

## PROPOSED ORDINANCE

**Proposed by: Department of Planning & Zoning (*Revisions in bold, italic, deletions are strikethroughs*)**

Following is a proposed ordinance to amend the Code of the Town of Vienna, Chapter 18, Zoning, Article 2, Definitions and Article 23, Board of Zoning Appeals, updating variance standards consistent with the Code of Virginia.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

**Section 1:** The Code of the Town of Vienna, Chapter 18, Zoning, Article 2, Definitions and Article 23, Board of Zoning Appeals, is amended to read as follows:

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### ARTICLE 2. - DEFINITIONS

*Variance means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*

### ARTICLE 23. - BOARD OF ZONING APPEALS

#### Sec. 18-230. - Continuation of existing board.

The board of zoning appeals heretofore established shall continue as the board of zoning appeals under the provisions of this chapter.

(Code 1969, § 18-230)

#### Sec. 18-231. - Membership.

The board of zoning appeals shall consist of not less than five nor more than seven residents of the Town, appointed by the circuit court of the county upon recommendation of the Town Council, for a term of five years. Appointments to fill vacancies shall be only for the unexpired portion of the term. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed him. Members of the board shall hold no other public office in the Town except that one may be a member of the planning commission. A member whose term expires shall continue to serve until ~~their~~ successor is appointed and qualifies.

(Code 1969, § 18-231; Ord. of 12-2-1991)

#### Sec. 18-232. - Appeals.

The board of appeals is authorized to hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator or other administrative officer in the administration or enforcement of this chapter.

(Code 1969, § 18-232)

Sec. 18-233. - Variances.

The board of appeals shall have the power to authorizegrant, 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: provided the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standard for a variance and the criteria set out in this section.~~

A. Notwithstanding any other provision of law, general or special, 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 a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and

- (1) 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;
- (2) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- (3) 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 the ordinance;
- (4) 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
- (5) The relief or remedy sought by the variance application is not available through the conditional use permit process or, when permitted by this chapter, determination by the zoning administrator.

~~A. When a property owner can show that his property was acquired in good faith and:~~

- ~~(1) 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 the ordinance from which this chapter is derived; or~~
- ~~(2) 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~~
- ~~(3) Where the board is satisfied, upon evidence heard by it, that the granting of such variance will alleviate a clearly demonstrated 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 spirit and use of this chapter.~~

~~B. No such variance shall be authorized by the board unless it finds that:~~

- ~~(1) The strict application of this chapter would produce undue hardship.~~
- ~~(2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.~~

~~(3) 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.~~

~~(4) 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.~~

BC. 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.

(Code 1969, § 18-233)

Sec. 18-234. - Variances; notice and hearing.

With respect to an appeal for a variance, the board shall hold a public hearing and give notice of the time and place thereof as prescribed in sections 18-213 and 18-214.

(Code 1969, § 18-234)

Sec. 18-235. - Variance valid for six months.

Any variance authorized by the board to permit the erection or alteration of a building or structure shall be valid only for six months unless a building permit for such erection or alteration is obtained within this period and the erection or alteration is started and proceeds to completion in accordance with the terms of the decision.

(Code 1969, § 18-235)

Sec. 18-236. - Applications for conditional use permits.

The board of appeals is authorized to hear and decide applications for those use permits enumerated in section 18-210.

(Code 1969, § 18-236)

Sec. 18-237. - Interpretation of zoning map.

A. The board is authorized to hear and decide applications for interpretation of the zoning map where there is any uncertainty as to the location of a district boundary. The board 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.

B. The board shall not have the power, however, to re-zone property or substantially to change the locations of district boundaries as established by this chapter, or to change the locations of zone boundaries as established by the zoning map.

(Code 1969, § 18-237)

Sec. 18-238. - Interpretation of zoning map; notice and hearing.

With respect to an application for interpretation of the zoning map as provided in section 18-237, the board shall hold a public hearing and give notice of the time and place thereof as prescribed in sections 18-213 and 18-214.

(Code 1969, § 18-238)

Sec. 18-239. - Procedure.

- A. Appeals. An appeal to the board may be taken by any person aggrieved or by any official of the Town 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 from was taken.
- B. Notwithstanding the provisions of subsection A of this section, appeals from a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zones or similar short-term recurring violations, shall be taken within 14 days after the decision appealed from.

(Code 1969, § 18-239; Ord. of 7-3-2000)

Sec. 18-240. - Notice and hearing.

The board shall hold a public hearing of an appeal, give public notice of the time and place thereof as well as due notice to the parties in interest as prescribed in sections 18-213 and 18-214.

(Code 1969, § 18-240)

Sec. 18-241. - Decisions of board.

- A. In all cases coming before the board of zoning appeals, decisions shall be made within 90 days of the filing of the application or appeal. The board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from. The concurring vote of at least three members 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 chapter or to effect any variance thereof.
- B. 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 record. The chair of the board, or in his absence the acting chair, may administer oaths and compel the attendance of witnesses.

(Code 1969, § 18-241; Ord. of 3-2-1987)

Sec. 18-242. - Fee required.

Every notice of appeal shall be accompanied by a check or cash payment to the Town in the amount set forth in the schedule of fees adopted by the Town, which shall be applied to the cost of advertising and expense incidental to reviewing and publishing the facts. In addition, the board may require the applicant to pay for the recording of the proceedings.

(Code 1969, § 18-242)

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**Section 2:** This ordinance shall become effective 10-days after adoption.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Laurie DiRocco, Mayor

ATTEST:

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Melanie J. Clark, CMC

Town Clerk

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