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ARTICLE VIII. APPEALS

DIVISION 1. ADMINISTRATIVE VARIANCES

Sec. 24-644. Reduction in setback and yard requirements based on error in building location.

Notwithstanding any other provision of this ordinance, the zoning administrator shall have the authority, as qualified below, to approve a reduction in the minimum setback and yard requirements in the case of any structure existing or partially constructed which does not comply with such requirements applicable at the time such structure was erected. Such a reduction may be approved by the zoning administrator in accordance with the following provisions:

- (1) The zoning administrator determines, in writing, that:
 - a. The encroachment does not exceed one and one half linear feet;
 - b. The noncompliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a building permit, if such was required;
 - c. To force compliance with the minimum setback and yard requirements would cause undue hardship upon the owner;
 - d. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
 - e. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
 - f. The character of the zoning district will not be changed by the granting of the variance;
 - g. It will not create an unsafe condition with respect to both other property and public streets; and
 - h. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.
 - (2) In approving such a reduction under the provisions of this section, the zoning administrator shall allow only a reduction necessary to provide reasonable relief and may prescribe such conditions, to include landscaping and screening measures, to assure compliance with the intent of this ordinance.
 - (3) Upon the approval of a reduction for a particular building in accordance with the provisions of this section, the same shall be deemed to be a lawful building.
 - (4) Prior to the granting of a variance, the zoning administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for variance, and an opportunity to respond to the request within twenty-one days of the date of the notice. If any adjoining property owner objects to said request in writing within the time specified above, the request shall be transferred to the board of zoning appeals for decision.
 - (5) In accordance with the provisions set forth in section 24-633, the applicant shall have 30 days in which to appeal a decision made under section 24-644 by the zoning administrator.
- (Ord. No. 31A-189, 4-13-99)

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DIVISION 2. BOARD OF ZONING APPEALS

Sec. 24-645. Creation, number, qualifications, appointment and compensation.

A board of zoning appeals, consisting of five residents of the county as members, shall be appointed by the Circuit Court of James City County. Members of the board may serve without pay other than for traveling expenses.

(Ord. No. 31A-88, § 20-110, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-646. Term of office of members, filling vacancies.

(a) The term of office of members of the board of zoning appeals shall be for five years.

(b) Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

(Ord. No. 31A-88, § 20-111, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-647. Disqualification of member having interest in property in question before board.

Any member of the board of zoning appeals shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.

(Ord. No. 31A-88, § 20-112, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-648. Removal of members.

Members of the board of zoning appeals may be removed for cause by the circuit court upon written charges and after a public hearing.

(Ord. No. 31A-88, § 20-113, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-649. Chairman, vice chairman, and secretary.

The board of zoning appeals shall choose annually from its membership a chairman and vice chairman who shall act in the absence of the chairman. The board may elect as its secretary either one of its members or a qualified individual who is not a member of the board. A secretary who is not a member of the board shall not be entitled to vote on matters before the board.

(Ord. No. 31A-88, § 20-114, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-650. Powers and duties; granting of variances.

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 chapter or of any ordinance adopted pursuant thereto.
- (2) To authorize upon appeal or original application in specific cases such variance from the terms of this chapter 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 this chapter shall be observed and substantial justice done, as follows:
 - a. 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 this chapter, 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 chapter 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 chapter.
 - b. No such variance shall be authorized by the board unless it finds:
 1. That the strict application of this chapter would produce undue hardship;
 2. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 3. 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.
 - c. No such variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia.
 - d. 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 this chapter.
 - e. In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure for 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.
- (3) To hear and decide appeals from the decision of the zoning administrator or applications for such special exceptions as may be authorized by this chapter. 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 hearing as provided by section 15.2-2204 of the Code of Virginia 1950.

- (4) 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 a public hearing with notice as required by section 15.2-2204 of the Code of Virginia, the board may interpret the map in such way as to carry out the intent and purpose of this chapter for the particular section or district in question. The board shall not have the power, however, to rezone property or substantially to change the locations of district boundaries as established by ordinance.

(Ord. No. 31A-88, § 20-115, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-651. Rules and regulations; meetings; compulsory attendance of witnesses; records.

The board of zoning appeals shall adopt rules and regulations as it may consider necessary. The 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. The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. 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. 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. All meetings of the board shall be open to the public. A quorum shall be at least three members.

(Ord. No. 31A-88, § 20-116, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-652. Vote required to reverse any order, etc., or to decide in favor of any appellant.

A favorable vote of three members of the board of zoning appeals 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.

(Ord. No. 31A-88, § 20-117, 4-8-85; Ord. No. 31A-189, 4-13-99)

Secs. 24-653 - 24-662. Reserved.

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ARTICLE VIII. APPEALS

DIVISION 3. REGULATIONS GOVERNING APPEALS

Sec. 24-663. Initiation and effect of appeal; restraining orders.

An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the zoning administrator. Such appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with 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 appealed was taken. An 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 proceeding 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 zoning administrator and for good cause shown.

(Ord. No. 31A-8, § 20-118, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-664. Procedure; deposit if public hearing required.

(a) Appeals shall be mailed to the board of zoning appeals in care of 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.

(b) Appeals requiring an advertised public hearing shall be accompanied by a certified check payable to the treasurer for the amount set forth in section 24-7.

(Ord. No. 31A-88, § 20-119, 4-8-85; Ord. No. 31A-189, 4-13-99)

Sec. 24-665. Public hearing; authority of board.

The board of zoning appeals 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 matter within 90 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.

(Ord. No. 31A-88, § 20-120, 4-8-85; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-189, 4-13-99)

Sec. 24-666. Petition for certiorari to review decision of board.

(a) *Petition to circuit court.* Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals or any taxpayer or any officer, department, board or bureau of the county may present to the Circuit Court of James City County a petition specifying the grounds on which aggrieved within 30 days after the final decision of the board. A “final decision” is the decision that resolves the merits of the action pending before the board or effects a dismissal of the case with prejudice.

(b) *Allowance of writ of certiorari.* Upon the presentation of such petition, the court will allow a writ of certiorari to review the decision of the board of zoning appeals and will prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which will not be less than ten days and may be extended by the court. The allowances of the writ will 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.

(c) *Board required to return papers and other facts.* 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.

(d) *Taking of testimony; finding of facts and conclusions of laws.* 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 reserve or affirm, wholly or partly, or may modify the decision brought up for review.

(e) *Costs.* 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. In the event the decision of the board is affirmed, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari. (Ord. No. 31A-88, § 20-121, 4-8-85; Ord. No. 31A-110, 9-12-88; Ord. No. 31A-189, 4-13-99; Ord. No. 31A-221, 1-10-06)