

**ARTICLE 17  
BOARD OF ZONING APPEALS**

**VARIANCES AND PROVISIONS FOR APPEAL**

**17-1 Board of Zoning Appeals**

**A. Membership**

1. A board consisting of five (5) members and one alternate shall be appointed by the Circuit Court of the County of Westmoreland. The alternate shall have the same powers and duties conferred to regular members and shall fill in for any absentee member. The qualifications, terms and compensation of alternate members shall be the same as those of regular members.
2. A regular member, when he knows he will be absent from a meeting, shall notify the chairman twenty-four hours prior to the meeting of such fact.
3. Members of the Board shall hold no other public office in the Town except that one of the five appointed members may be a member of the Planning Commission.
4. The board shall choose annually its own chairman and vice chairman who shall act in the absence of the chairman.
5. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the Board, excluding the alternate member. A secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.

**B. Terms of Office and General Procedures.**

1. The term of office shall be for five (5) years. Appointments for vacancies occurring otherwise than by expiration of term shall be only for the unexpired term. Members may be reappointed to succeed themselves. A member whose term expires shall serve until his successor is appointed and qualified. The secretary of the Board shall notify the court at least thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs.
2. Members may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause by the court which appointed him, after a hearing held after at least fifteen (15) days notice.
3. 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 a financial interest.
  1. The board shall serve without pay.
  2. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all the members of the Board. The board may make, alter and rescind rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth.
  3. The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year.
  4. 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.
  5. The chairman of the Board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.
  6. The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an 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.

## **17-2 Powers and Duties of the Board**

- A. The Board of Zoning Appeals shall have the following powers and duties:
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 Zoning Ordinance or of any ordinance adopted pursuant thereto.
  2. To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice of hearing as provided by this Article.
  3. 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 owners of the property affected by any such question, and after public hearing with notice as required by this Article. 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. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. No provision of this article shall be construed as granting any Board the power to rezone property.
  4. To hear and decide applications for such special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted 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. No such special exception may be granted except after notice and public hearing as provided in this Article.
  5. To authorize upon application in specific cases such variance from the terms of this ordinance as provided for in Section 17-6 of this Article.

## **17-3 Appeals to the Board**

- A. Procedure to Appeal
1. An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Administrator.
  2. Such an appeal shall be taken within thirty (30) days after the decision appealed from by filing an application with the Zoning Administrator on a form provided by the Town. The application shall state the grounds of the appeal and be accompanied by any plans or information as required on the application form.
  3. Upon receipt of an application for appeal, the Zoning Administrator shall schedule the application for a public hearing before the Board and submit to the Board the application, a written staff report, and all the papers constituting the record upon which the action appealed was taken.
  4. An application for appeal shall stay all 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 notice to the Administrator and for good cause shown.
  5. The board shall fix a reasonable time for the hearing of an application for appeal, give public notice in accordance with the public notice requirements of this Article, as well as due notice to the parties in interest and make its decision within ninety days of the filing

- of the application or appeal.
6. In exercising its powers the Board and with a majority plus 1 vote the Board may reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from.
  7. In exercising its powers the Board the Board may affirm the decision or determination of the zoning administrator.

#### **17-4 Variances**

##### **A. Procedure for Variance**

1. Applications for variances may be made by any property owner, tenant, government official, department, board or bureau.
2. An application for a variance shall be filed with the Zoning Administrator on a form provided by the Town.
3. An application shall contain or be accompanied by a plan showing the proposed development and other site features necessary to evaluate the proposed development.
4. Within ten (10) working days after receiving a variance application the Zoning Administrator shall determine whether the application is complete and all submission requirements satisfied. If the Zoning Administrator determines that the application is not complete, the Zoning Administrator shall notify the applicant of any deficiencies within five (5) working days after such determination.
5. Once an application is determined to be complete, the Zoning Administrator shall schedule the application for a public hearing before the Board and submit the application, together with a written staff report, to the Board.
6. Upon receiving the application and report, the Board shall conduct a public hearing on the proposed variance in accordance with the public notice requirements of this Article, and shall decide the same within ninety (90) days of the filing of the application.
7. Based on consideration of the requirements found in Section 17-6 of this Article, the Board may either grant the variance, with or without conditions, or deny the variance.
8. 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 ensure that the conditions imposed are being and will continue to be complied with.

#### **17-5 Variances - Standards of Review.**

- A. The Board of Zoning Appeals may authorize, upon application 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:
  1. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional 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 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.

2. 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.
  - d. Variances shall be authorized only after a hearing advertised according to the public notice requirements of this Article, shall have been held.
  - e. No variance shall be authorized unless the Board finds that the condition 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.
  - f. Where an application for a zoning variance is disapproved by the Board, the Board may not consider substantially the same application for a period of one (1) year following the date of the denial of the application by the Board.
  - g. If the work described or permitted by any zoning variance has not been started within one year from the date of issuance, the variance shall expire.

#### **17-6 Appeal of the Board's Decision.**

##### **A. Procedure to Appeal to Circuit Court**

1. Any person or persons jointly or severally aggrieved by any decision of the Board of zoning appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may present to the circuit court for the county or city a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.
2. Upon the presentation of such petition, the court shall allow a writ of 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 realtors' 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.
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 the portions thereof as may be called for by the 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 Notice of Public Hearing - Advertising.**

Notice of any public hearing held by the Board shall be advertised for two successive weeks in a newspaper having general circulation within the Town of Colonial Beach. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, or documents may be examined. The notice shall specify the date, time, and place of public hearing at which persons affected may appear and present their views, such public hearing shall not be held less than six days nor more than twenty-one days after the second advertisement appears in such newspaper.

**17-8 Notice of Public Hearing - Written Notice.**

- a. At least five (5) days prior to each public hearing, the Board shall send written notice specifying the date, time and place of public hearing at which persons affected may appear and present their views, to the owner(s), their agent or the occupant of each parcel involved and to all abutting property and property located immediately across the street or road from the affected property. Such notice shall contain a descriptive summary of the purpose of the public hearing and a reference to the place or places within the locality where copies of the proposed plans, or documents may be examined. Such notice shall be sent to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records. If the purpose of the public hearing involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, written notice shall also be given at least ten days before the hearing to the chief administrative officer, or his designee, of such adjoining locality. Such notices may be sent by first class mail; however, a representative of the Board shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

**17-9 Notice of Public Hearing - Posting of Property.**

The Zoning Administrator shall post, at least fifteen (15) days prior to the date of each public hearing, for each street frontage, at least one notice of the scheduled public hearing, on the land or building involved.