

ARTICLE 30. BOARD OF ZONING APPEALS

Sec. 15-491 Composition; Powers, and Duties

- A. *Composition.* The board of zoning appeals (board) consists of five members, each appointed by the Goochland County Circuit Court for terms of five years. The secretary of the board must notify the court at least 30 days in advance of the expiration of any member's term, or promptly if any vacancy occurs. Vacancies will be filled by the court for the unexpired portion of the term. A member whose term expires shall continue to serve until his successor is appointed and qualifies, unless prohibited by law. If authorized by the board of supervisors, each member can receive compensation for attendance at each meeting of the board. Any board member or alternate may be removed, by the court, for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, after a hearing and at least 15 days' notice of the hearing.

In addition to regular members, the board of supervisors may request, and the court may appoint two alternate members. The qualifications, terms, and compensation of alternate members will be the same as regular members. A regular member, when he knows he will be absent from or will have to abstain from any application at a meeting, will notify the chair as soon as practicable and at least 24 hours prior to the meeting. The chair may select an alternate to serve in the absent or abstaining member's place. An alternate member may vote on any proceeding in which he takes the place of or votes instead of a regular member.

- B. *Ex parte communications, proceedings.* The county's non-legal staff may have ex parte communications (communications in which not all parties to a matter are present) with a board member, but may not discuss the facts or law relative to a particular case. The applicant, landowner, or his agent or attorney may have ex parte communications with a board member, but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law relative to a particular case occurs, the party engaging in the communication must inform the other party as soon as practicable, including a description of the substance of the communications. Ex parte communications do not include discussions as part of a public meeting to which staff, the applicant, landowner or his agent are all invited.

Any materials relating to a particular case furnished to a board member must be made available as soon as practicable, but at least within three business days, to the applicant, appellant or other aggrieved person, at no cost. Any materials furnished to a board member must also be made available for public inspection.

For purposes of this section, "non-legal staff" means any staff who is not employed in the county attorney's office. Nothing in this section precludes the board or board members from having ex parte communications with any attorney or staff of any attorney when those communications are protected by the attorney-client or other privilege.

- C. *Powers.* The board has the following powers and duties:
- (1) To hear and decide appeals from any written order, requirement, decision, or determination made by any administrator in the administration or enforcement of the zoning ordinance or the state laws pertaining to zoning.
 - (2) To hear and decide variances.
 - (3) To hear and decide interpretations of the official zoning map where there is uncertainty as to the location of a district boundary.
 - (4) To fix a schedule of regular meetings and adopt procedures appropriate for the board's operation.

- D. *Applications.* A request for a variance or map interpretation must be initiated by filing a completed application on the form approved by the community development department. Applications may be made by property owners, tenants, or contract purchasers, but all applications must contain consent from all property owners. Applications are only complete when all maps, plans, plats or other supporting information are submitted and payment is made of the applicable fee as identified in the fee schedule adopted as an appendix to this code. The zoning administrator will transmit a copy of the application to the board secretary for placing on the board docket; and to the planning commission, which may send a recommendation to the board or appear as a party at the hearing.
- E. *Appeals.* Appeals from any written order, requirement, decision, or determination of the zoning ordinance made by an administrator may be filed by any person aggrieved by it or any county officer, department, or board affected by it. Appeals must be filed within 30 days of the order, requirement, decision or determination. Appeals can only be initiated by filing with the zoning administrator and the board a notice of appeal that states the grounds of the appeal, and paying the fee stated in the fee schedule adopted as an appendix to this code.
- F. *Hearings.* The board will fix a reasonable time for a hearing on an application or appeal, and provide the required notice of the hearing to the public and any parties to a pending matter, pursuant to Virginia Code §§ 15.2-2204, 15.2-2310, or 15.2-2311, as applicable.
- G. *Notice.* When an applicant or appellant is not the property owner, then the property owner may request notice of the application or appeal and the board secretary will provide the notice, or require the applicant or appellant to provide it and give satisfactory evidence of having done so. Written notice mailed to the owner at the last known address on the real estate tax assessment records will satisfy the notice requirements.

Sec. 15-492 Appeals

- A. Appeals must be taken within 30 days of the decision by filing with the administrator and the board a notice of appeal specifying the appeal grounds. The board secretary will transmit to the board all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings to enforce the action on appeal unless the administrator certifies to the board that, by reason of facts stated in the certificate, a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed by the board.
- B. The determination of the administrative officer shall be presumed to be correct. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from. The concurring vote of three board members is necessary to reverse any order, requirement, decision, or determination of the administrator. If the board's attempt to reach a decision on an appeal results in a tie vote, and the appellant requests it, then the matter may be carried over until the board's next scheduled meeting.
- C. The board is required to make its decision within 90 days of the filing of the appeal.

Sec. 15-493 Variances

- A. A variance is a reasonable deviation from the zoning ordinance regulations regarding the shape, size, or area of a lot or parcel, or the size, height, area, bulk, or location of a structure. Variances can be granted only when the strict application of the zoning ordinance would unreasonably restrict the use of the property, the need for the variance is not generally shared by other properties, and granting the variance is not contrary to the purposes of the zoning ordinance; however, a variance cannot permit a change in use which could occur only through a rezoning or conditional use permit.
- B. A variance must be granted if the evidence shows that the strict application of the zoning ordinance would unreasonably restrict the utilization of the property, or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon, or that the granting of a reasonable modification to property or improvements thereon requested

by, or on behalf of, a person with a disability would alleviate a hardship related to the disability, and all of the following are true:

- (1) the property interest was acquired in good faith and any hardship was not created by the applicant;
 - (2) the granting of the variance will not be of substantial detriment to adjacent and nearby properties;
 - (3) the condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable an amendment to the zoning ordinance;
 - (4) the granting of the variance does not result in a use that is not otherwise permitted on such property, or a change in the zoning classification of the property; and
 - (5) the relief or remedy sought is not available through a conditional use permit.
- C. Any variance granted to provide a reasonable modification for the benefit of person with a disability may expire when the intended beneficiary no longer needs it.
- D. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or nonconforming use of lands, structures or buildings in other districts may be considered grounds for granting a variance.
- E. The concurring vote of three board members is necessary to grant a variance.
- F. In granting a variance, the board may impose conditions regarding the location, character, and other features of the proposed structure or use as it finds necessary in the public interest, and may require a surety bond to ensure that the conditions imposed are being and will continue to be complied with.
- G. Notwithstanding any other provision of law, the property on which a variance has been approved must be treated as conforming for all purposes under state law and this ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the property or part of the structure for which no variance is required. Where the expansion is proposed within an area of the property or part of the structure for which a variance is required, the approval of an additional variance is required.

Sec. 15-494 Interpretation of district map

The board will hear and decide applications for interpretation of the official zoning map where there is any uncertainty as to the location of a district boundary. The board should interpret the map in a manner that carries out the intent and purpose of the zoning ordinance for the appropriate section or district; however, the board does not have the power to rezone property, or substantially change the locations of district boundaries. The concurring vote of three board members is required to determine district boundaries.

Sec. 15-495 Appealing board decisions

An appeal of a decision of the board may be taken to the Goochland County Circuit Court within 30 days as provided under Virginia Code § 15.2-2314.

Sec. 15-496 Building permit appeals

Court hearing. When a building permit has been issued and a person who has no actual notice of the building permit issuance seeks to prevent, restrain, correct, or abate the construction because of a zoning violation, they may file suit in the Goochland County Circuit Court within 15 days after the start of construction even though no appeal was taken from the decision of the administrator to the board.

Secs. 15-497 through 15-499. Reserved.