

ORDINANCE AMENDING AND RE-ENACTING
TITLE 10 CHAPTER 3 ARTICLE W
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

Be it ordained by the Council of the City of Harrisonburg, Virginia:

That Article W. Board of Zoning Appeals is amended as shown:

Sec. 10-3-132. - Composition.

There shall be a board of zoning appeals (hereinafter called the "board") which shall consist of five (5) members, each to be a resident of the city and each to be appointed by the circuit court of the city for terms of five (5) years, except the original appointments shall be made for such terms that the term of one member shall expire each year. ~~When approved by the court, one member shall be a member of the city planning commission. Vacancies shall be filled by such court for the unexpired portion of the term.~~ 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. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality except that one member shall be a member of the city planning commission. A member whose term expires shall continue to serve until their successor is appointed and qualifies. A member may be removed by such court for cause, upon written charges and after a public hearing. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed them, after a hearing held after at least fifteen days' notice. Each member shall receive such compensation as the city council may authorize for attendance at each regular or called meeting of the board.

Sec. 10-3-133. - Organization.

The board shall elect one of its members as chairman and one of its members as vice chairman. The chairman shall preside at all meetings of the board and in the chairman's absence the vice-chairman shall preside. The city manager, or designated agent, shall appoint a recording secretary whose duty it shall be to keep the minutes and other records of the actions and deliberations of the board and perform such other ministerial duties as the board shall direct. The recording secretary shall receive such compensation as the city council may authorize for attendance at each regular or called meeting of the board.

Sec. 10-3-134. - Procedure.

The board shall adopt such rules of procedure as it may deem necessary in order to carry into effect the provisions of this chapter, said rules to be in writing and copies available to the public at the office of the zoning administrator and the recording secretary of the board. Meetings of the board shall be held at the call of the chairman and at such other times as the board may

determine. Such chairman, or in the chairman's absence the vice-chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The recording secretary shall keep minutes of the board's proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of the board's examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. A quorum shall consist of three (3) board members, one which shall be either the chairman or the vice-chairman. The board shall submit a report of its activities to the city council at least once each year.

Sec. 10-3-135. - Powers.

The board of zoning appeals shall have the following powers and duties:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter. During such appeals:
 - a. The determination of the administrative officer shall be presumed to be correct.
 - b. At the hearing on appeal, the administrative officer shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence.
 - c. The board shall consider any applicable ordinances, laws and regulations in making its decision. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct.
- (2) ~~To authorize upon appeal in specific cases such grant a variance from the terms of this chapter if the evidence shows that the strict application of this chapter would unreasonably restrict the utilization of the property and as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship; provided, that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done as hereinafter provided.~~
- (3) To hear and decide applications for interpretation of the zoning district map where there is any uncertainty as to the location of a district boundary. The board shall not have the power to change substantially the locations of the district boundaries as established by ordinance.
- (4) To determine, in cases of uncertainty, of the district classification of any use not specifically named in these regulations; provided, however, such use shall be in keeping with uses specifically permitted in the district in which such use is to be classified.

Sec. 10-3-136. - Variances.

Subject to the provisions of this article, the board shall have the power to grant the following variances:

- (1) A variance in the yard and lot area requirements in any district as to relieve practical difficulties or particular hardships in cases ~~when a property owner can show that his property was acquired in good faith and where~~ by reason of 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 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 utilization 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 demonstrated hardship 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.~~
- (2) No variance shall be authorized granted by the board unless it finds that:
- ~~That the~~ The strict application of this chapter would ~~produce undue hardship unreasonably restrict the utilization of the property.~~
 - ~~That such~~ Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - ~~That the~~ 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.
 - The property for which the variance is being requested was acquired in good faith.
 - Any hardship was not created by the applicant for the variance.
 - The relief or remedy sought by the variance application is not available through any other process available in this chapter such as modifications to this chapter or through approval of a special use permit.
- (3) No such variance shall be authorized considered except after notice and hearing as required by ~~§ 15.1-431~~ §15.2-2204 of the Code of Virginia, 1950, as amended. Such notice may be given by first-class mail rather than by registered mail.
- (4) No variance shall be authorized granted 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 in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this chapter.
- (5) In ~~authorizing~~ granting 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.

~~Sec. 10-3-137. Conditions attached to approvals.~~

~~Where the board is authorized to decide appeals, and where the board is authorized to approve variances, such approval, decision or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:~~

- (1) ~~Amount, direction and location of outdoor lighting.~~
- (2) ~~Amount of location of off-street parking and loading space.~~
- (3) ~~Connected or disconnected with other buildings.~~
- (4) ~~Exits or entrances, doors and windows.~~
- (5) ~~Paving, shrubbery, landscaping, ornamental or screening fences, walls or hedges, or security fences.~~
- (6) ~~Time of day or night for operating.~~
- (7) ~~No store fronts.~~
- (8) ~~Control or elimination of smoke, dust, gas, noise, vibration caused by operations.~~
- (9) ~~Requirements for termination of a use based on lapse of time or such other conditions as the board may specify.~~
- (10) ~~Such other conditions as are necessary as prescribed by law.~~

Sec. 10-3-13837. - Amendment of variance.

Amendment of a variance shall follow the same procedures and meet the same criteria as is specified for applications for variances as described in Section 10-3-138. The procedure for amendment of a variance already approved, or the request for a change of conditions attached to an approval, shall be the same as for the new application, except that, where the administrator determines the change to be minor relative to the original approval, he may transmit the same to the board with the original record without requiring that a new application be filed.

Sec. 10-3-13938. - Procedure on applications and appeals.

- (a) Application for variances. An application to the board for a variance in which the board has original jurisdiction under this chapter may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the recording secretary of the board on forms which shall be provided for the purpose in accordance with rules which shall be adopted by the board. All information including maps and plans required by such forms, or otherwise required by the board in order that it might be fully informed, shall be furnished by the applicant. The recording secretary of the board shall place the matter on the agenda. Every application or appeal shall be advertised for a public hearing and said notice shall appear at least once a week for two (2) successive weeks in a newspaper having general circulation in the city. Such notice shall specify the time and place of hearing, not less than six (6) days nor more than twenty-one (21) days after the second advertisement and the property shall be posted in accordance with the rules of the board.
- (b) Appeals. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this chapter. Such appeal shall be taken within ten (10) days for a notice of violation involving temporary or seasonal commercial uses, maximum occupancy limitation of a residential dwelling unit, keeping of inoperable vehicles and junk, or similar short term, recurring violations, or within thirty (30) days after the entry of any other decision appealed from by filing with the administrator, and

with the board, a notice of appeal specifying the grounds thereof. The administrator shall forthwith transmit to the recording secretary of the board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in the furtherance of the action appealed from unless the administrator certifies to the board, after the notice of appeal shall have been filed with ~~him~~ them, that by reason of facts stated in the certificate of stay would, in ~~his~~ their opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or a court of record, on application and on notice to the administrator and on due cause shown.

In any case where the administrator has certified conformity with the provisions of this chapter and a building permit has been issued and construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, suit may be filed within fifteen (15) days after the start of construction by a person who had no actual notice of the issuance of such permit. The court may hear and determine issues raised in the litigation even though no appeal was taken from the decision of the administrator to the board of zoning appeals.

(c) Filing fees:

- (1) All persons, firms or corporations appealing to the board of zoning appeals shall be required to pay, at the time the application is submitted, two hundred seventy-five dollars (\$275.00) per request for expenses relative thereto.
- (2) All persons, firms or corporations applying for variances under the provisions of this chapter or applying for an amendment of a variance already approved shall be required to pay, at the time the application is submitted, two hundred seventy-five dollars (\$275.00) per request for expenses relative thereto.
- (3) The payment of such money in advance to the office of the administrator as specified shall be deemed a condition precedent to the consideration of such appeal, variance request or requested amendment to a variance already approved.

(d) Hearing and decision. The board shall, within thirty (30) days, fix a time and date for the hearing of the requested variance or appeal, give public notice thereof as required by law, as well as due notice to the parties in interest, and decide the same within thirty (30) days after the hearing date. Upon the hearing any party may appear in person, or by agent, or by attorney. In exercising its powers, the board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify, any order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of a majority of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variance from this chapter.

(e) Posting of property. Notwithstanding any advertising requirements imposed by the Code of Virginia, as amended, any property proposed for review due to a variance or any other

public hearing as elsewhere specified in this section shall be posted for public notice as specified below. At least fourteen (14) days prior to the board of zoning appeal's public hearing on the pending application, the city shall erect on the subject property signs indicating the variance proposed and a contact phone number for persons wanting more information regarding the public hearing/meeting. Such signs may not be removed until the board of zoning appeals has acted upon the application, and shall be removed no later than five (5) days thereafter. The city shall determine the number of signs required, placement, and type of posting; however, there shall be at least one sign posted along each public right-of-way abutting the property.

- (f) Equal say. The board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved and the administrative officer or their staff.
- (g) Ex parte communications. The applicant, landowner or their agent or attorney and the non-legal staff of the governing body may not discuss the facts or law relative to a particular case with a member of the board prior to the hearing. If any ex parte discussion of facts or law occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise them of the substance of such communication.
- (h) Availability of materials. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to the applicant, appellant or other person aggrieved within three days of being available to the board member. Any such materials furnished to a board member shall also be made available for public inspection.

Sec. 10-3-14039. - Appeals to courts.

Appeals to courts from a decision of the board may be filed in the manner prescribed by law.

The remainder of Article W is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the 10 day of May, 2016. Adopted and approved this 10 day of May, 2016.

MAYOR

ATTESTE:

Erica S. Kern
CITY CLERK