parties in interest about the restrictions this Rule imposes.
- 3.5 If any member of the Board is contacted by a party in interest, or attorney for such party, with reference to a matter pending before the Board, the Board member shall respectfully inform the party or attorney of the restrictions which this Rule imposes, and of the right of the party to make a full presentation to the entire Board at a Public Hearing and promptly discontinue the discussion.

### **ARTICLE 4. PROCEDURE FOR HEARING CASES**

- 4.1 The Board has jurisdiction to hear three types of matters:
- 4.1.1 Application for Variance. To authorize upon appeal or original application in specific cases such variance as defined in § 15.2-2201 of the 1950 Code of Virginia, as amended, from the terms of the County zoning 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 County zoning ordinance shall be observed and substantial justice done, as follows.
- 4.1.1.1 No such variance shall be authorized by the Board unless it finds:
- 4.1.1.1.1 That the strict application of the County zoning ordinance would produce undue hardship;

- 4.1.1.1.2 That the hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
  - 4.1.1.1.3 That 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.
- 4.1.2 Appeals. Appeals from any order, requirement, decision or determination made by the Zoning Administrator in the administration or enforcement of Title 15.2, Chapter 22 of the 1950 Code of Virginia, as amended, or of any ordinance adopted pursuant thereto.
- 4.1.2.1 The decision on such appeal shall be based on the Board's judgment of whether the Zoning Administrator made a correct interpretation and application of the applicable law.
  - 4.1.2.2 The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.
- 4.1.3 Application for Zoning Map Interpretation. To hear and decide applications for interpretation of the County zoning district map where there is any uncertainty as to the location of a district boundary. 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 zoning district in question. The Board shall not have the power to change substantially the locations of district boundaries as established by the County zoning ordinance.
- 4.2 The Board shall not officially consider informal requests for advice.
- 4.3 Any application for a hearing by the Board shall be filed with the Zoning Administrator on the form provided by the County along with all documentation necessary to advise the Board fully. The Zoning Administrator shall transmit the completed form and any attachments to the Secretary along with all papers constituting the County's record of action upon which the matter is based.
- 4.4 The party requesting review by the Board must file the appropriate form and supporting documentation, if any, no later than the last County business day each month to be scheduled on the agenda for the following month's hearing(s). Any application received after that date will be scheduled for the subsequent meeting.
- 4.5 The Secretary shall assign a case number and schedule matters for hearing in the order in which received.
- 4.6 The Secretary shall notify all interested parties of the time scheduled for the hearing of the matter and give public notice in accordance with statutory requirements.

- 4.7 The party who requested review by the Board and the Zoning Administrator may appear on their own behalf or be represented by an attorney or other agent at the hearing.
- 4.8 In the absence of an appearance by the party who requested review, the Board may dispose of the matter on the record before it after hearing comments of the Secretary and, as necessary, from the Zoning Administrator.
- 4.9 The Board may, by consensus, modify the suggested time limits provided with the hearing procedures set forth herein. The Chairperson shall enforce time limits to allow fair and judicious presentation of the matters under review.
- 4.10 Variance and Zoning Map Interpretation Hearing Procedure. The procedure for hearing of an application for variance or zoning map interpretation shall be as follows:
- 4.10.1 The Chairperson shall identify the matter by announcing the name of the party who filed the application.
  - 4.10.2 The Secretary shall describe the property in issue and the nature of the request.
  - 4.10.3 The Chairperson shall call for comments from the Applicant in support of the application, and the Applicant shall provide such comments. Fifteen (15) minutes.
  - 4.10.4 The Chairperson shall open the public hearing and call for any other comments in support of the application, and any other speakers in favor may provide comments to the Board. Three (3) minutes allotted per speaker up to thirty (30) minutes.
  - 4.10.5 The Chairperson shall call for comments in opposition to the application, and any speakers in opposition shall tell the Board why they oppose the application. Three (3) minutes allotted per speaker up to thirty (30) minutes.
  - 4.10.6 The Chairperson shall close the public hearing and give the Applicant the opportunity to rebut comments in opposition. Five (5) minutes.
  - 4.10.7 At any time through the foregoing presentations, members of the Board may ask questions of the speakers.
  - 4.10.8 The Chairperson shall declare the hearing closed and invite discussion among the members of the Board.
- 4.11 Appeal Hearing Procedure. The procedure for hearing of an appeal of an order, requirement, decision, or determination of the Zoning Administrator shall be as follows:
- 4.11.1 The Chairperson shall identify the matter by announcing the name of the appellant.

- 4.11.2 The Secretary shall describe the property at issue and the nature of the appeal.
  - 4.11.3 The Chairperson shall give the Zoning Administrator the opportunity to present argument in favor of the Zoning Administrator's position. The Zoning Administrator may call witnesses to comment to the Board. Twenty (20) minutes.
  - 4.11.4 The Chairperson shall give the Appellant the opportunity to present argument in favor of the Appellant's position. The Appellant may call witnesses to comment to the Board. Twenty-five (25) minutes.
  - 4.11.5 The Chairperson shall give the Zoning Administrator the opportunity to rebut argument presented by the Appellant. Five (5) minutes.
  - 4.11.6 Members of the Board may question the speaker at any time during presentations to the Board.
  - 4.11.7 The Chairperson shall declare the hearing closed and invite discussion among members of the Board.
- 4.12 Board decisions shall be made by motion, which must receive a second, and majority vote in favor of the motion. If the motion does not receive a second or a majority vote, or if the motion receives a tie vote, then the motion fails. The Board shall not use any tie-breaking mechanism.
- 4.13 In any case in which an application has been denied by the Board or withdrawn after having been filed, no such application shall be again considered by the Board within one (1) year from the date of such denial or withdrawal.
- 4.14 Within ninety (90) days of the filing of the application or appeal, the Secretary shall notify the interested parties and the Zoning Administrator of the decision of the Board. Such decision shall be recorded in the minutes of the meeting of the Board. Failure of the Board to act on any application or appeal within this time period shall be construed as approval of the application or appeal.
- 4.15 After hearing an application or appeal, the Board shall not defer rendering a decision in favor of rehearing the same matter again at a later meeting, but may continue Board deliberation and rendering of its decision to a later meeting.
- 4.16 Rehearing.
- 4.16.1 No rehearing of any decision by the Board shall be had except on motion by a member of the Board who previously voted for the decision, which shall be made not later than at the regular meeting of the Board held in the month succeeding the meeting at which the decision was rendered; such motion shall be to reconsider the vote, and shall be carried by not less than three (3) affirmative votes.
  - 4.16.2 No motion for a rehearing shall be entertained unless new evidence is submitted that could not reasonably have been presented at the original

hearing. In all cases, the request for rehearing shall be in writing, reciting the reason for the request, filed not more than fifteen (15) days after the date of the meeting at which the decision was rendered, and shall be accompanied by the necessary information, including a recitation of all evidence that could not reasonably have been presented at the original hearing.

4.16.3 If a rehearing is granted, the case shall be put on the agenda for a rehearing. The same procedure as to notices shall be followed as in the original application.

## **ARTICLE 5. RECORDS**

5.1 The Secretary shall maintain a complete file on each appeal as part of the records of the Board of Zoning Appeals.

5.2 The Secretary shall prepare minutes for each meeting of the Board to record actions of the Board, and such minutes, after adoption by the Board, shall be the official record of the Board's actions.

5.3 The application or appeal file and the adopted meeting minutes shall be a public record.

5.4 The record of Board determinations shall include the following:

5.4.1 Name of applicant or appellant;

5.4.2 Tax identification number for the parcel at issue;

5.4.3 Nature of proceeding;

5.4.4 Record of members of the Board present for hearing;

5.4.5 Statement of motion made;

5.4.6 Name of members who made and seconded the motion;

5.4.7 Roll call of yeas and nays on vote.

## **ARTICLE 6. AUDIO RECORDING OF BOARD MEETINGS**

6.1 The Secretary shall record all meetings of the Board unless technical difficulties prevent recording.

6.2 Any individual who would like to listen to tapes of the meetings shall file with the Secretary a written request that includes the requesting party's name, address, and telephone number.

6.3 The Secretary shall contact the requesting party to arrange a mutually agreed upon time within regular business hours that the requesting party may listen to the tapes

in the County Administrative Offices building. Tapes shall not be taken out of the building.

- 6.4 The Secretary shall maintain tapes for thirty (30) days after adoption of the Board's meeting minutes, after which time, the Secretary may dispose of such tapes.

#### **ARTICLE 7. BY-LAWS AND PROCEDURES**

- 7.1 These by-laws and procedures shall be in full force and effect unless modified by motion to amend, which must receive a second, and majority vote in favor.
- 7.2 Any modification or amendment of the by-laws shall only be made in open meeting with a quorum present after thirty (30) days prior notice of proposed modification.