

TOWN OF CAPE CHARLES BOARD OF ZONING APPEALS RULES OF PROCEDURE

ARTICLE I OBJECTIVES

- 1-1 The Cape Charles Board of Zoning Appeals, hereinafter called “Board” or “BZA”, established pursuant to Cape Charles **Town Code, Chapter 32, Section 32-40** and Code of Virginia §15.2-2308, as amended, has adopted these rules of procedure in order to properly exercise its powers and fulfill its duties in accordance with the Cape Charles Zoning Ordinance and the Code of Virginia §15.2-2309, as amended.

ARTICLE II MEETINGS

- 2-1 *Annual meeting.* The meeting in January of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, Vice-Chair, and Secretary.
- 2-2 *Regular meetings.* A regular meeting of the Board of Zoning Appeals for the hearing of cases shall be held on the 2nd Tuesday of each month, starting at **9:00 a.m.**, at the Cape Charles Civic Center located at 500 Tazewell Avenue, unless no cases or other matters are pending – in which instance, no meeting shall be held. If the Chair, or Vice-Chair in his or her absence, finds and declares that the weather or other conditions are such that it is hazardous for members to attend the meeting, the meeting shall be continued until the 3rd Tuesday of that month. All matters properly advertised to be heard at such meeting shall be conducted at the next available meeting after fulfilling the advertising requirements for each public hearing. Notice of all meetings must be in accordance with Code of Virginia §2.2-3707 (C), posted at least three (3) working days prior to the meeting and be posted in the Cape Charles Town Offices and the town website.
- 2-3 *Special Meetings.* Special meetings may be called by the Chairman, provided that at least three days’ notice under the circumstances of such meeting is given to each member and notice is contemporaneously provided to the public when the members of the public body are notified. Notice of all meetings must be in accordance with Code of Virginia §2.2-3707 (C) and be posted in the Cape Charles Town Offices and the town website.
- 2-4 *Quorum.* The Board of Zoning Appeals has five members who are appointed by the Northampton County Circuit Court judge each for a term of five years, pursuant to Cape Charles **Town Code Chapter 32, Section 32-40**. A quorum shall consist of a majority of the members of the Board, which is deemed to be three members. If less than a majority of the members are present, no action can be taken, and the meeting shall be adjourned.
- 2-5 *Conduct.* The conduct of business at all regular meetings of the Board shall follow these Rules of Procedure and hereby embrace Robert’s Rules of Order for Small Organizations to specify rules of order as the procedural determinant in cases where both the Code of

Virginia, as amended, and these Rules of Procedure are silent. Robert's Rules of Order for Small Organizations are less formal.

- 2-6 *Adjournment.* The Board may adjourn a regular meeting once all applications or appeals are duly disposed of and the Chair has called for a motion to adjourn.
- 2-7 *Postpone/Continuance.* If all applications or appeals cannot be properly disposed of on the date set, the meeting shall be postponed/continued to a date set and announced by the BZA. No further public notice shall be necessary for a postponement/continuation of such meeting.

ARTICLE III OFFICERS

- 3-1 *Chair.* At its annual meeting, the BZA shall elect a Chair who if present, shall preside at all meetings and hearings of the Board; he or she shall decide all points of order or procedure and shall appoint any committees that are found to be necessary. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- 3-2 *Vice-Chair.* At its annual meeting, the BZA shall elect a Vice-Chair who, if present, shall assume the duties of the Chair in his or her absence or disability.
- 3-3 *Secretary.* At its annual meeting, the BZA shall elect a Secretary. The Secretary, who need not be a member of the Board pursuant to Code of Virginia §15.2-2308 (C), shall handle all official correspondence necessary for the execution of the duties and functions of the BZA. The Secretary shall keep the minutes of the Board's proceedings, shall keep a file on each case which comes before the Board, and perform other such duties as these rules may provide and the BZA may, from time to time, assign.

The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs, pursuant to Code of Virginia §15.2-2308 (A) and Cape Charles **Town Code Chapter 32, Section 32-40.**

- 3-4 *Term of Office.* The Chair and Vice-Chair shall be elected for one-year terms and shall serve until their respective successors take office. Either or both officers may be elected to one or more successive terms.
- 3-5 *Vacancies in Office.* Vacancies in office shall be filled as soon as practicable using the election procedures as set forth in this Article.
- 3-6 *Absence of Chair and Vice-Chair.* In the event that the Chair and Vice-Chair are both absent from any meeting, a member present shall be chosen to act as Chair.
- 3-7 Technical assistance may be provided by Town staff as needed.

ARTICLE IV ORDER OF BUSINESS

- 4-1 *Agenda.* The agenda for each regular meeting will be established by the Secretary; the Secretary shall consult with the Chair when determining the order of cases to be heard.

- 4-2 *Organization of the Agenda.* The agenda for each regular meeting shall substantially follow the order listed below unless a change is requested by the Chair and approved by consent of the Board.
- A) Call to order
 - 1. Members Present and Absent
 - 2. Determination of a Quorum
 - B) Invocation and Pledge of Allegiance
 - C) Adoption of Agenda
 - D) Minutes - review and approve minutes of previous meeting(s)
 - E) Old Business/Matters Deferred from Previous Meetings
 - F) New Business – Scheduled Hearings
 - 1. Special Exceptions to the Chesapeake Bay Preservation Action aka Special Use Permits
 - 2. Variances
 - 3. Appeals of Zoning Determinations
 - 4. Interpretations of the District Zoning Map
 - G) Other Matters
 - H) Adjournment

ARTICLE V QUORUM

- 5-1 A majority of the five (5) members of the BZA shall constitute a quorum for any regular meeting of the Board, which shall be three (3) members. A majority of the members present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting.

If, during the course of a meeting, less than a majority of the membership of the BZA remains present, no action may be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

ARTICLE VI APPLICATIONS TO THE BZA

- 6-1 The BZA shall establish, and make publicly available, a deadline for receipt of completed applications.
- 6-2 *Appeals.* Appeals to the BZA may be taken by any person aggrieved or by any office, department, board or bureau of the Town or municipality affected, by any decision of the Zoning Administrator pursuant to Cape Charles Zoning Ordinance Section 2.6.2 (A) and the VA Code §15.2-2311. Such an appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator and with the board, a notice of appeal specifying the grounds thereof.

An application for appeal, filed according to this procedure utilizing any forms promulgated by the Town for applications for appeals, shall be given a case number within five (5) working days. Applications for appeals will be assigned for hearing in the order in which they are received. The appeal shall be heard based upon the

established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The hearing will be conducted in accordance with the prescribed Procedure for Hearing Cases in Article VII below.

The BZA's decision on any appeal shall be based on the Board's judgment of whether the administrative officer was correct (VA Code §15.2-2309). Said decision will be issued within sixty (60) days of the hearing. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify any order, requirement, decision, or determination appealed from.

- 6-3 *Special Exceptions/Special Use Permits.* Applications for special exceptions/~~special use permits~~ may be made by any person, property owner, tenant, governmental official, department, board, or bureau. Such applications shall be made to the zoning administrator in accordance with department policy and on forms prescribed by the department. Completed Applications for Special Exceptions/~~Special Use Permits~~ will be assigned for hearing in the order in which they are received.

The special exceptions/~~special use permits~~ application shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The BZA shall issue a decision within a reasonable timeframe of the closing of the hearing, pursuant to ~~Cape Charles Zoning Ordinance Section 2.6.3~~

- 6-4 *Variances.* Applications for variances may be made by any person, property owner, tenant, governmental official, department, board, or bureau. Such applications shall be made to the zoning administrator in accordance with department policy and on forms prescribed by the department. Completed Applications for Variances will be assigned for hearing in the order in which they are received.

The variance application shall be heard based upon the established calendar for receipt of completed applications and the proposed BZA meeting hearing date and in compliance with all advertising and public notifications as prescribed in VA Code §15.2-2204.

The BZA shall issue a decision within a reasonable timeframe of the closing of the hearing, pursuant to ~~Cape Charles Zoning Ordinance Section 2.6.3~~ and VA Code §15.2-2309 (2), as amended.

ARTICLE VII PROCEDURE FOR HEARING CASES

- 7-1 Cases shall be heard in the order in which they appear on the agenda, except a case may be advanced for hearing by order of the Board upon good cause shown.
- 7-2 At the hearing, the order shall be as follows:
- Presentation of case and explanation and/or report by Zoning Administrator or his/her designee.
 - Open public hearing, announce that each person speaking during the public hearing will need to state their name & address and will be sworn in by the Chairman to provide testimony during the public hearing.

- i. Statement of Applicant or his representative; the applicant may make a presentation which is limited to ten (10) minutes unless additional time is granted by the Chair. If the applicant wishes to present a PowerPoint presentation, it must be provided to staff at least twenty-four (24) hours in advance for review for appropriateness.
- ii. Statements of other persons in favor. All comments are limited to three (3) minutes. The Secretary will state if any correspondence has been received in support of the application and will enter it into the record.
- iii. Statements by persons in opposition of the application. All comments are limited to three (3) minutes. The Secretary will state if any correspondence has been received in opposition of the application and will enter it into the record.
- iv. Applicant's rebuttal, limited to five (5) minutes, unless additional time is granted by the Chair.
- v. The Chair opens the floor to the members of the BZA to ask any questions of the applicant and/or their representative and to Town staff to clarify items raised during the hearing.
- vi. The Chair will close the public hearing.
- vii. The Chair will call for the Board to consider the case and to call for motions. If the Board decides that it is not sufficiently informed, it may continue the case and may request further information.
- viii. The final disposition of any appeal shall be in the form of a motion sustaining, reversing, varying, or modifying the order, requirement or determination appealed from.

The final disposition of an application for a variance or special exception/special use permit shall be in the form of a motion approving, approving with conditions, modifying, or denying the application. Said motion shall refer specifically to the applicable provision in the Town Zoning Ordinance and shall set forth facts and finding in the case on which the decision is based, which shall be consistent with the requirements of the law.

If a motion fails to receive a second, the motion has died, and the application or appeal will be carried over for another motion until a final disposition is reached. The vote of each member present on each motion shall be recorded with the motion.

- c. *General Conduct by all participants at the public hearing.* All persons addressing the Board of Zoning Appeals will stand behind the lectern, state their name and address and affirm by oath that they are providing truthful testimony for the matter at hand. No person shall use inappropriate language or verbally attack any BZA member or any member of the public or the Town staff. Signs and placards are not allowed inside the meeting room. Any person whose behavior is disruptive shall be asked by the Chair to leave the meeting room. Persons may not question individual BZA members or staff members without the consent of the Chair. Comments must be limited to the public hearing matter at hand. Public Comments will adhere to the "Guidelines for Citizen Participation" adopted by Town Council on 7/19/2021 and attached as Appendix A.
- d. No member present shall abstain from voting unless such member has a conflict of interest in the matter being voted upon. A "conflict of interest" shall exist when there is an actual conflict: 1) pursuant to the Virginia State and Local Government Conflict of Interests Act (§ 2.2-3100 et. seq. of the Code of Virginia, or 2) pursuant to Town of Cape Charles Code of Ethics & Meeting Rules of Order, adopted by Town Council on July 22, 2021, and which is affixed as Appendix B to these Rules of Procedure or 3) as stated by the Board member unless objected

to by a majority vote of the members of the Board with such member asserting such conflict of interest not permitted to vote on such matter.

ARTICLE VIII REHEARING/RECONSIDERATION OF A VOTE

- 8-1 No rehearing/reconsideration of any decision by the Board shall be had except on motion by a member of the Board who previously voted on the prevailing side of the decision, which shall be made not later than the first regular meeting succeeding the meeting at which the motion was acted on; such motion shall be to reconsider the vote and shall be carried by not less than three affirmative votes.
- 8-2 No motion for a rehearing/reconsideration shall be entertained unless new evidence is submitted, which could not reasonably have been presented at the original hearing. In all cases, the request for rehearing shall be in writing, reciting the reasons for the request, and shall be accompanied by the necessary information, including a recitation of all evidence, which could not reasonably have been presented at the original hearing.
- 8-3 If a rehearing/reconsideration is granted, the case shall be put on the agenda for a rehearing/reconsideration after complying with all notice requirements.

ARTICLE IX VOTING PROCEDURES

- 9-1 Each decision by the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a member and properly seconded by any other member. Any motion not properly seconded shall not be further considered.

ARTICLE X ANNUAL REPORT

- 10-1 The board shall keep a full public record of its proceedings and shall submit a report of its activities to the governing body or bodies at least once each year, pursuant to the Code of Virginia §15.2-2308 (C).

ARTICLE XI SUSPENSION OF RULES

- 11-1 These rules may be suspended in whole or in part, only upon the unanimous vote of the entire Board.

ARTICLE XII AMENDMENTS

- 12-1 These rules may be amended or modified by an affirmative vote of four members of the Board.

ATTACHMENT A

STANDARDS/CRITERIA FOR REVIEW OF EACH TYPE OF APPLICATION

VARIANCES

Pursuant to the Code of Virginia §15.2-2309 (2), variance applications shall be evaluated and reviewed based upon the following criteria:

- (a) Does the evidence show that 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?;
- (b) Was the property interest for which the variance is being requested acquired in good faith and any hardship was not created by the applicant for the variance?;
- (c) Will the granting of the variance not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area?;
- (d) Is the condition or situation of the property concerned 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?;
- (e) Does the granting of the variance result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property?;
- (f) Is the relief or remedy sought by the variance application not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application?

SPECIAL USE PERMITS/SPECIAL EXCEPTIONS Town Zoning Ordinance § 2.6.2 (F)

- ~~(a) Hear and decide applications for special exceptions as may be authorized in the ordinance & may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee to ensure that the conditions imposed are being will continue to be complied with.~~

EXCEPTIONS TO THE CHESAPEAKE BAY PRESERVATION ACT OVERLAY – Town Code Section 32-194 (Exceptions)

- A) A request for an exception to the requirements of 32-186 and 32-189 (c) of this overlay district shall be made in writing to the board of zoning appeals. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment that complies with the provisions of Section 32-190 (Water Quality Impact Assessment).
- B) The Town of Cape Charles shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.

C) The board of zoning appeals shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this article if the board of zoning appeals finds:

- 1) Granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners in this overlay district;
- 2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;
- 3) The exception request is the minimum necessary to afford relief;
- 4) The exception request will be consistent with the purpose and intent of the overlay district and not injurious to the neighborhood or otherwise detrimental to the public welfare, and is not of substantial detriment to water quality; and,
- 5) Reasonable and appropriate conditionals are imposed, which will prevent the exception request from causing a degradation of water quality.

APPEAL OF ADMINISTRATIVE OFFICER DETERMINATION

Pursuant to the Code of Virginia §15.2-2309 (1), appeals of administrative officer determinations 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 any applicable ordinances, laws, and regulations in making its decision. For the purposes of this section, determination means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.