

ARTICLE XVII - PROVISIONS FOR APPEAL

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.

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.

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 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 an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.

17-2.2 To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to be 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:

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 this 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 approaching confiscation, 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.

No such variance shall be authorized by the board unless it finds: (a) that the strict application of the ordinance would produce undue hardship; (b) that such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (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.

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

No variance shall be authorized unless the board finds that the conditions or situation of the property concerned or the intended use 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. In authorizing 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 insure that the conditions imposed are being and will continue to be complied with.

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

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

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.

17-7 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.

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