



**Amherst County Board of Supervisors
County Ordinance No. 2019-0002**

AN ORDINANCE, NO. 2019-0002

Amending § sections 1402.02, 1402.03, 1402.04 and 1402.06 of Article XIV of Appendix A - Zonings and Subdivisions to the Code of the County of Amherst to address changes to the Board of Zoning Appeals

Approved as to form and legality by the County Attorney

**FIRST READING: Planning Commission, March 21, 2019
PUBLIC HEARING: Planning Commission, April 18, 2019
FIRST READING: Board of Supervisors, May 7, 2019
PUBLIC HEARING: Board of Supervisors, May 21, 2019**

THE COUNTY OF AMHERST HEREBY ORDAINS:

§ 1. That Sections 1402.02, 1402.03, 1402.04 and 1402.06 of Article XIV of Appendix A - Zonings and Subdivisions to the Code of the County of Amherst be and hereby is amended as follows:

1402. - The Board of Zoning Appeals.

The Amherst County Board of Zoning Appeals, hereinafter referred to as the board of appeals, is hereby reestablished.

1402.01. Membership. A board consisting of five (5) members, who shall be residents of Amherst County, shall be appointed by the circuit court of the county, with appointments and terms of office as follows:

1. The board of appeals members appointed hereunder shall serve respectively for terms of one (1) year, two (2) years, three (3) years, four (4) years and five (5) years. Subsequent appointments shall be for terms of five (5) years each. Members may be reappointed to succeed themselves.
2. No member shall hold any public office in the county; however, one (1) member may be a member of the commission.
3. A member whose term expires shall continue to serve until his successor is appointed and qualified.
4. The secretary of the board of appeals shall notify the circuit court at least thirty (30) 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.

5. Any member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the circuit court after hearing held after at least fifteen (15) days' notice.
6. A member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four (24) hours prior to the meeting of such fact.

1402.02. Rules of procedure. The board of appeals shall observe the following procedures:

1. The board of appeals shall adopt rules and forms in accordance with the provisions of this ordinance and consistent with other ordinances of the county and general laws of the commonwealth for the conduct of its affairs.
2. The board of appeals shall elect a chairman and vice-chairman from its own membership who shall serve annual terms as such and may succeed themselves. 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. The election of officers shall be held at the first meeting of the board of appeals after July 1 of each year.
3. The board of appeals shall keep a full public record of its proceedings and other official actions, shall file the same in the office of the board of appeals, and shall submit a report of its activities to the board of supervisors at least once each year.
4. All meetings of the board of appeals shall be open to the public.
5. Any member of the board of appeals shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.
6. The meetings of the board of appeals shall be held at the call of the chairman and at such other times as a quorum of the board of appeals may determine. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meetings. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Va. Code Section 15.2-2312 shall be conducted at the continued meeting and ~~no further advertisement is required.~~ notice shall be given in accordance with the Virginia Freedom of Information Act.
7. The chairman, or in his absence the vice-chairman or acting chairman, may administer oaths and compel the attendance of witnesses.
8. For the conduct of any hearings and the taking of any action, a quorum shall be at least three (3) members.

9. A favorable vote of at least three (3) members of the board of appeals shall be necessary to reverse any order, requirements, decision, determination of any administrative official or to decide in favor of the applicant on any matter upon which the board of appeals is required to pass.
10. A tie vote among those present and voting defeats the motion, resolution or issue voted upon.

1402.03. Duties and powers. The board of appeals shall have the following duties and powers:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of Article 7, of Chapter 22, of Title 15.2 of the Code of Virginia, or provisions of this ordinance adopted pursuant thereto. 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; The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board of appeals shall consider any applicable ordinances, laws, and regulations in making its decision. For the purposes of this subsection, determination means any order, requirement, decision, or determination made by an administrative officer. Notice and hearing shall be held as provided by Section 15.2-2204 of the Code of Virginia, 1950, as amended. 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 of appeals may give such notice by first-class mail rather than by registered or certified mail.
2. To authorize upon appeal or original application in specific cases such a variance from the terms of as defined in this ordinance, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as set out in this subsection. ~~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 the ordinance shall be observed and substantial justice done as follows:~~

A variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to the physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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 ordinance; (iv) 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 (v) the relief or remedy sought by the variance application is not available through a special exception.

No variance shall be considered except after notice and public hearing as set forth in Section 15.2-2204 of the Code of Virginia, 1950, as amended. 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 of appeals may give such notice by first-class mail rather than by registered or certified mail.

In authorizing a variance the board of appeals 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. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

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 ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board of appeals is satisfied, upon the evidence heard by it, that the granting of the 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 the ordinance.~~

b. ~~No such variance shall be authorized by the board of appeals unless it finds that all three (3) of the following conditions apply: (1) that the strict application of the ordinance 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 the 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.~~

e. ~~No such variance shall be authorized except after notice and hearing as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended. 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.

~~d. No variance shall be authorized unless the board of appeals finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation to be adopted as an amendment to the ordinance.~~

~~e. In authorizing a variance the board of appeals 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.~~

~~3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by Virginia Code Section 15.2-2204. 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.~~

43. To hear and decide, upon appeal or original application, 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 Section 15.2-2204 of the Code of Virginia, 1950, as amended, the board of appeals may interpret the map in such way as to carry out the intent and purpose of the ordinance 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 of appeals may give such notice by first class mail rather than by registered or certified mail. The board of appeals shall not have the power to change substantially the locations of district boundaries as established by this ordinance.

54. No provision of this ordinance shall be construed as granting the board of appeals 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 board of supervisors.

1402.04. Financing the board of appeals. Within the limits of funds appropriated by the board of supervisors, the board of appeals may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the board of appeals may receive such compensation as may be authorized by the board of supervisors.

1402.05. Appeals to the board of appeals. Requests for special exception permits, administrative review, or variances shall follow procedures specified by Article X herein.

1402.06. Decision Appeal of decision of board of appeals.

1. Any person or persons jointly or severally aggrieved by any decision of the board of appeals, or any aggrieved taxpayer or any officer, department, board or bureau of the county may file with the clerk of the circuit court for the county a petition that shall be styled "In Re: date Decision of the Board of Zoning Appeals of Amherst County" specifying the grounds on which aggrieved within thirty (30) days after the final decision of the of the board of appeals.

2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of appeals and shall describe prescribe therein the time within which a return thereto must be made and served upon the ~~realtor's attorney~~ secretary of the board of zoning appeals, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board of ~~zoning~~ appeals and on due cause shown, grant a restraining order.
3. Any review of a decision of the board of appeals shall not be considered an action against the board of appeals and the board of appeals shall not be a party to the proceedings; however, the board of appeals shall participate in the proceedings to the extent required by this section. The board of supervisor, the landowner, and the applicant before the board of appeals shall be necessary parties to the proceedings in the circuit court. The court may permit intervention by any other person or persons jointly or severally aggrieved by any decision of the board of appeals.
34. The board of 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 the portions thereof as may be called for by such 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.
45. ~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, said court 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.~~ In the case of an appeal from the board of appeals to the circuit court of an order, requirement, decision, or determination of a zoning administrator or other administrative officer under Section 1402.03.1, the findings and conclusions of the board of appeals on questions of fact shall be presumed to be correct. The appellant may rebut the presumption by proving by a preponderance of the evidence, including the record before the board of appeals, that the board of appeals erred in its decision. The court shall hear any arguments on questions of law de novo.
6. In the case of an appeal by a person of any decision of the board of appeals that denied or granted an application for a variance, the decision of the board of appeals shall be presumed to be correct. The appellant may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of appeals, that the board of appeals erred in its decision.
7. In the case of an appeal from the board of appeals to the circuit court, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.
58. Costs shall not be allowed against the board of appeals locality or the governing body 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 cost 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.

6. ~~In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, or any modification of zoning requirements pursuant to Va. Code Section 15.2-2286, the decision of the board of zoning appeals shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board of zoning appeals, that the board of zoning appeals erred in its decision. Any party may introduce evidence in the proceedings in court.~~
7. ~~In the case of an appeal by a person of any decision of the board of zoning appeals that denied or granted any application for a variance, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law.~~

(Ord. of 10-18-05(8); Ord. of 12-19-06(2))

§ 2. That this ordinance shall be in force and effect upon adoption.

Adopted this 21st day of May, 2019.

L. J. Ayers III, Chairman
Amherst County Board of Supervisors

ATTEST:

Dean C. Rodgers, Clerk
Amherst County Board of Supervisors

Ayes _____

Nays _____

Abstentions _____