



DOCKET ITEM #9

Text Amendment #2017-0003 – Board of Zoning Appeals

CONSENT AGENDA ITEM

If no one asks to speak about this case prior to the hearing, it will be approved without discussion as part of the Consent Agenda.

Issue: (A) Initiation of a Text Amendment; (B) Public hearing and consideration of an amendment to Article 11, Division C of the Zoning Ordinance to incorporate state code provisions and update the Board of Zoning Appeals regulations pertaining to process of the Board, variances, appeals and special exceptions.	Planning Commission Hearing:	May 2, 2017
	City Council Hearing:	May 13, 2017
Staff: Alex Dambach, Division Chief, alex.dambach@alexandriava.gov		

I. Issue

Article XI of the Zoning Ordinance, Development Approvals and Procedures, contains the ordinances related to the Board of Zoning Appeals in Division C. Due to recent changes in the Code of Virginia, zoning regulations for this Board need to be updated. The Board and staff have been operating in accordance with state code and charter; however, it is necessary to update the Zoning Ordinance.

II. Background

The Virginia General Assembly has in recent years made changes to the Code of Virginia that the City needs to comply with. For example, in the 2015 session, the General Assembly adopted an Act to amend certain Code of Virginia provisions related to boards of zoning appeals. This legislation changed the standards by which a board of zoning appeals evaluates an application for a variance. The legislation also added a provision that regulates the ex-parte communications of board members. In the 2017 session, the General Assembly adopted an Act to amend Section 15.2-2311 of the Code of Virginia, the amendment changes notice requirements by creating a rebuttable presumption related to a person's last known address.

Due to the adoption of these changes, it was necessary for the City of Alexandria to comply with these amended sections of the Code of Virginia. Staff has taken the opportunity to do a comprehensive review of the Code of Virginia and City Charter and is proposing these amendments to the Zoning Ordinance accordingly. Staff presented this text amendment to the Board of Zoning Appeals on April 13, 2017. The members voted unanimously to support its adoption.

III. Discussion of Proposed Text Changes

The purpose of the changes in this text amendment is to bring the provisions of the Zoning Ordinance into conformance with the City Charter and Code of Virginia.

As discussed above, the General Assembly has, in recent years, made changes to the Code of Virginia that the City needs to comply with. For instance, the variance standards were modified, provisions related to ex-parte contact were added, and this year the General Assembly varied the standard related to a determination of a person's last known address when receiving a notification. Staff's intention is to have the Zoning Ordinance be the one place that reflects the applicable provisions of both the City Charter and Code of Virginia. When these changes were made to the Code of Virginia, the City's policies and practices were changed to be in accordance with them. With the exception of the 2017 Code of Virginia changes, no further policy or practice changes are required.

IV. Recommendation

Staff recommends that the Planning Commission recommend approval of the proposed text amendment as proposed in Attachment I.

Staff: Alex Dambach, Division Chief, alex.dambach@alexandriava.gov

Attachment I: Text Amendments to the Zoning Ordinance

Attachment I

Text Amendments to the Zoning Ordinance

Language that is underlined is to be added, and language shown with a strikethrough is to be deleted.

Sec. 2-100 - Definitions.

For the purposes of this ordinance, the following words and phrases shall have the meaning assigned below, except in those instances where the context clearly indicates a different meaning.

2-201.1 – Variance

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.

Editor's Notes: See Code of Virginia § 15.2-2201.

2-201.42 - Veterinary/animal hospital.

A type of animal care facility where common household pets are provided with preventative care and/or are treated for illness, injury, or disease, but does not include animal shelters.

2-201.23 - Walkability index.

A City of Alexandria scoring system used to measure the degree to which a person can travel on foot between places to work, live and play. The index considers the presence of neighborhood services, civic and community facilities, retail and community anchors. It also considers the presence of sidewalks and other physical infrastructure which contribute to a safe and pleasant pedestrian experience.

DIVISION C. - BOARD OF ZONING APPEALS

Sec. 11-1000 - Board of zoning appeals.

11-1001 - Authority and establishment.

The board of zoning appeals is established to perform those duties set forth in section 9.18 of the city charter and in this Division C of Article XI.

Editor's Notes: See City Charter § 9.14 through § 9.21 and Code of Virginia § 15.2-2308 through § 15.2-2314.

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11-1002 - Composition of board of zoning appeals.

The board of zoning appeals shall consist of seven members who are qualified voters and live in the City of Alexandria but who hold no office of profit under the city government. Members shall be appointed by the city council for four year terms and vacancies shall be filled by the city council for the unexpired portion of any term. Members shall serve without compensation, but may receive reimbursement for travel and expenses incurred by attendance at conventions, meetings and such other travel as may be in the best interest of the city and the performance of the duties and activities of the board of zoning appeals. A member may be removed by the city council for neglect of duty or malfeasance in office, upon written charges and after a public hearing.

Editor's Notes: See City Charter § 9.14.

11-1003 – Organization and staff.

The board shall elect one of its members as chairman. The chairman shall preside at all meetings of the board and in his absence a member designated by the board shall act as chairman and shall preside. The board shall appoint a secretary and the city manager shall appoint such other employees as may be needed for the conduct of the work of the board. Within the limits of funds appropriated by the city council, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.

Editor's Notes: See City Charter § 9.15 related to first three sentences and see Code of Virginia § 15.2-2308(D) related to last sentence.

11-10034 - Meetings, minutes and records.

Meetings of the board of zoning appeals shall be held at the call of the chairman and at such other times as the board of zoning appeals may determine. For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the board and the board shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under section 11-1008, and the staff. The board may make, alter and rescind rules and forms for its procedures, consistent with city ordinances and general laws of the Commonwealth of Virginia. The board shall keep minutes of its proceedings showing the vote of each member on each question, or if absent or not voting, indicating such fact. The board shall keep records of its examinations and other official actions. All such minutes and records shall be filed in the office of the board of zoning appeals and shall be a public record.

Editor's Notes: See City Charter § 9.16 related to the first sentence, see Code of Virginia § 15.2-2308(C) related to the second and third sentences, and see City Charter §§ 9.16 and 9.19 related to the fourth through sixth sentences.

11-10045 - Powers and duties.

The board of zoning appeals shall have the following powers and duties:

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~~(A) To hear and decide appeals as provided for in section 11-1200 where it is alleged there is error from any order, requirement, decision or determination made by the director in the administration or enforcement of this ordinance.~~ To hear and decide appeals as provided for in section 11-1200 from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this ordinance.

~~(B) To authorize upon appeal in specific cases such variance from the terms of this ordinance as is provided for in section 11-1100 and as will not be contrary to the public interest, when owing to special conditions, a literal enforcement of the provisions will result in undue hardship; provided that the spirit of the ordinance shall be observed and substantial justice done.~~

(C) To hear and decide applications for and revoke special exceptions as provided for in section 11-1300.

~~(D)~~ (E) To permit, when reasonably necessary in the public interest, any agency of the city, state or United States the use of land or the construction or use of buildings or structures in any zone in which they are prohibited by the ordinance, provided such construction or use shall adequately safeguard the health, safety and welfare of the occupants and of adjoining and surrounding property, and shall not unreasonably impair an adequate supply of light and air to adjacent property, increase congestion in streets, or increase public danger from fire or otherwise affect public safety. Notice of the public hearing shall be provided in accordance with section 11-300.

~~(E)~~ (F) To permit the following exceptions to the zone regulations and restrictions, provided that by their design, construction and operation, such exceptions shall safeguard the health, safety and welfare of the occupants of the adjoining and surrounding properties, shall not unreasonably impair an adequate supply of light and air, shall not increase public danger from fire or otherwise unreasonably affect public safety, and shall not diminish or impair the established property values in surrounding areas:

(1) The extension of a zone where the boundary line of a zone divides a lot that was in single ownership on ~~June 24, 1992~~ the effective date of the ordinance. An asterisk shall be placed on the zoning map for land so affected and such land shall be treated as if it were in the new zone.

(2) The reconstruction of a structure containing a nonconforming use which has been damaged by fire or other casualty, or act of God or the public enemy, if it has been damaged to the extent of more than 60 percent of fair market value as established by the opinion of three disinterested appraisers appointed by the city council, and if the board finds some compelling public necessity for a continuance of the use and such a continuance is not primarily to continue a monopoly.

Notice of the public hearing shall be provided in accordance with section 11-300.

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~~(E)~~ To make, alter and rescind rules and forms for its procedures, and to prescribe procedures for the conduct of public hearings that it is required to hold, consistent with the ordinances and charter of the city and the general laws of the Commonwealth.

~~(F)~~ No provision of this Division C of Article XI shall be construed as granting the board of zoning appeals the power to rezone property or to base board decisions on the merits of the purpose and intent of ordinances adopted by city council. ~~No use variance may be approved by the board of zoning appeals.~~

Editor's Notes: See Code of Virginia § 15.2-2309 related to subsections (A), (B), (C), and (G) and see City Charter § 9.18 related to subsections (D) through (F) generally and see Code of Virginia § 15.2-2309 related to notice.

11-10056 - Limitations.

All provisions of this ordinance relating to the board of zoning appeals shall be strictly construed. The board, as a body of limited jurisdiction, shall act in full conformity with all provisions and definitions in this ordinance and in strict compliance with all limitations contained therein.

Editor's Notes: See City Charter § 9.14 through § 9.21.

11-10067 - Periodic report.

The board shall report to the city council annually summarizing all appeals and applications made to it since its last previous report and summarizing its decisions on such appeals and applications. Such report shall include the board's observations and recommendations deemed advisable in order to assure full conformity with the requirements and limitations of this division C of Article XI pertaining to the jurisdiction and functions of the board or to amend the ordinance relating thereto. At the same time that each such report is filed with the council, copies thereof shall also be filed with the director, the planning commission, and the city attorney.

Editor's Notes: See Code of Virginia § 15.2-2308.

11-10078 - Final decisions subject to judicial review.

All final decisions of the board shall be subject to judicial review in the following manner.

(A) Any person, firm or corporation, jointly or severally aggrieved or in fact affected by any final decision of the board, or any officer, department, board or agency of the city government charged with the enforcement of any order, requirement or decision of the board, may appeal from such decision by filing a petition that shall be styled "In Re: [date] Decision of the Board of Zoning Appeals of the City of Alexandria" in the circuit court of the city specifying the alleged illegality of the action of the board within 30 days after the date of the decision of the board.

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(B) The circuit court shall review the record, documents and actions taken by the board and may receive evidence. The court may reverse or modify the decision reviewed, in whole or in part, when it is satisfied that the decision of the board is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion.

(C) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board and shall prescribe therein the time within which a return thereto must be made and served upon the secretary of the board or, if no secretary exists, the chair of the board, which shall not be less than 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 and on due cause shown, grant a restraining order.

(D) Any review of a decision of the board shall not be considered an action against the board and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section. The council, the landowner, and the applicant before the board 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.

(E) The board 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 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.

(F) In the case of an appeal from the board to the circuit court of a decision of the board, any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia.

(G) Costs shall not be allowed against the city, unless it shall appear to the court that it acted in bad faith or with malice. 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 costs 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 locality may request that the court hear the matter on the question of whether the appeal was frivolous.

Editor's Notes: See City Charter § 9.20 and Code of Virginia § 15.2-2314 related to subsection (A), see City Charter § 9.21 related to subsection (B), and Code of Virginia § 15.2-2314 related to subsections (C) through (G).

11-10089 - One year period within which to comply.

Any decision of the board shall be null and void and of no effect if the applicant to the board or his successor has not commenced and diligently and substantially pursued construction or operations allowable by virtue of such decision within one year from the

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date of the decision and thereafter diligently pursued its completion. In cases where there is an appeal from the board to the courts, the one-year period of time shall run from the date of a final decision by the court.

Editor's Notes: See City Charter § 9.14 through § 9.21 and Code of Virginia § 15.2-2308 through § 15.2-2314.

11-1010 – Ex parte communications and proceedings.

(A) The non-legal staff of the city may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the city, the applicant, landowner or his agent or attorney are all invited.

(B) Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under section 11-1008, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under section 11-1008 requests additional documents or materials be provided by the city other than those materials provided to the board, such request shall be made pursuant to Code of Virginia § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to Code of Virginia subsection F of § 2.2-3707.

(C) For the purposes of this section, "non-legal staff of the city" means any staff who is not in the office of the attorney for the city, or for the board, or who is appointed by special law. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

(D) This section shall not apply to cases where an application for a special exception has been filed.

Editor's Notes: See Code of Virginia § 15.2-2308.1.

Sec. 11-1100 - Variance.

11-1101 - Jurisdiction and authority.

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Upon appeal, the board of zoning appeals shall exercise the jurisdiction and authority to grant a variance from the literal terms of this ordinance in accordance with the procedures, standards and limitations contained in this section 11-1100.

Editor's Notes: See other editor's notes in Section 11-1100.

11-1102 - Procedures for variance.

(A) Application for variance. Any ~~person owning, or having a possessory or contract interest in property and the consent of the owner~~ property owner, tenant, government official, department, board or bureau, may file an application for variance in regard to such property with the director. The application shall contain the following information and such additional information as the board of zoning appeals may, by rule, require:

- (1) Ten copies of a plot plan drawn to scale clearly showing the requested variance(s), the property involved, existing and proposed buildings or additions, property lines, and the location of and distance to adjacent buildings from the proposed building or addition.
- (2) The particular provisions or requirements of this ordinance which prevent the proposed construction on, or proposed use of, the property.
- (3) The existing zoning classification of the property.
- (4) The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this ordinance and a statement as to whether such conditions existed at the time the current owner acquired the property.
- (5) The particular characteristics or conditions which distinguish the land from other land in the same zone.
- (6) The particular hardship which would result if the specified provisions or requirements were to be applied to the subject property.
- (7) The extent to which it would be necessary to vary the requirements of this ordinance in order to permit the proposed construction on, or use of, the property.
- (8) An explanation of how the requested variance conforms to each of the standards set out in section 11-1103 below.
- (9) The identity of all persons or entities who have a legal or equitable interest in the property and a description of the nature of that interest.

(B) Staff review and report. The director shall review the application to determine that it contains the required information; shall review the merits of the application and perform research as necessary to determine whether a variance under the terms of this section 11-

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1100 should be granted; shall prepare a staff report indicating its analysis and findings with respect to the standards in section 11-1103 and regarding the effect and impact on the neighborhood if the variance were to be granted; and shall forward its report to the board of zoning appeals. The director shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.

(C) Docketing and notice. At the time the director determines that the application is complete, he shall docket the matter for public hearing before the board of zoning appeals for a date to occur no later than 30 working days from the date of such determination and docketing.

(D) Public hearing by board of zoning appeals. After a duly noticed public hearing in accordance with section 11-300, on the application for variance, the board shall either approve, deny or approve with conditions the application for a variance. Its decision shall be supported by findings of fact and conclusions with respect to the standards of section 11-1103. The concurring affirmative vote of four members shall be necessary to decide in favor of the applicant.

(E) Withdrawal of application. An application for variance may not be withdrawn by the applicant after it has been docketed for public hearing without the consent of the board.

Editor's Notes: See Code of Virginia §§ 15.2-2309 and -2310 and see City Charter § 9.19.

11-1103 - Standards for variances.

The board of zoning appeals shall not vary the regulations of this ordinance as authorized above unless it finds that:

- ~~(A) The particular physical surroundings, shape, topographical condition or other extraordinary situation or condition of the specific property involved would effectively prohibit or unreasonably restrict the utilization of the property or would constitute a clearly demonstrable hardship, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;~~
- ~~(B) The conditions upon which the petition for a variance is based are not applicable generally to other property within the same zoning classification;~~
- ~~(C) The property was acquired in good faith and any hardship produced by the ordinance was not created by the owner of such property;~~
- ~~(D) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, or diminish or impair the values thereof;~~
- ~~(E) The proposed variance will not impair an adequate supply of light and air to adjacent property, or cause or substantially increase congestion in the public streets, or increase the danger of fire or the spread of fire, or endanger the public safety;~~
- ~~(F) The variance, if granted, will not alter the essential character of the area or be a substantial detriment to adjacent property;~~
- ~~(G) The strict application of this ordinance would produce undue hardship;~~

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~~(H) Such undue hardship is not shared generally by other properties in the same zone and vicinity; and~~

~~(I) No other remedy exists whereby the same relief was, is or may be available from another approval body of the city as part of its review of a site plan or other development application.~~

(A) It meets the definition of a variance as defined in section 2-201.1;

(B) 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;

(C) 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;

(D) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;

(E) 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;

(F) 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

(G) The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance or the process for modification of a zoning ordinance at the time of the filing of the variance application.

Editor's Notes: See Code of Virginia § 15.2-2309.

11-1104 - Conditions and restrictions.

The board may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to reduce, minimize, or mitigate the effect of such variance upon other property in the neighborhood, and better to carry out the general intent of the ordinance. The board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. In addition, a variance shall specify whether it is granted generally for all potential uses or whether its effect is limited to specific uses of the property. Failure to comply with any such conditions and restrictions shall constitute a violation of this ordinance. Violations of this ordinance may be enforced and penalized in accordance with section 11-200.

Editor's Notes: See Code of Virginia § 15.2-2309 related to the second sentence and see City Charter § 9.18 related to the remainder.

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11-1105 - Burden of applicant.

The applicant for a variance shall bear the burden of producing evidence to prove by a preponderance of the evidence ~~establishing~~ that the requested variance satisfies the standards set out in section 11-1103.

Editor's Notes: See Code of Virginia § 15.2-2309.

11-1106 - Reconsideration.

If an application for a variance is denied, the board of zoning appeals shall not consider an application for the same variance on the same site again for one year unless the new application differs in a substantial and material way from the old one, in which case it may be reconsidered after six months.

Editor's Notes: See Code of Virginia § 15.2-2310.

11-1107 – Conformance and expansion

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, the approval of an additional variance shall be required.

Editor's Notes: See Code of Virginia § 15.2-2309.

Sec. 11-1200 - Appeals.

11-1201 - Appeals from administrative ruling.

~~The board of zoning appeals is authorized to hear appeals where it is alleged there is error from any order, requirement, decision or determination made by the director in the administration or enforcement of this ordinance and jurisdiction on appeal is not given to another body.~~ To hear and decide appeals as provided for in section 11-1200 from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this ordinance. For purposes of this section, determination means any order, requirement, decision or determination made by the director.

Editor's Notes: See Code of Virginia § 15.2-2309.

11-1202 - Extent of the board's appeal powers.

In exercising the authority herein granted the board may, in conformity with the provisions of this ordinance, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from.

Editor's Note: See City Charter § 9.19.

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11-1203 - How appeals may be taken.

Appeals to the board may be taken by any person aggrieved or by an officer, department, board, commission or agency of the city affected by a decision of the director. Appeals shall be taken within such reasonable time as shall be prescribed by the board by general rule by filing with the director and with the board a notice of appeal specifying the grounds of the appeal. The director shall forthwith forward to the board all the papers constituting the record upon which the action appealed from was taken. The board may prescribe a fee to be paid to the city whenever an appeal is taken. Notice of the public hearing shall be provided in accordance with section 11-300.

Editor's Notes: See Code of Virginia § 15.2-2309.

11-1204 - Stay of proceedings.

A notice of appeal properly filed as herein provided shall stay all proceedings in furtherance of the action appealed from, unless the director certifies to the board after the notice of appeal has been filed with him 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 except by a restraining order which may be granted by the board or by a proper court on notice to the director and on due cause shown.

Editor's Notes: See City Charter § 9.17.

11-1205 - Decisions on appeal.

(A) Within a reasonable time after the notice of appeal has been filed, the board shall hold a public hearing, give public notice thereof as well as due notice to the parties in interest, decide the appeal, and file with the director its written findings of fact and conclusions with respect to the appeal.

(B) The chairman of the board, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

(C) The decision on such appeal shall be based on the board's judgment of whether the director was correct. The determination of the director shall be presumed to be correct. At a hearing on an appeal, the director 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 shall consider any applicable ordinances, laws, and regulations in making its decision.

(D) In exercising the powers conferred upon it the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination, appealed from, and make such order, requirement, decision or determination as should be made, and to that end shall have all the power of the director.

(E) If the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

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(F) The concurring affirmative vote of four members shall be necessary to reverse a decision.

(G) The director shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing.

Editor's Notes: See City Charter § 9.17 related to subsection (A), see Code of Virginia § 15.2-2312 related to subsection (B), see Code of Virginia § 15.2-2309 related to subsection (C), see Code of Virginia § 15.2-2312 and City Charter § 9.19 related to subsection (D), see Code of Virginia § 15.2-2311 related to subsection (E), see City Charter § 9.19 related to subsection (F), and see City Charter § 9.19 related to subsection (G).

11-1206 - Proceedings to prevent construction of a building.

Where a building permit has been issued and the construction of the building for which such permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the director to the board of zoning appeals.

Editor's Notes: See Code of Virginia § 15.2-2313.

11-1207 – Written Notice or Order

Any written notice of a zoning violation or a written order of the director shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with section 11-1200 and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. [Effective until 7/1/17 - The appeal period shall not commence until the statement is given. A written notice of a zoning violation or a written order of the director that includes such statement sent by registered or certified mail to, or posted at, the last known address of the property owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed sufficient notice to the property owner and shall satisfy the notice requirements of this section.] [Effective on 7/1/17 - The appeal period shall not commence until the statement is given and the written notice of a zoning violation or a written order of the director is sent by registered mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission.]

Editor's Notes: Code of Virginia § 15.2-2311.

11-1208 – Decision on Appeal Binding

A decision by the board on an appeal taken pursuant to section 11-1200 shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with section 11-1207. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order.

Editor's Notes: Code of Virginia § 15.2-2311.

11-1209 – Civil Penalties

No civil penalties shall be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

Editor's Notes: Code of Virginia § 15.2-2311.

11-1210 – Change to Decision

In no event shall a written order, requirement, decision or determination made by the director or other administrative officer be subject to change, modification or reversal by any director or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the director or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the director or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the city, modification is required to correct clerical errors.

Editor's Notes: See Code of Virginia § 15.2-2311(C).

Sec. 11-1300 - Special exception.

11-1301 - Authority.

The board of zoning appeals is authorized to review applications for those special exceptions established by this section 11-1300.

Editor's Notes: See other editor's notes in Section 11-1300.

11-1302 - Special exception established.

A lot in a single family, two family or townhouse zone may be the subject of a special exception from the following zoning requirements pursuant to this section 11-1300:

(A) Fences on corner lots.

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(B) Yard and setback requirements for enlargement of a dwelling, as follows:

(1) Yard and setback requirements applicable to the extension or enlargement of a single family, two family or townhouse dwelling only, within any one noncomplying plane of such dwelling.

(2) As used in this subsection, the term noncomplying plane means the vertical plane established by a wall, one story or more in height, of a main building which wall:

(a) Does not comply with the yard or setback requirements of this ordinance,

(b) Existed prior to the effective date of any change to the yard or setback regulations or restrictions applicable to such wall, and

(c) Extends for more than 50 percent of the length of the building along the side containing such wall.

(3) The term noncomplying plane does not include any plane established in whole or in part by entrances, steps or other projections into a required yard.

(4) Nothing in this subsection shall be deemed to authorize the extension or enlargement of a single family, two family or townhouse dwelling beyond the height or floor area ratio permitted by the zone in which such dwelling is located, nor to authorize the approval of more than one special exception per dwelling under the provisions of this subsection.

(C) Yard and setback requirements for a ground level, single story, covered front porch, limited to the main architectural entrance of a dwelling, facing a front yard, or primary front yard if a corner lot, and subject to the following requirements:

(1) Limitation on yard and setback reductions:

(a) The porch deck shall project a maximum of eight feet from the front building wall plane.

(b) The front building wall plane shall be established by the wall of the dwelling which extends for more than 50 percent of the length of the building, and faces the front yard, or primary front yard if a corner lot.

(c) The front yard, or primary front yard if a corner lot, shall not be reduced to less than fifteen feet from the front property line.

(2) The applicant for a ground level covered front porch shall demonstrate by clear and convincing evidence that the proposed porch is compatible with the existing building architecture, neighboring properties and neighborhood character, and will comply with the following requirements:

(a) No portion of the porch shall extend beyond the end of the walls of the front building facade, except where the resulting lot and structure retain a side or front yard which complies with the zone requirements.

(b) The roof line of the porch shall be in scale with the existing building architecture.

(c) No second floor balcony, deck, or enclosed construction shall be permitted above the front porch.

(d) A ground level covered front porch shall remain open, and shall at no time be enclosed with building walls, glass or screens; provided that railings, no higher than the minimum height required by the building code,

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and with balusters evenly spaced so as to leave at least 50 percent of the perimeter length of the railings open, shall be permitted.

(3) Nothing in this subsection shall be deemed to authorize the extension or enlargement of a single family, two family or townhouse dwelling beyond the height or floor area ratio permitted by the zone in which such dwelling is located, nor to authorize the approval of more than one special exception per dwelling under the provisions of this subsection.

(D) Established front yard setback requirements for a main dwelling required by section 7-2503, subject to the following requirements:

(1) Limitation on front setback increase or decrease.

(a) An adjustment is allowed of as much as ten percent from the average front setback line calculated for the project or five feet, whichever is less.

(b) The front setback increase or decrease shall be the minimum necessary to achieve the desired result.

(2) The applicant shall demonstrate by clear and convincing evidence that the proposed change in front setback for the dwelling is necessary for environmental and/or critical construction reasons and that the dwelling in the proposed location will be compatible with the character of the rest of the neighborhood block and will not be detrimental to the maintenance of a an established setback along the street.

Editor's Notes: See City Charter § 9.18 and Code of Virginia § 15.2-2309.

11-1303 - Procedures for special exception.

(A) Application. Any ~~person owning, or having an interest in property and the consent of the owner~~ property owner, tenant, government official, department, board or bureau, may file an application for a special exception in regard to such property with the director. The application shall contain the following information and such additional information as the board of zoning appeals may, by rule, require:

1. Ten copies of a plot plan drawn to scale clearly showing the requested special exception(s), the property involved, existing and proposed buildings or additions, property lines, and the location of and distance to adjacent buildings from the proposed building or addition.

2. The particular provisions or requirements of this ordinance which prevent the proposed construction on, or proposed use of, the property.

3. The existing zoning classification of the property.

4. The special conditions, circumstances or characteristics of the land, building or structure that prevent the use of the land in compliance with the requirements of this ordinance and a statement as to whether such conditions existed at the time the current owner acquired the property.

5. An explanation of how the requested special exception conforms to each of the standards set out in section 11-1304 below.

(B) Staff review and report. The director shall review the application and determine that it contains the required information; shall review the merits of the application; shall

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prepare a staff report indicating its findings; and shall forward the report to the board of zoning appeals. The director shall also transmit a copy of the application to the planning commission which may send a recommendation to the board or appear as a party at the hearing.

(C) Docketing and notice. At the time the director determines that the application is complete, he shall docket the matter for public hearing before the board of zoning appeals for a date to occur no later than 30 working days from the date of such determination.

(D) Public hearing by board of zoning appeals. The board of zoning appeals shall conduct a public hearing, in accordance with section 11-300, on the application for a special exception and approve, deny or approve the application with conditions. The decision of the board shall state the reasons therefor. The concurring affirmative vote of four members shall be necessary to decide in favor of the applicant.

(E) Withdrawal of application. An application for a special exception may not be withdrawn by the applicant without the consent of the board after it has been docketed for public hearing.

Editor's Notes: See Code of Virginia §§ 15.2-2309 and -2310 and City Charter §§ 9.18 and 9.19.

11-1304 - Standards for special exception.

In order to grant an application for a special exception under this section 11-1300, the board must find that the strict application of the ordinance creates an unreasonable burden on the use and enjoyment of the property which outweighs the material zoning purpose for which the specific provision of the ordinance at issue was designed. In making its determination, the board shall consider and weigh the following issues, as applicable.

(A) Whether approval of the special exception will be detrimental to the public welfare, to the neighborhood or to adjacent properties.

(B) Whether approval of the special exception will impair an adequate supply of light or air to adjacent property, or cause or substantially increase traffic congestion or increase the danger of fire or the spread of fire, or endanger the public safety.

(C) Whether approval of the special exception will alter the essential character of the area or the zone.

(D) Whether the proposal will be compatible with development in the surrounding neighborhood.

(E) Whether the proposed development represents the only reasonable means and location on the lot to accommodate the proposed structure given the natural constraints of the lot or the existing development of the lot.

(F) In the case of fences, whether the size, configuration or other unusual characteristic of the lot requires an exception from the zoning requirements in order to provide a reasonable fenced area without creating significant harm to adjacent properties or the neighborhood.

Editor's Notes: See City Charter § 9.18.

11-1305 - Conditions and restrictions.

Conditions and restrictions may be imposed on the premises benefited by a special exception as may be necessary to reduce, minimize, or mitigate the effect of the special exception upon other property in the neighborhood and better to carry out the general intent of the zoning ordinance. A guarantee or a bond may be required of the applicant to ensure that the conditions imposed are being and will be complied with. Failure to comply with any such conditions or restrictions shall constitute a violation of this ordinance and cause to revoke the permit, after notice and hearing is had. Violations of this ordinance may be enforced and penalized in accordance with section 11-200.

Editor's Notes: See Code of Virginia § 15.2-2309.

11-1306 - Burden on applicant.

The applicant for a special exception shall bear the burden of producing evidence establishing that the requested special exception satisfies the standards set out in section 11-1304.

Editor's Notes: See City Charter § 9.18(d).

11-1307 - Special exception not authorized.

A special exception otherwise available under this section shall not be approved where the same relief was, is or may be available from the planning commission, board of architectural review or city council as part of its review of a site plan or other development application and such relief was either not granted or not sought.

Editor's Notes: See City Charter § 9.18(d).

11-1308 - Reconsideration.

If an applicant for a special exception is denied, a subsequent application for the same relief on the same site shall not be considered again for one year unless the new application differs in a substantial and material way from the old one, in which case it may be reconsidered after six months.

Editor's Notes: See Code of Virginia § 15.2-2310.

11-1309 – Revocation.

The board may revoke a special exception previously granted by the board if the board determines that there has not been compliance with the terms or conditions of the permit. Notice of the public hearing shall be provided in accordance with section 11-300.

Editor's Notes: See Code of Virginia § 15.2-2309.