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Board of Zoning Appeals

15.1 Organization

A Board of Zoning Appeals (hereinafter referred as the BZA) consisting of five (5) members shall be appointed by the Town Council. The BZA shall serve without compensation other than for travel expenses. One of the five appointed members shall be an active member of the Planning Commission.

1. Retention of Existing BZA. The present BZA shall continue as the Board of Zoning Appeals under the provisions of this article and pursuant to authority and provisions of Section 15.1-494 of the 1950 Code of Virginia, as amended.
2. Term of Office, Vacancies. The term of office of each member of the BZA shall be for five (5) years, except that original appointments have been made for such terms that the term of one member shall expire each year. Vacancies occurring in the BZA shall be filled for the unexpired term only.
3. Disqualification and Removal. Any member of the BZA shall be disqualified to act upon a matter before the BZA with respect to property, in accordance with Section 2.1-639 of the 1950 Code of Virginia, as amended. Any member may be removed for cause by the appointing authority upon written charges and after a public hearing.
4. Chairman. The BZA shall choose annually its own chairman and, in his absence, an acting chairman.
5. Secretary. The Zoning Administrator shall serve as secretary to the BZA, prepare minutes of meetings, keep all records and conduct official correspondence. When authorized by the Town Council, a court stenographer shall be employed to record such proceedings as the Council may direct.
6. Secretary, Alternate. In the absence of the Zoning Administrator at any meeting, the BZA shall appoint some other person, who may or may not be a member of the BZA, to prepare the minutes thereof.

15.2. Rules and Regulations

Subject to the provisions of this article and the general laws of the Commonwealth of Virginia, the BZA shall adopt such rules and regulations as it may deem necessary for the proper conduct of its business, and to carry into effect the provisions of this Ordinance.

15.3. Powers of the Board of Zoning Appeals

The BZA shall have the following powers and duties:

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1. Administrative Review. The BZA shall have the power to hear and decide appeals when it is alleged there is error in any final order, requirement, determination or decision made by an administrative officer in the administration or enforcement of this Ordinance.
2. Variances. The BZA shall have original jurisdiction to hear and decide applications seeking a variance from the strict application of certain regulations of this Ordinance.
3. Interpretation of Zoning Map. The BZA shall have power to hear and decide any application for interpretation of the Zoning District Map as provided in Section 14.6.
4. Additional Matters. The BZA shall act on any other matter as required by the provisions of this Ordinance.

15.4. Appeals - Procedure

In the case of an appeal from any final order or decision of an administrator the procedures to be followed shall be in strict accordance with Section 15.2-2311 of the Code of Virginia, 1950 (as amended). An appeal to the BZA may be taken by any person aggrieved by, or any officer, department, board or bureau of the Town of Round Hill, affected by any decision of the Zoning Administrator relative to the administration of this Ordinance. The applicant shall file with the administrator and the BZA a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the BZA when delivered to the Town Office, and the date and time of filing shall be entered on the notice by the town staff.

- a. An appeal must be taken within thirty (30) days after the date of the decision or order appealed from.
- b. Whenever an appeal is filed, the administrator shall transmit to the BZA all the papers constituting the record upon which the action is appealed from.
- c. An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision appealed from, unless the administrator certifies to the BZA that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the BZA on a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.
- d. The BZA may reverse or affirm (wholly or partly) or may modify the Order, requirement, decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the BZA shall have all the powers of the officer from whom the appeal is taken.
- e. If the BZA decides that there was an error in the order, requirement, decision or determination by the zoning enforcement officer as specified in the notice of appeal, the Town Clerk shall return the application fee to the appellant and no fee shall be charged for the appeal. If, however, the BZA upholds the action of the administrator, the Town Clerk shall retain the fee.

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15.5. Variances - Procedure

An application for a variance shall be submitted to the BZA by filing a copy of the application with the Zoning Administrator on a form to be provided by the Zoning Administrator, including all plans and information relating to the application required by the BZA pursuant to Section 15.2-2310 of the Code of Virginia, 1950. The procedure to be followed shall be in strict accordance with section 15.2-2310 of the 1950 Code of Virginia, as amended. The proposal shall then be advertised pursuant to provisions of Section 15.2-2204 of the Code of Virginia prior to public hearing by the BZA. A variance may be granted by the BZA if it concludes it will not be contrary to the public interest and that the strict enforcement of the Ordinance would result in unnecessary hardship; provided that the spirit of the ordinance shall be observed, and substantial justice done.

Required Standards for Variances

To grant a variance the BZA shall make specific findings based on the evidence before it that the application satisfies all of the following enumerated requirements:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property; or
 - G. An extraordinary condition, situation or development of property immediately adjacent to the subject property.
3. That:
 - A. The strict application of the terms of the Zoning Ordinance would effectively prohibit or unreasonably restrict the utilization of the subject property, or
 - B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.
4. That the strict application of this Ordinance would produce undue hardship relating to the property.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That authorization of the variance will not be of substantial detriment to adjacent property.
7. That the character of the zoning district will not be changed by the granting of the variance.

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8. That the condition or situation of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Town Council as an amendment to the Zoning Ordinance.
9. That the variance will be in harmony with the intended spirit and purposes of this Ordinance and will not be contrary to the public interest.
10. Variance: Imposing of Conditions. In authorizing a variance the BZA 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. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; 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 the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, that approval of an additional variance shall be required.
11. Variance: Duration. A variance may be issued for an indefinite duration or for a specified duration only.
12. Variance: Issuance. The nature of the variance and any conditions attached to it shall be entered on the zoning permit (or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance and further information). All such conditions are enforceable in the same manner as any other applicable requirement of this article.
13. Variance: Denial. A motion to deny the variance may be made on the basis that any one or more of the criteria set forth in Section 15.5 is not satisfied or that the application is incomplete. Such a motion shall include a statement of the specific reasons or findings of fact that support it.

15.6. Interpretations of the Zoning Map

The BZA is authorized to hear and decide applications for interpretations of the Zoning District Map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Zoning Administrator, they shall be handled as provided in Section 15.4.

1. Interpretation: Filing Procedure. An application for a map interpretation shall be submitted to the BZA by filing a copy of the application with the Zoning Administrator in the planning department. The application shall contain sufficient information to enable the Board to make the necessary interpretation.
2. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by this Ordinance, the BZA 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. The BZA shall not have the power, however,

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to rezone property or to substantially change the locations of district boundaries as established by this Ordinance.

3. Interpretation: Rules. Unless district boundary lines are fixed by dimensions or otherwise clearly shown described and where uncertainty exists as to the boundaries of districts as shown on the Zoning District Map, the following rules shall apply:.
- a. Boundaries indicated as approximately following or being at right angles to the centerlines of alleys, streets, highways or streams shall be construed to follow such center lines;
 - b. Boundaries indicated as approximately following lot lines, town limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;
 - c. Boundaries indicated as following river, creek and stream or other body of water shall be construed to follow the centerline at low water or at the limit of the jurisdiction, and, in the event, of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.
 - d. Where a district boundary divides a lot or where distances are not specifically indicated on the Zoning District Map, the boundary shall be determined by measurement, using the scale of the Zoning District Map.
 - e. Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

15.7. Affirmation or Denial

With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reason or findings or facts that support the motion. If such a motion is not made or fails to receive the votes necessary for adoption, then a motion to uphold the decision appealed from shall be in order.

15.8. Requests to be Heard Expeditiously

The BZA shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with, and obtain the necessary information to make sound decisions.

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15.9. Hearing of Application

1. Time and Notice. Upon receipt of an application or appeal, the BZA shall fix a reasonable time for a hearing of such application or appeal, and in addition to the notice conforming to Section 15.1-431 of the 1950 Code of Virginia, as amended, shall cause to be posted, at least fifteen (15) days before such hearing, a poster calling attention to the nature and substance of the appeal or application, the land involved, the name of the applicant or appellant, and the date and place of the public hearing. The BZA shall prescribe the form of said poster, which shall be affixed to a pole, post, fence, or structure on the land involved, if practical, or if not, within three hundred (300) feet thereof, and in either event, in such location as to be clearly visible from a public road. Any party may appear in person or by agent or by attorney at the hearing.
2. Meetings and Hearings. Meetings or hearings of the BZA shall be held at the call of the chairman, or acting chairman, or at the request of any two members, provided that notice thereof has been mailed to each member of the BZA at least seven days before the time set, or that a waiver or notice is obtained from each member. Three members shall constitute a quorum for the transaction of any official business. The presiding chairman may administer oaths and compel the attendance of witnesses (Section 15.1-496). Every person before the rostrum shall abide by the order and direction of the chairman or acting chairman. Discourteous or disorderly or contemptuous conduct shall be regarded as a breach of the privileges extended by the BZA and shall be dealt with as the chairman deems proper. All hearings of the BZA shall be open to the public. The BZA shall keep minutes of its proceedings showing the number of votes for and against, or failure to vote on each question, and shall keep records of its examinations and other official actions, all of which shall be filed promptly in the office of the zoning administrator and shall be a public record.
3. Decision. The BZA shall render a decision on any application submitted to it within ninety (90) days of filing. An application shall not be deemed filed until the applicant has met all submission requirements set forth in, or under authority of, this Ordinance.
4. Rehearings. A request for a rehearing shall be in writing and shall be delivered to the Zoning Administrator within fifteen (15) days after the date of the decision of the BZA. It shall recite the reasons for the request. A rehearing may then be granted by the chairman or upon the affirmative vote of any two members.

[Amended February 19, 2009]
[Amended September 17, 2009]
[Amended May 20, 2010]