

ARTICLE 1349
Board of Zoning Appeals

1349.01 Creation, membership and procedure.

1349.02 Applications and appeals.

1349.03 Stay of proceedings.

1349.04 Application for appeal of actions of the Building Inspector, Building Commission, or Zoning Board of Appeals.

CROSS REFERENCES

Open governmental proceedings - see W.Va. Code Art.6-9A

Establishment; composition - see W.Va. Code 8-24-51 et seq.

Appeals - see W.Va. Code 8-24-56 et seq.

Injunctions - see W.Va. Code 8-24-67

1349.01 CREATION, MEMBERSHIP AND PROCEDURE.

(a) A Board of Zoning Appeals shall be appointed in accordance with the provisions of West Virginia Code 8-24. Such Board shall consist of five members.

(b) The Board shall have the power to adopt rules and regulations for its own government, not inconsistent with law or with the provisions of this or any other pertinent ordinance. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the Acting Chairman, may administer oaths and compel attendance of witnesses.

(c) Hearings of the Board shall be public; minutes shall be kept of proceedings, showing the action of the Board and the vote of each member upon each question, and records shall be made of the Board's examinations and other official actions, all of which shall be filed immediately in the office of the Board as a public record.

(d) Three members of the Board shall act by resolution, and the concurring vote of three members shall be necessary to reverse any order requiring decision or determination of the Zoning Inspector, or to decide in favor of an applicant any matter upon which it is required to pass under the Zoning Ordinance, or the effect any variation in the requirement of the Zoning Ordinance.

(e) The Board may call on the other officials for assistance in the performance of its duties, and it shall be the duty of such officials to render such assistance to the Board as may reasonably be required.

(Passed 2-14-78)

1349.02 APPLICATIONS AND APPEALS.

(a) An application to the Board, in cases in which it has original jurisdiction under the provisions of this Zoning Ordinance, may be taken by any property owner, including a tenant, or by any governmental officer, department, board or bureau. Such application shall be filed with the Zoning Inspector who shall transmit the same, together with all the plans, specifications and other papers pertaining to the application, to the Board.

(b) An appeal to the Board may be taken by any property owner, including a tenant, or by any governmental officer, department, board or bureau affected by any ruling of the Zoning Inspector. Such appeal shall be taken within a reasonable time, as prescribed by the rules of the Board, by filing with the Zoning Inspector a notice of appeal, together with all the plans and papers constituting the record upon which the action appealed from was taken.

(c) The Board shall fix a reasonable time for the hearing of an application or of an appeal. It shall give at least ten days notice of the time and place of such hearing by insertion in a daily newspaper of general circulation in the County, and shall also give notice delivered personally or by mail at least five days before the time fixed for such hearing to the applicant or appellant and to the Zoning Inspector, and to the respective owners of record of property adjoining or adjacent to the premises in question. Any party may appear at such hearings in person or by agent or by attorney. The Board shall decide the application or appeal within a reasonable time.

(Passed 2-14-78)

1349.03 STAY OF PROCEEDINGS.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector 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 such case, proceedings shall not be stayed otherwise than by an order which may, on due cause shown, be granted by the Board on application, after notice to the Zoning Inspector, or by judicial proceedings.

(a) Powers of the Board. The Board shall have jurisdiction in matters and shall have the specific and general powers provided in this Zoning Ordinance.

(b) Special Exceptions and Interpretation of Map. The Board shall have the power to hear and decide, in accordance with the provisions of this Zoning Ordinance, requests or applications for special exceptions or for interpretation of the Zoning Map or for decisions upon other special questions upon which the Board is authorized to pass.

(1) Special exceptions. In addition to permitting the special exceptions heretofore specified in this Zoning Ordinance, the Board shall have authority to permit the following:

Nonconforming Uses.

- A. The substitution for a nonconforming use existing at the time of enactment of this Zoning Ordinance, another nonconforming use, if no structural alterations except those required by law or ordinance are made; provided, however, that in any Residence District, and in any Business District no change shall be permitted to any use prohibited in the Industry District.
 - B. The temporary use of a building or premises in any District for a purpose or use that does not conform to the regulations prescribed by this Zoning Ordinance, provided that such use is of a true temporary nature and does not involve the erection of substantial buildings. Such permit shall be granted in the form of a temporary and revocable permit for not more than a twelve month period, subject to such conditions as will safeguard the public health, safety, convenience, and general welfare.
 - C. The temporary use of a building or premises in undeveloped sections for a purpose that does not conform to the regulations prescribed by this Zoning Ordinance, provided that such structure or use is of a true temporary nature, promotive of or incidental to the development of such undeveloped sections, and does not involve the erection of substantial buildings.
- (2) Interpretation of Map. Where the street or lot layout actually on the ground, or as recorded, differs from the street and lot lines indicated on the Zoning Map, the Board, after notice to the owners of the property and after public hearing, shall interpret the Map in such a way as to carry out the intent and purposes of this Zoning Ordinance for the particular section or District in question.
- (c) Administrative Review and Variances. The Board also shall have the power:
- (1) Administrative review. To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, grant or refusal made by the Zoning Inspector in the enforcement of the provisions of this Zoning Ordinance.
 - (2) Variances. To authorize on appeal in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Zoning Ordinance will result in unnecessary hardship, and so that the spirit of this Zoning Ordinance shall be observed and substantial justice done, as follows:
 - A. Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of enactment of this Zoning Ordinance, or by reason of exceptional situation or condition of such piece of property, or of the use or development of property immediately adjoining the piece of property in question, the literal enforcement of the provisions of the Zoning

Ordinance would result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of such property, unnecessary to carry out the spirit and purpose of the Zoning Ordinance, the Board shall have the power to authorize, upon appeal, a variance from such strict application, so as to relieve such difficulties or hardships, and so that the spirit and purpose of the Zoning Ordinance shall be observed and substantial justice done. In authorizing a variance the Board may attach thereto such conditions regarding the location, character and other feature of the proposed building, structure or use as it may deem advisable in the interest of the furtherance of the purposes of the Zoning Ordinance.

- B. No such variance in the provisions or requirements of the Zoning Ordinance shall be authorized by the Board unless the Board finds, beyond reasonable doubt, that all of the following conditions exist:
1. That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same Zoning District.
 2. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same Zoning District and in the vicinity.
 3. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of the Zoning Ordinance or the public interest.
- C. No grant or variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which the variance is sought is not of so typical or recurrent a nature as to make reasonably practicable the formulation of a general regulation, under an amendment of the Zoning Ordinance, for such conditions or situations.

(d) Action of Board. In exercising its power, the Board may, in conformity with the provisions of West Virginia Code 8-24, and of the Zoning Ordinance reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made.

(Passed 2-14-78)

1349.04 APPLICATION FOR APPEAL OF ACTIONS OF THE BUILDING INSPECTOR, BUILDING COMMISSION, AND/OR ZONING BOARD OF APPEALS.

Any person aggrieved by the action or order of the Building Inspector, the Building Commission or the Zoning Board of Appeals shall have the right to appeal to the Circuit Court of Harrison County, West Virginia, for a temporary injunction restraining the Building Inspector or Building Commission pending final disposition of the cause as provided in WV Code 8-12-16. In the event such application is made, a hearing thereon shall be had within twenty (20) days, or as soon thereafter as possible, and the court shall enter such final order or decree as the law and justice may require. Cost of such proceeding shall be imposed at the discretion of the Court.

(Passed 8-10-99)

Code Enforcement Commission - See Article 1731

Building Commission - See Article 1731