

- D. The Planning Commission 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 Planning Commission and shall be a public record.
- E. All meetings of the Planning Commission shall be open to the public.
- F. A quorum shall be at least four (4) members.

1.19 Board of Zoning Appeals

1.19.1 Appointment; composition; compensation; removal; term; conflicts:

- A. A Board of Zoning Appeals (BZA) consisting of five members shall be appointed by the Circuit Court of Shenandoah County. The Board shall serve without pay other than for traveling expenses. Any Board member 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 15 days' notice. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
- B. The members' office shall serve five-year staggered terms. One of the five appointed members shall be an active member of the Planning Commission.
- C. Any member of the BZA shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- D. The BZA shall choose annually its own chairman and vice-chairman, who shall act in the absence of the chairman.
- E. At the request of the Town Council, the Circuit Court may appoint not more than three alternates to the BZA. The qualifications, terms and compensation of alternate members shall be the same as those of regular members.
- F. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the Zoning Administrator at least 24 hours prior to the meeting of such fact.

1.19.2 Responsibilities

The Board of Zoning Appeals shall have the following responsibilities:

- A. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of Code of Virginia, § 15.2-2280 et seq. or of this UDO. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The Board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.
- B. To authorize upon appeal or original application in specific cases such variance as defined in this UDO from the terms of this UDO 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 UDO shall be observed and substantial justice done.
- C. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned 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 UDO. 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.

- D. To hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by Code of Virginia, § 15.2-2204.
- E. 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 the question, and after public hearing with notice as required by Code of Virginia, § 15.2-2204, the Board may interpret the map in such way as to carry out the intent and purpose of this UDO for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by this UDO.
- F. No provision of this section shall be construed as granting the Board the power to rezone property or to base Board decisions on the merits of the purpose and intent of local ordinances duly adopted by the Town Council, consistent with the Code of Virginia, § 15.2-2309.

1.19.3 Rules and regulations; meeting

- A. The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary.
- B. The meeting of the BZA shall be held at the call of its chairman or at such times as a quorum of the Board may determine.
- C. The chairman, or in his absence, the vice chairman, may administer oaths and compel the attendance of witnesses.
- D. The BZA 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.
- E. All meetings of the BZA shall be open to the public.
- F. A quorum shall be at least three members.
- G. A favorable vote of three members of the Board 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.

1.19.4 Appeals to BZA

- A. 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 Zoning Administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of Code of Virginia, § 15.2-2280 et seq. or this UDO.
- B. Notwithstanding any Charter provision to the contrary, any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993, shall include a statement informing the

recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and un-appealable if not appealed within 30 days. The appeal period shall not commence until the statement is given. The 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 from was taken.

- C. 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 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 Zoning Administrator and for good cause shown.
- D. In no event shall a written order, requirement, decision or determination made by the Zoning Administrator or other administrative officer be subject to change, modification or reversal by the Zoning Administrator or any other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the Zoning Administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the Zoning Administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the Town Council, modification is required to correct clerical or other nondiscretionary errors.

1.19.5 Mailing of copies of appeal; fee for public hearing

- A. Appeals shall be mailed to the Board of Zoning Appeals, C/O the Zoning Administrator, and a copy of the appeal 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 Town treasurer in the amount of the review fee as established by Town Council.

1.19.6 Action on Appeals

- A. 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 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 this UDO or to effect any variance from this UDO. 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. The chairman of the Board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses, consistent with the Code of Virginia, § 15.2-2312.
- B. Certiorari to review decision of BZA is permitted consistent with the Code of Virginia, § 15.2-2314.
 - 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 Town, may present to the Circuit Court for the county a petition specifying the grounds on which aggrieved within 30 days after the filing of the decision in the office of the Board.

2. The BZA 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.
3. 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 evidence as it may direct and report the evidence 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.
4. 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 and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the Board may request that the court hear the matter on the question of whether the appeal was frivolous.

1.20 Town Council

1.20.1 Responsibilities

- A. Appoint members to the Planning Commission, Board of Zoning Appeals, Architectural Review Board, and any other committee, commission or board as the Town Council determine.
- B. Decide all development review recommendations and requests pursuant to this UDO;
- C. Approve development agreements and rules and regulations for public improvements from the Zoning Administrator or other staff members;
- D. Adopt fees and authorize waivers to fees;
- E. Decide applications for waivers from public improvement requirements;
- F. Decide requests for closing or abandoning streets and easements; and
- G. Other responsibilities assigned by this UDO, the Town Charter, other sections of the Town Code, or Virginia Law.

1.21 Conflicts of Interest

- A. Members of a commission, committee or board whose professional services are being used by an Applicant shall disqualify themselves from that application. Such disqualification shall prohibit all action by the Planning Commission or committee member including discussion, deliberation, voting, recommendation or participation as a commission or committee member.
- B. Members of a commission, committee or board who have a financial interest in the property in question or who is employed with a firm that has been hired to aid the Applicant in any matter whatsoever, or who has a