

CHAPTER 14 -- BOARD OF ZONING APPEALS; APPEAL PROCESS
(Amended January 18, 2005)

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CHAPTER 14 -- BOARD OF ZONING APPEALS; APPEAL PROCESS

ARTICLE 14A ENACTMENT

These regulations shall become effective from the date of their adoption by the Raleigh County Commission. Any other Board of Zoning Appeals Regulations shall be deemed repealed. These regulations shall in no way effect any action taken by the Board of Zoning Appeals prior to the effective date of these regulations.

Date

John L. Aliff, President

Pat Reed, Commissioner

John D. Humphrey, Commissioner

ATTEST:

Clerk of the Raleigh County Commission

ARTICLE 14B APPOINTMENT

A. The Raleigh County Board of Zoning Appeals shall consist of five (5) members and two (2) alternate members appointed by the Raleigh County Commission. All appointed members shall meet the requirements established in West Virginia Code 8A-8-4.

ARTICLE 14C MEETINGS

A. The board shall meet at least quarterly and may meet more frequent at the request of the chairperson or by two or more members.

B. Notice for a special meeting must be in writing, including the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

C. Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

ARTICLE 14D QUORUM

A. A board must have a quorum to conduct a meeting. A majority of the members of the board is a quorum. No action of the board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

ARTICLE 14E OFFICERS

A. At its first regular meeting each year, the board shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

ARTICLE 14F GOVERNING BODIES DUTIES

The Raleigh County Commission shall provide the board with:

A. Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and

B. Appropriate money to defray the reasonable expense of the board.

ARTICLE 14G POWERS AND DUTIES

A. Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule or regulation adopted pursuant thereto;

B. Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;

C. Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;

D. Authorize, upon the appeal in specific cases, a variance to the zoning ordinance;

E. Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;

F. Adopt rules and regulations concerning:

1. The filing of appeals, including process and forms for the appeal;
2. Applications for variances and conditional uses;
3. The giving of notice; and
4. The conduct of hearings necessary to carry out the board's duties under the terms of WV Code 8A-8;

G. Keep minutes of its proceedings;

H. Keep an accurate and complete audio of all board proceedings and official actions and keep the audio record in a safe manner, accessible within twenty-four hours of demand, for three (3) years;

I. Record the vote of all actions taken;

J. Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the board and shall be public record;

K. With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the board: Provided, that the governing body sets the salaries; and

L. Supervise the fiscal affairs and responsibilities of the board.

ARTICLE 14H APPEAL TO BOARD OF ZONING APPEALS

A. An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of the zoning ordinance, or rule or regulation adopted pursuant to the zoning ordinance, shall be filed with the Board of Zoning Appeals.

B. The appeal shall:

1. Specify the grounds of appeal;

2. Be filed within thirty (30) days of the original order, requirement, decision or determination made by an administrative official or board charged with the enforcement of the zoning ordinance; and

3. Be on a form prescribed by the board.

C. Upon request of the board of zoning appeals, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.

ARTICLE 14I NOTICE OF HEARING OF APPEAL

A. Within ten (10) days of receipt of the appeal by the board of zoning appeals, the board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five (45) days of receipt of the appeal by the board.

B. At least fifteen (15) days prior to the date set for the hearing on the appeal, the board shall publish a notice of the date, time and place of the hearing as a Class I legal advertisement and shall give written notice by certified mail to interested parties.

C. The party taking the appeal shall pay the cost of public notice and written notice to interested parties.

D. At the hearing, any party may appear in person, by agent or by attorney licensed in the State of West Virginia.

E. Every decision by the board must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court, and as a result of the failure, the circuit court returns an appealed matter to the board and dismisses the matter with or without restrictions, the board shall pay any additional costs for court filing fees, service of process and reasonable attorney fees required to permit the person appealing the board's decision to return the matter to circuit court for completion of the appeal.

ARTICLE 14J STAYS; EXCEPTION

A. When an appeal has been filed with the board, all proceedings and work on the premises in question shall be stayed, unless the official or board from which the appeal was taken certifies in writing to the Board of Zoning Appeals, that a stay would cause imminent peril to life or property. If the written certification is filed, proceedings or work on the premises shall not be stayed. Nothing shall prevent obtaining a restraining order.

ARTICLE 14K CONDITIONAL USE PERMIT STANDARDS

A. Conditional Use permits may be issued for any of the following:

1. Any of the uses or purposes for which such permits are required or permitted by the provisions of this ordinance.

2. Public utility or public service uses or public building in any district when found to be necessary for the public health, safety, convenience or welfare.

3. To classify as a conforming use any institutional use existing in any district at the time of the establishment of such district.

4. To permit the location of any of the following uses in a district from which they are excluded: Airport, library, community center, church, hospital/clinic, educational institution, recreational uses, cemetery or crematory.

B. The Board may impose conditions, safeguards and restrictions upon the premises benefited by the conditional use as may be necessary to reduce or minimize potential injurious affects upon other property and to carry out the general purpose and intent of this ordinance.

ARTICLE 14L VARIANCE AND EXCEPTION STANDARDS

A. Variances and exceptions may be granted to any of the provisions of this ordinance to the following extent:

1. To vary or modify the strict application of any of the regulations or provisions of this ordinance in cases which they are practical difficulties or unnecessary hardships.

2. To permit the extension of a district where the boundary line thereof divides a lot in one ownership at the time of passage of this ordinance.

B. The Board may impose conditions, safeguards and restrictions upon the premises benefited by the variance or exception as may be necessary to reduce or minimize potential injurious affects upon other property and to carryout the general purpose and intent of this ordinance.

ARTICLE 14M PROCEDURE FOR VARIANCE/CONDITIONAL USES

A. The application shall be filed on prescribed form(s) by the board and meet all requirements by the board in its rules and regulations.

B. Notice of hearing shall be given by a Class I legal advertisement at least five (5) days prior to the hearing in a newspaper of general circulation in Raleigh County. Notice shall also be given to interested parties by certified mail.

ARTICLE 14N APPEAL PROCESS

Every decision or order of the planning commission, board of zoning appeals or county commission is subject to review by certiorari in accordance with Chapter 8, Article 9 of the West Virginia Code.

APPENDIX A GUIDELINES FOR BOARD OF ZONING APPEALS HEARING

Property owners must present a signed petition and necessary attachments, requested supplement, amendment or change to the Raleigh County Planning and Zoning Ordinance to the Board of Zoning Appeals.

After review of the petition and necessary attachments and when deemed complete by the Board of Zoning Appeals or its agent, a public hearing will be held. The applicant will serve notice of a public hearing a minimum of five (5) days prior to the hearing date. Notice of the hearing date will be provided by placing a Class I legal advertisement in the "general circulation" newspaper and by sending notification by certified mail to adjacent property owners, as herein defined, at least five (5) days prior to the hearing date.

All applicants must appear at the hearing either in person or by representative.

After the public hearing, a decision will be rendered by the Board of Zoning Appeals and an order entered.

The following items are required to constitute a complete application:

1. Petition, with filing fee of \$60.00 (Form BZA-1)
2. Copy of Deed of Petition area.
3. Plot Plan Map (Form BZA-2).
4. Listing of adjacent property owners (Form BZA-3).
5. Legal advertisement (Form BZA-4).
6. Description of proposed use of property (Form BZA-5).
7. Plans for proposed use of property (See Form BZA-5).
8. Deed Examination that property is not restricted.

Criteria for Issuance of Special Use Permit or Variance.

Business:

1. Type of Business.
2. Hours of operation.
3. Adequate off-street parking.
4. Building size.
5. Number of employees.
6. Noise, fumes, odors or electrical interference causing a nuisance to a neighboring residence.
7. Increased traffic within the neighborhood.
8. Outside storage or placement of equipment, machinery or materials.

Mobile Homes:

Mobile Home - A transportable structure that is wholly, or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a housing site and designed for long-term residential use and built prior to the enactment of the federal manufacturing housing construction and safety standards institute (ANSI) - A119.1 standards for mobile homes. (37-15-2)

1. Types of residences in affected area (the general character of the neighborhood; would placement of manufactured home be conducive to the area).
2. Ownership of property (is it to be rented or owner-occupied).
3. Reasons for wanting placement of manufactured home (are there special circumstances or hardships involved).
4. Does the placement of manufactured home meet the requirements of the Raleigh County Zoning Ordinance?

Manufactured Home Park:

1. Manufactured Home Parks are not permitted in the Residential (R2) zone. Manufactured Home Parks are allowed in the Rural (R1) and Commercial (B1) zones after securing a Special Use Permit.
2. More than one (1) Manufactured Home on one tax parcel constitutes a Manufactured Home Park.
3. Application for Manufactured Home Park shall require a plot plan of property showing proposed Homesites, all other buildings and structures; setbacks from adjacent properties and roadways.

CHECKLIST FOR BOARD OF ZONING APPEALS HEARING

- _____ Petition, with Filing Fee of \$60.00 (Form BZA-1)
- _____ Copy of Deed of Petition Area
- _____ Plot Plan Map (Form BZA-2)
- _____ Listing of Adjacent Property Owners (Form BZA-3)
- _____ Legal Advertisement Notification (Form BZA-4)
- _____ Description and Plan of Proposed Use (Form BZA-5)
- _____ Deed Examination

PETITION FOR BOARD OF ZONING APPEALS HEARING

DATE: _____

PROPERTY OWNER: _____

ADDRESS: _____

AGENT (if applicable): _____ Telephone _____

AGENT'S ADDRESS: _____

PROPERTY ADDRESS AND LOCATION: _____

PROPERTY TAX ID: District _____; Map _____; Parcel _____

Copy of deed or description of property must accompany this application.

PROPOSED USE OF PROPERTY: _____

I certify that the information supplied on this petition and other information provided is accurate and true to the best of my knowledge.

SIGNATURE OF OWNER: _____

SIGNATURE OF AGENT (if applicable): _____

Taken, subscribed and sworn to before the undersigned authority this the _____ day of _____, 20____.

My commission expires: _____

Notary Public _____

In addition to a Class I legal advertisement (Form BZA-4), notice must be sent to all adjacent property owners. Notification shall be by certified mail and must occur a minimum of five (5) days prior to the public hearing. Proof that notification was sent may be made by submission of the certified receipts. The applicants requirement to notify adjacent property owners will be fulfilled if the notification is mailed to the adjacent property owners current address as listed with the County Assessor's office.

Adjacent property owners shall mean all persons, firms, corporations, etc. whose property borders at any point of the property subject to the hearing, any owners whose property would border the parcel, but for the location of a street, alley or other roadway between that property and the parcel. Notification shall be given to property owners or other entities that the Board of Zoning Appeals may deem necessary. The location of all property owners to be notified are to be shown on the Plot Plan Map.

Notification must, at a minimum, advise the property owner that his/her property is adjacent to that property subject to the hearing. Also, the notification must contain a copy of completed Form BZA-4.

Failure to fully comply with this section will require the public hearing to be rescheduled and proper notice to be given again.

RALEIGH COUNTY BOARD OF ZONING APPEALS NOTICE OF PUBLIC HEARING

Notice is hereby given that on the ____ day of _____ in the County Commission Courtroom, 116 1/2 North Heber Street, Beckley, West Virginia at 5:30 p.m., the Board of Zoning Appeals of Raleigh County, West Virginia will hold a public hearing upon the application of _____ for the purpose of _____

_____ The physical location of the property is _____ Any person wishing to be heard concerning this matter should be present at the time and place indicated above. Written comments concerning this matter received by _____ will be _____ Written comments should be sent to: Raleigh County Board of Zoning Appeals, 116 1/2 N. Heber Street, Beckley, West Virginia 25801. A copy of the application for public review is on file in the office of the County Commission at the address listed above.

