

- F. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of Code of Virginia § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of Code of Virginia § 15.2-2286 at the time of the filing of the variance application.
- G. No variance shall be considered except after notice and hearing as required by § [15.2-2204](#).

### 2.18.5 Historic Structures

Variations may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

### 2.18.6 Floodway

Variations shall not be issued within any designated regulatory floodway or known or historic floodway areas if any increase in flood levels during the base flood discharge would result or upon a determination by the BZA that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud or victimization of the public, conflict with existing local laws or ordinances, including FEMA regulations, and may be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and maps.

## 2.19 Administrative Appeals

### 2.19.1 Applicability

- A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the Town of Strasburg 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 this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to Code of Virginia § 15.2-2286.
- B. Should any person be aggrieved by any decision of the Board of Zoning Appeals, they shall have the right to appeal same to the Circuit Court of Shenandoah County, Virginia, in the manner prescribed by law, consistent with the Code of Virginia, § 15.2-2314.

### 2.19.2 Initiation

- A. Appeal may be made from any final decision of the Zoning Administrator to the Board of Zoning Appeals. 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.
- B. 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 locality, may file with the Clerk of Circuit Court of Shenandoah County a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of the Town of Strasburg" specifying the ground on which aggrieved within 30 days after the final decision of the board.

### 2.19.3 Stay of Proceedings

When an appeal is filed, all proceedings in furtherance of the action affected by the decision being appealed shall be stayed, unless:

- A. The Zoning Administrator certifies to the Board of Zoning Appeals, after the notice of appeal has been filed with the Zoning Administrator, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property; or
- B. The appellant is not diligently pursuing the appeal.

#### 2.19.4 Criteria

In considering all appeals from rulings made under these regulations, the Board shall, in making its findings on any specific case, determine the effect of the proposed change upon the supply of light and air to adjacent property, upon the congestion in the public streets, upon the public safety from fire and other hazards, upon the established property values within the surrounding area, and upon other factors relating to the public health, safety, comfort, morals and general welfare of the people of Strasburg, Virginia. Every ruling made upon any appeal to the BZA shall be accompanied by a written finding of fact based upon the testimony received at the hearing afforded by the Board and shall specify the reason for granting or denying the appeal.

#### 2.19.5 Decision

- A. The Board of Zoning Appeals shall give public notice of the hearing as provided in this UDO, shall hold the hearing, and shall decide the appeal within thirty (30) days after such hearing.
- B. Any party may appear before the Board of Zoning Appeals at any hearing, in person, or by agent or attorney.
- C. The Board of Zoning Appeals may:
  1. Reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed;
  2. Make such order, requirement, decision, or determination as ought to be made; and
  3. Exercise all the powers of the Zoning Administrator or Board of Zoning Appeals pertaining to the final decision which is being appealed.

#### 2.19.6 Exemptions

- A. Generally
  1. The Board of Zoning Appeals may approve an exemption from any of the requirements of this UDO, to the extent necessary to comply with or conform to federal or state law, or to avoid or resolve any alleged violation of the freedom of religion-based rights afforded to any person under federal or state law caused by the enforcement of any regulation imposed by this UDO or as otherwise allowed by the Virginia Code or case law.
  2. Any person desiring such an exemption shall file a written petition with the Zoning Administrator, who shall forward the petition to the Board of Zoning Appeals for purposes of conducting a public hearing on the petition and issuing a final determination. The petition shall include separate statements that:
    - (a) Advise to which particular regulation of the Town of Strasburg the requested exemption relates;
    - (b) Explain how the regulation is not in conformance with federal or state law, or how it allegedly violates the person's rights afforded under federal or state law;
    - (c) Describe how granting the exemption would be in the public interest and not be contrary to health, safety, and welfare considerations; and

- (d) Describe the intended use of land or activity for which the exemption is being sought.
  3. The Applicant shall submit any additional information requested by the Board of Zoning Appeals and shall appear before the Board of Zoning Appeals at the public hearing to explain the request and to answer any questions relative to the petition.
  4. In considering an exemption from the requirements of this UDO, the Board of Zoning Appeals may approve the exemption, provided that it makes findings, based on the evidence presented, regarding at least one of the following criteria:
    - (a) The exemption is in the public interest and is not contrary to health, safety, and welfare considerations;
    - (b) The exemption is necessary for the Applicant or the Town of Strasburg to comply with or conform to federal or state law;
    - (c) The exemption is necessary to avoid or resolve any alleged violation of rights afforded to any person under federal or state law caused by the enforcement of any regulation of the UDO; and
    - (d) The Town of Strasburg regulation does not constitute or further a compelling governmental interest in need of protection and is not the least restrictive alternative for satisfying or achieving the governmental interest.
  5. The Board of Zoning Appeals shall either grant or deny the exemption within 30 days of the conclusion of the public hearing at which it considered the exemption. The Board of Zoning Appeals may request additional information from the Applicant, may continue the hearing from time to time in order to fully consider the petition and all pertinent information, and may grant the exemption in full or in part by waiving compliance with certain aspects of this UDO. The Board of Zoning Appeals may grant the exemption in full or in part, subject to conditions that are related to the public health, safety, and welfare. If the Board of Zoning Appeals grants the exemption in full or in part, it shall prepare a written order that approves the exemption. If appropriate, the order may contain conditions relating to the exemption. If the Board of Zoning Appeals denies the exemption, it shall issue a written decision that identifies the reasons for the denial and shall provide a copy of the decision to the Applicant.
- B. Temporary Certificate of Compliance. The Applicant may file a written request with the Board of Zoning Appeals for a temporary certificate of compliance to allow the use or activity during the pendency of the exemption petition process pursuant to this UDO.
- C. Town of Strasburg Policy or Practice. In regard to an exemption from any Town of Strasburg policy or practice, the same procedures and criteria within this UDO shall apply, except that there shall be no public hearing before the Board of Zoning Appeals. The Zoning Administrator shall forward the petition to the Board of Zoning Appeals who shall consider the exemption petition at an open public meeting, which shall be attended by the Applicant. The public meeting shall be scheduled within 30 days of receipt of the petition and the Board of Zoning Appeals may request additional information from the Applicant. The Board of Zoning Appeals shall grant or deny the exemption within 30 days of the conclusion of the last public meeting at which it considers the information relative to the exemption. The Board of Zoning Appeals may grant the exemption in full or in part, subject to conditions that are related to the public health, safety, and welfare. If the Board of Zoning Appeals grants the exemption in full or in part, it shall prepare a written order that approves the exemption. If appropriate, the order may contain conditions relating to the exemption. If the Board of Zoning Appeals denies the exemption, it shall issue a written decision that identifies the reasons for the denial and shall provide a copy of the decision to the Applicant.