

Issue Analysis Form

Date: May 14, 2019 – Board of Supervisors

Item: Board of Zoning Appeals Powers and duties generally, Zoning Ordinance Amendment

Lead Department: Community Development

Contact Person: Horace Wade, Planner



Description and Current Status

Staff recommends amending the Prince George County Zoning Ordinance to reflect language consistent with the Code of Virginia. Specifically, the language for the Powers and duties of the Board of Zoning Appeals needs to be amended because staff cannot provide the Board of Zoning Appeals with an analysis of a variance requests with the current County Ordinance. Staff has been utilizing language directly from the Code of Virginia and applying it to sections of the Prince George County Zoning Ordinance that applicants have sought a variance.

Government Path

Does this require IDA action?

Yes No

Does this require BZA action?

Yes No

Does this require Planning Commission action?

Yes No
March 28, 2018
Recommended for
Approval by 6-0 vote.

Does this require Board of Supervisors action?

Yes No
May 14, 2019

Does this require a Public Hearing?

Yes No

If so, before what date?

n/a

Fiscal Impact Statement

N/A

County Impact

The proposed Board of Zoning Appeals, Powers and duties generally Zoning Ordinance Amendment will allow staff and the Board of Zoning Appeals to analyze variance requests in compliance with the Code of Virginia by citing the Prince George County Zoning Ordinance.

Notes

n/a

Sec. 90-985. - Powers and duties generally.

The board of zoning appeals shall have the power and duty:

- (1) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement related to planning, subdivision of land or zoning of this chapter or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer 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 ~~the purpose and intent of~~ any applicable ordinances, laws and regulations in making its decision.
- (2) ~~To authorize~~ Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases ~~such a~~ variance as defined in Code of Virginia, § 15.2-2201, 1950 as amended; ~~from the terms of this chapter as will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of this chapter shall be observed and substantial justice done, as follows: the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in Virginia Code § 15.2-2201, 1950, as amended and the criteria set out in Virginia Code § 15.2-2309, 1950, as amended.~~
 - a). Notwithstanding any other provision of law, general or special, a variance shall be granted if:
 1. The evidence shows that the strict application of the terms of anthe ordinance relating to planning, subdivision of land or zoning 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 on the propertythereon at the time of the effective date of the planning, subdivision of land or zoning ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon on the property requested by, or on behalf of, a person with a disability; and
 2. when a property owner can show that his- The property interest for which the variance is being requested was acquired in good faith and where by reason of the exceptional and any hardship was not created by the applicant for the variance; andnarrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance from which this chapter is derived, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of this chapter would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter.
 3. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; and
 4. 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; and
 5. 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

6. The relief or remedy sought by the variance application is not available through an administrative variance, special exception or modification of the zoning-applicable ordinance.

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

~~1. The strict application of this chapter would produce undue hardship;~~

~~2. The hardship is not shared generally by other properties in the same zoning district and the same vicinity; and~~

~~3. The authorization of the variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance.~~

b. Any variance granted to provide a reasonable modification to a property or improvements on the property thereon requested by, or on behalf of, a person with a disability shall may expire when the person benefited by it is no longer in need of the modification to the such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990, as applicable, such request shall be granted by the County unless a variance from the board of zoning appeals under this chapter is required in order for such request to be granted.

No variance shall be ~~authorized~~ considered except after notice and hearing as required by the Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.

~~c. No variance shall be authorized unless the board finds that 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 this chapter.~~

~~cd.~~ In authorizing-granting a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state and local 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 then be required.

(3) To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by Code of Virginia, § 15.2-2204, 1950, as amended. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.

(4) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Code of Virginia, § 15.2-2204, 1950, as amended, the board may interpret the map in such way as to carry out the intent and purpose of this chapter for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail. The

board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

- (5) No provision of this section 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 local ordinances duly adopted by the board of supervisors.
- (6) The board by resolution may fix a schedule of regular meetings and may also fix the day to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Code of Virginia, § 15.2-2312, 1950 as amended, shall be conducted at the continued meeting and no further advertisement is required.
- (7) To hear and decide appeals to decrease the 100-foot-wide buffer area provided for as a portion of the resource protection area (RPA) overlay zoning district in accordance with the provisions provided in section 90-596 of this Code.
- (8) To grant special exceptions, upon conditions, to allow the keeping of more than three dogs on residentially zoned parcels, on business zoned parcels that allow residential uses, or any residentially used parcel, regardless of zoning, of an acre or less.

(Code 1988, § 17-345; Ord. No. O-12-37, § 1, 11-27-2012)

State Law reference— Powers and duties of board of zoning appeals, Code of Virginia, § 15.2-2309.

PUBLIC NOTICE
PRINCE GEORGE COUNTY BOARD OF SUPERVISORS

The Prince George County Board of Supervisors will hold a public hearing on Tuesday, May 14, 2019 beginning at 7:30 pm on:

ORDINANCE AMENDMENT OA-19-01: An Ordinance to amend and update "The Code of the County of Prince George, Virginia." by amending § 90-985 "Powers and duties generally," of the Board of Zoning Appeals to comply with current state law.

The meeting will be held in the Board Room, third floor, County Administration Building, 6602 Courts Drive, Prince George, VA 23875. A copy of the Ordinance amendment may be examined or obtained by contacting Planning and Zoning, first floor, County Administration Building from 8:30 am to 5:00 pm, Monday – Friday, 804.722.8678.

Percy C. Ashcraft
County Administrator