

## ARTICLE I. Board of Zoning Appeals

### SECTION 10-3-107. Establishment of Board of Zoning Appeals

- A. **Establishment.** A Board of Zoning Appeals is established pursuant to Code of Virginia §§ 15.2-2308 through 15.2-2316.
- B. **Membership.** The Board must consist of 5 residents of the City appointed by the Circuit Court of Rockingham County. Members serve 5-year terms and may be reappointed as provided by state law. Vacancies shall be filled for the unexpired term. Members of the Board cannot hold other public office in the City, except that 1 may be a member of the Planning Commission.
- C. **Officers.** The Board must elect a Chair and Vice-Chair from among its members and must adopt rules of procedure consistent with the Code of Virginia and this Ordinance.
- D. **Authority.** The Board shall have all powers and duties authorized by state law, including:
  - 1. Hearing and deciding appeals of administrative decisions;
  - 2. Hearing and deciding variances;
  - 3. Hearing and deciding appeals related to Article G; and
  - 4. Any additional power granted by state law or delegated by City Council consistent with the Code of Virginia.
- E. **Limitations.** All provisions of this Ordinance relating to the Board of Zoning Appeals are strictly constructed. As a board of limited jurisdiction, the Board of Zoning Appeals must act in full conformity with this Ordinance, and no action may be taken beyond the authority specifically conferred.
- F. **Decisions Subject to Judicial Review.** All findings and decisions of the Board of Zoning Appeals are subject to judicial review in the manner provided by the Code of Virginia.
- G. **Hearings and Decisions.** The Board of Zoning Appeals shall fix a reasonable time for the hearing of any application or appeal. Any materials relating to a particular matter before the Board, including any staff recommendation or report furnished to any member or members of the Board, shall be made available without cost to the applicant, appellant, or other person aggrieved within 3 days of being made available to the board member. Any such materials furnished to a board member shall also be made available for public inspection.

- H. **Limitation on Rehearing.** If an application is denied or withdrawn after the Board of Zoning Appeals has begun a public hearing on it, the Board of Zoning Appeals will not hear a substantially similar application concerning any of the same property within 12 months.

#### **SECTION 10-3-108. Variances**

- A. **General Standard.** The Board of Zoning Appeals shall have the power to grant variances, subject to the provisions of this Section.
1. In accordance with state law, to grant a variance, the Board of Zoning Appeals must determine from the evidence that:
    - a. The strict application of this Ordinance would unreasonably restrict the utilization of the property;
    - b. Granting the variance would alleviate a hardship due to a physical condition relating to the property or its improvements; or
    - c. Granting a variance would alleviate a hardship by granting a reasonable modification to property or improvements requested by a person with a disability.
  2. Further, the Board of Zoning Appeals must find that:
    - a. The property was acquired in good faith, and the applicant did not create any hardship for which relief is sought;
    - b. The variance would not result in a substantial detriment to adjacent property or nearby properties in the proximity of that geographical area;
    - c. The condition or situation of the property 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 by City Council as an amendment to the Zoning Ordinance;
    - d. The granting of the variance would not result in an unpermitted use or a change of zoning classification;
    - e. The relief or remedy sought by the variance application is not available through a special exception; and
    - f. That the variance would conform with the purposes of this Ordinance and not be contrary to the public interest.

- B. **Conditions.** After determining that the applicant has satisfied the requirements for a variance, the Board of Zoning Appeals must determine the minimum variance that would afford relief. In granting a variance, the Board of Zoning Appeals may impose conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary or in the public interest. Further, a variance granted to provide a reasonable modification requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification, subject to the provisions of state and federal law, as applicable.
- C. **Expiration of a Variance.** The activity approved by the variance must be established or any construction must be commenced and diligently pursued within the time specified by the Board of Zoning Appeals or, if no time was specified, then within 36 months from the approval date of the variance. Otherwise, the variance will automatically expire without notice, unless additional time is approved by the Board of Zoning Appeals.

### **SECTION 10-3-109. Appeals**

- A. **Right of Appeal.** Any person aggrieved by a written administrative decision or determination by the Zoning Administrator, including a notice of violation, may appeal to the Board of Zoning Appeals, except that an appeal that relates to a proffered condition must be taken to City Council.
- B. **Initiation.**
  - 1. Except as set forth below, all appeals must be filed within 30 days from the date of the decision appealed by filing an appeal application with the Zoning Administrator.
  - 2. Appeals from notices of violation involving the following violations must be filed within 10 days from the date of the notice by filing an appeal application with the Zoning Administrator:
    - a. Occupancy of a dwelling unit.
    - b. Other short-term, recurring violations as determined by the Zoning Administrator.
  - 3. All appeal applications must specify the grounds for the appeal.
  - 4. Where the time limit on filing falls on a day where City Hall is closed, the filing deadline is extended to the next business day.
- C. **Stay of Proceedings.** An appeal will stay all proceedings related to the action appealed unless the Zoning Administrator certifies that a stay would cause imminent peril to life or property.

**D. Procedure on Appeal.**

1. The determination of the Zoning Administrator shall be presumed correct.
2. At the hearing, the Zoning Administrator shall explain the basis for the determination, after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
3. The Board may consider any applicable ordinances, laws, and regulations in making its decision. The decision on appeal shall be based on the Board's judgment of whether the Zoning Administrator was correct.

**E. Decisions.**

1. The Board of Zoning Appeals may affirm or reverse, wholly or partly, the decision of the Zoning Administrator.
2. The concurring vote of 3 members of the Board of Zoning Appeals is required to reverse any determination of the Zoning Administrator.