

**Article XVIII  
Board of Zoning Appeals**

Repealed and Replaced 6/27/06

**Section 1      Authority and Establishment**

The Board of Zoning Appeals was established pursuant to the provisions of Article 7, Chapter 22, Title 15.2-2308 of the Code of Virginia, 1950, as amended. The Board of Zoning Appeals, heretofore established, shall continue as the Board of Zoning Appeals for the purpose of this Ordinance.

The official title of the Board of Zoning Appeals shall be the "Caroline County Board of Zoning Appeals". This body shall also be known as the "Board of Zoning Appeals" or the "BZA".

**A. Purpose**

The Board of Zoning Appeals is established to perform those duties as set forth in Section 15.2-2309 the Code of Virginia, 1950, as amended and as set forth in the provisions of this Ordinance.

**B. Membership**

The Board of Zoning Appeals shall consist of five (5) members, one from each election district, appointed by the Circuit Court of Caroline County, Virginia, and the members shall serve with pay as may be authorized by the Board of Supervisors. All members shall be residents of the County.

- a. The terms of office of the membership shall be for five (5) years except that the initial term shall be such that a least one Board member's term shall expire each year.
- b. The Clerk of the Board of Zoning Appeals shall notify the Circuit Court at least thirty (30) days in advance of the expiration of any term of office and shall notify the Court promptly of any vacancy. Appointments to fill any vacancies shall be only for the expired portion of the term. Members may be reappointed to succeed themselves.
- c. A member whose term expires shall continue to serve until his successor is appointed and qualifies.
- d. Members of the Board of Zoning Appeals shall hold no other public office in the County except that one (1) member may be a member of the Planning Commission.
- e. Any Board of Zoning Appeals member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by the Court that appointed him, after a hearing held at least fifteen (15) days notice to the member sought to be removed.

**C. Referral to Planning Commission**

The Clerk of the Board of Zoning Appeals shall transmit to the Planning Commission and Board of Supervisors an annual summary of every application for an appeal or variance made to the Board of Zoning Appeals.

**D. Organization; Meeting; and Rules and Regulations**

The Board of Zoning Appeals shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Chairman, or in his absence the Vice-Chairman, may administer oaths and compel the attendance of witnesses. The Board may adopt such rules and

regulations as it may consider necessary, consistent with ordinances or the county and general laws of the commonwealth.

Meetings of the Board shall be held at the call of its chairman or at such times as a quorum of the Board may determine. For the conduct of any hearing and the taking of any action, a quorum shall consist of at least three members.

The Board shall keep full records of its examinations and other official actions, all of which shall be promptly filed in the office of the Board as a public record. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. The Board shall submit an annual report of its activities to the governing body. All meetings of the Board shall be open to the public.

A favorable vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any zoning official or to decide in favor of an applicant on any other matter upon which the Board is required to pass. If three votes to reverse or decide in favor of an applicant are not obtained then the zoning official's decision stands or the application fails regardless of any tie vote.

## **SECTION 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 ordinance.
2. To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, when owing to special conditions a literal enforcement of the provisions hereof will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done as set forth in Section 4-B of 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 such question, and after public hearing with notice as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, the Board may interpret the map in such way as to carry out the intent and purpose of this 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.
4. To make, alter and rescind rules and forms for its procedures, consistent with this Ordinance of the County and the general laws of the Commonwealth of Virginia.
5. To prescribe procedures for the conduct of public hearings.
6. To employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services within the limits of funds appropriated by the Board of Supervisors.

## **SECTION 3      APPEALS TO THE BOARD**

### **A. Initiation**

Any person aggrieved or any officer, department, board, planning commission or authority of the County affected by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this Ordinance may appeal such decision to the Board of Zoning Appeals.

## **B. Filing of Appeals**

Notices of appeal shall be filed with the Zoning Administrator within thirty (30) days of the date of the decision appealed. The notice shall specify the grounds for such appeal, and shall be filed in accordance with the following provisions;

1. An application for an appeal shall be filed with the Zoning Administrator in accordance with the following provisions:
  - i. The specific provision(s) of the Ordinance from which an appeal is sought must be stated;
  - ii. The nature and extent of the appeal must be provided.
2. Submission requirements:
  - i. A copy of the deed to verify ownership of the property.

## **C. Processing**

The Board of Zoning Appeals shall process all notices of appeal in accordance with the provisions of this ordinance. No determination shall be made by the Board of Zoning Appeals on any appeal until a public hearing has been held on same in accordance with the provisions of Section 15.2-2204 of the Code of Virginia, 1950, as amended. Except that when giving the required notice to the owners, agents, or occupants of abutting property and property immediately across the street from the subject property affected, the Board may give notice by first class mail rather than by registered or certified mail.

## **D. Decision on Appeals**

1. The Board of Zoning Appeals may affirm or reverse, wholly or partly, or may modify the order, requirement, decision or determination appealed from.
2. The concurring vote of three (3) members of the Board of Zoning Appeals shall be required to reverse any order, decision or determination of the Zoning Administrator under this Ordinance. If three votes to reverse or decide in favor of an applicant are not obtained then the zoning official's decision stands or application fails regardless of any tie vote.
3. The Board of Zoning Appeals shall render a decision on the appeal within ninety (90) days after receipt of same.

## **E. Stay of Proceedings**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board of Zoning Appeals, after the notice of appeal has been filed, that a stay would, in his opinion, cause imminent peril to life or property by reason of facts stated in the certificate of stay. In such case, the proceedings shall not be stayed other than by a restraining order which may be granted by a court of record on application, on notice to the Zoning Administrator and for good cause shown.

## **Section 4      VARIANCES**

### **A. Initiation**

A property owner, an owner acting jointly with a lessee of the property involved, or any person under bona fide contract to purchase same, may apply to the Board of Zoning Appeals for a variance of the strict application of the terms of this Ordinance.

**B. Authorization and Standards**

1. 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 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 this ordinance.

No such variance shall be authorized by the Board unless it finds:

- i. The strict application of the provisions of this ordinance would produce undue hardship;
- ii. The hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- iii. 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.
- iv. 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 this ordinance.

No such variance shall be authorized except after notice and hearings as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended. Except that when giving the required notice to the owners, agents, or occupants of abutting property and property immediately across the street from the subject property affected, the Board may give notice by first class mail rather than by registered or certified mail.

No variance shall be authorized unless the Board of Zoning Appeals 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 this 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.

2. The concurring vote of three (3) members of the Board of Zoning Appeals shall be required to authorize a variance.
3. The Board of Zoning Appeals shall render a decision on an appeal for a variance within ninety (90) days after receipt of same.

**C. Application**

1. An application for a variance shall be filed with the Zoning Administrator in accordance with the following provisions:
  - i. The specific provision or provisions of the Ordinance from which a variance is sought.

- ii. The nature and extent of the variance sought.
- iii. The special conditions of the property or the nature of use and/or development of immediately adjacent property which would make such variance necessary.

2. Submission requirements

- i. A copy of the deed to verify ownership of the property
- ii. A recent survey of the property, prepared by a surveyor licensed by the Commonwealth of Virginia, showing all dimensional criteria of the lot and proposed building(s) with tie distances to boundary lines
- iii. Location(s) of well and drain field (if applicable)

**D. Prohibited Variances & Limitations**

No variance shall be authorized by the Board of Zoning Appeals that would:

- 1. Permit the establishment of a use not otherwise permitted in the zoning district as set forth in this ordinance.
- 2. Result in an increase in density from that permitted by the applicable zoning district regulations as set forth in this ordinance.
- 3. Relate to signs, except as specifically qualified by the provisions of this ordinance. (sign regulations).
- 4. Whenever an application for a variance has been denied by the Board, at least one (1) year shall elapse before reconsideration of the same application or one substantially similar.

**SECTION 5      CERTIORARI TO REVIEW DECISION OF THE BOARD**

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer of any officer, department, board or bureau of the County may present to the Circuit Court of the County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of such board.

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 return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) 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, or notice to the BZA and due cause shown, grant a restraining order.

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 grounds of the decision appealed from and shall be verified.

If, upon 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.

Costs shall not be allowed against the Board of Zoning Appeals, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from.