

**RESTATED BY-LAWS  
OF THE  
BOARD OF ZONING APPEALS  
OF THE  
CITY OF CHESAPEAKE, VIRGINIA**

**(AMENDED AUGUST 27, 2020)**

**ARTICLE I. OFFICERS**

- 1-1. The Board shall consist of seven (7) members appointed by the Circuit Court for the City of Chesapeake. The Board shall organize and annually elect a chairperson, vice-chairperson, and secretary in the month of October, with such officers assuming office on January 1st, following such election.
- 1-2. The chairperson shall preside at all meetings and hearings of the Board, shall decide all points of order and procedure, and shall appoint any committees that are found to be necessary.
- 1-3. The vice-chairperson shall assume the duties of the chairperson in the chairperson's absence. Where the chairperson has permanent vacated office for any reason, the vice-chairperson shall assume the office of chairperson, and the Board at its earliest convenience shall elect a new vice-chairperson, who shall assume the office immediately upon election.
- 1-4. The chairperson, vice-chairperson or secretary may be removed from office at any time upon the concurrence of four (4) members of the Board through a vote taken at a regular or special meeting of the Board.
- 1-5. A recording secretary shall be appointed by the Board and shall receive direction from the secretary.
- 1-6. The recording secretary shall handle all official correspondence, subject to these Bylaws, at the direction of the Board; shall send out all notices required by these rules of procedure; shall keep the minutes of the Board's proceedings; and shall keep a file on each case which comes before the Board.
- 1-7. Records maintained by the recording secretary shall be kept on public file, in accordance with the requirements of Section 4-1 below.

**ARTICLE II. MEETINGS**

- 2-1. A regular meeting of the Board for the hearing of cases shall be heard on the fourth Thursday of each month at 6:30 p.m., unless there are no cases pending, in which case no meeting will be held. The Board shall hear only ten (10) cases per meeting, unless as of the date of the meeting, there are cases pending for which more than sixty (60) days have elapsed since the date of filing of an application for a variance or appeal. Such cases will

be heard by the Board regardless of their number to ensure that the Board complies with Section 3-6 below. The Board may, for the reasons stated, resolve at any regular or special meeting to alter the date, time, or place of a forthcoming meeting, or in its discretion cancel a scheduled meeting, provided that all pending cases are heard within the time required by law **and all affected parties have notice of the meeting change**. The November and December meetings shall be combined on a date decided by the Board during its October meeting.

- 2-2. Special meetings may be called by the chairperson, provided that at least five (5) days written notice is given to each Board member.
- 2-3. To hold a public meeting, a quorum of at least four (4) members must be in attendance. **Pursuant to Code of Virginia § 15.2-2312, to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter before it, or grant any variance to the application of the Zoning Ordinance, the concurring vote of a majority of the membership of the board shall be necessary.** In cases involving an appeal of the Zoning Administrator's order, requirement, decision, or determination only, if the Board's attempt to reach a decision results in a tie vote, the matter may be carried over to the next scheduled meeting at the request of the person filing the appeal. If the person filing the appeal does not request a continuance to the next scheduled meeting, or that person is not present at the meeting to request a continuance, the appeal shall fail and the Zoning Administrator's decision shall be deemed upheld as a final decision of the BZA. In cases involving variance applications, if the Board is unable to reach a final decision after two tie votes, then the application is deemed "not approved," which is the equivalent of a denial.
- 2-4. In the conduct of business at all meetings of the Board these Bylaws shall control. Any member of the BZA may raise a point of order or procedure. The chairperson shall make all rulings on points of order or procedure. **ROBERT'S RULES OF ORDER** may be referred to as a guide where these Bylaws do not address a particular matter of procedure, but shall not be considered controlling. The ruling of the chairperson on any point of order or procedure may be appealed to the BZA, and the chairperson's ruling overturned by a vote of a majority of BZA members in attendance at the meeting. The chairperson may vote on any such appealed ruling.
- 2-5. The agenda of regular meetings of the Board generally shall consist of the following items, which are to be considered in the order listed, unless modified by a Board vote at the meeting: Call to Order, Roll Call, Approval of the Minutes of the Previous Meeting, **Requests for Continuance**, Old Business (matters deferred or postponed from earlier meetings), New Public Hearing Items, New Business, Review of Litigation, and Adjournment.
- 2-6. Notwithstanding anything to the contrary in these Bylaws, the chairperson, or vice-chairperson if the chairperson is unable to act, may cancel any meeting if he finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Any applications pending for such cancelled meetings shall be automatically continued to the Board's next regular meeting. Subsequent meetings to

which applications have been continued may be cancelled in the event the chairperson, or vice-chairperson acting in his place, finds that any such hazardous condition(s) still exists. All findings of emergency shall be communicated to the members, applicants, and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and no further advertisement is required.

### ARTICLE III. PROCEDURE FOR HEARING CASES

- 3-1. Applications for variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the Zoning Administrator. The application and accompanying maps, physical surveys, plans, or other information shall be transmitted to the recording secretary of the BZA who shall place the matter on the agenda to be acted upon by the Board. Application shall be made on the forms provided by the Zoning Administrator, and the applicant shall furnish such other documents and information as the recording secretary may require ensuring that the Board is fully advised regarding the matter. No application shall be valid unless made on a form provided by the Zoning Administrator. The Recording Secretary shall review each application and reserves the right to request additional information or deny placing the application on the agenda if the application is deemed insufficient legally or by other reason.
- 3-2. An appeal to the Board may be taken by any person aggrieved, by any officer, department, board or bureau of the City affected by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, or as permitted by Virginia law. Such appeal shall be made within thirty (30) days of the date of the Zoning Administrator's decision being appealed, **unless some other time period is provided by the Code of Virginia**, by filing an application with the Zoning Administrator. Notice of appeal shall be made on the form provided by the Zoning Administrator, and the appealing party shall furnish such other documents and information as the recording secretary may require to ensure that the Board is fully advised regarding the matter. No appeal shall be valid unless made on the form provided by the Zoning Administrator. The Record Secretary shall review each application and reserves the right to request additional information or deny placing the application on the agenda if the application is deemed insufficient legally or by other reason.
- 3-3. An application for hearing or a notice of appeal filed with the recording secretary as provided for above shall be given a case number. Applications and appeals will be identified for hearing according to the case number and street address.
- 3-4. The recording secretary shall notify all interested parties of the time scheduled for the public hearing of the case and give public notice in accordance with § 15.2-2204 of the Code of Virginia, **as amended**.
- 3-5. **The Board may grant continuances in its discretion for good cause shown.** However, the Board shall not grant a continuance beyond ninety days from the date the application

or appeal was filed unless the Board makes a finding that neither the applicant nor the City will be prejudiced by continuing the matter beyond the ninety days. If the vote on a continuance request results in a tie vote, then the matter is not continued and will be heard on its merits at that meeting.

- 3-6. The person filing an application or appeal shall appear on his or her own behalf at the public hearing, or be represented by counsel or an agent. **Failure of the applicant to appear may be deemed by the Board to be considered a withdrawal of the application or appeal and the Board may vote to dismiss the application from its agenda or take such other action as the Board deems appropriate. Pursuant to § 20-705 of the Zoning Ordinance, the Board shall grant an applicant one (1) rehearing where an appeal or request for a variance is denied due to the applicant's failure to appear at the first public hearing at which the appeal or variance was scheduled to be heard. If the Board denies the application on its merits, and not solely due to the applicant's failure to appear, then the matter shall not be reheard by the Board. When an application is denied due to an applicant's failure to appear, the Secretary shall state into the record that the matter will be heard again at the Board's next regularly scheduled meeting. The application will be conditionally docketed for a rehearing at the Board's next meeting, and will be removed from the agenda administratively if a request for a rehearing is not filed with the Secretary within 14 days of the Board's decision.**
- 3-7. **The Board Chairperson, or acting Chairperson, shall administer oaths to all applicants and speakers. Both the applicant and the City official or officials involved in an application may speak for or against an application for a total of 10 minutes for each side. For other speakers, each speaker presentation shall be limited to five (5) minutes per application. The times herein may be reduced or enlarged by the Chairperson. The Board reserves the right to ask additional questions of the speakers and the City representatives.**
- 3-8. The Chairman may issue subpoenas to compel the attendance of witnesses. However, no subpoena shall be issued which allows for the examination of witnesses by applicants or City officials. The Board may ask questions of witnesses who are compelled to attend in light of the presentations made by other speakers. In requesting that a subpoena be issued, the requesting party shall state 1) the relevance of the witness to the proceeding and 2) how other means of entering information known by that witness into the BZA record would be impracticable. All requests for subpoenas shall be submitted to the BZA Secretary at least 30 days in advance of the hearing.
- 3-9. **Unless otherwise provided herein or by law, the final decision on any application or appeal to the Board shall be in the form of a motion approved by a concurring vote of a majority of the membership of the board. The Board's decision shall be made within ninety (90) days of the filing of an application for a variance or an appeal.**
- 3-10. Within ten (10) calendar days of the public hearing, the recording secretary shall notify the applicant and the Zoning Administrator of the decision, and of their right to file a Petition for a Writ of Certiorari with the Circuit Court. Said notification of the right to

appeal does not alter the thirty day appeal period for an applicant's right to appeal to Circuit Court, which commences on the date of the Board's decision.

#### ARTICLE IV. RECORDS

- 4-1. A complete file on each application and appeal shall be kept by the recording secretary as part of the records of the Board. Such records shall be retained and disposed of pursuant to the provision of the Virginia Public Records Act (Section 42.1-76, et seq., of the Code of Virginia, 1950, as amended.)
- 4-2. All records of the Board shall be a public record.
- 4-3. **These Bylaws shall be available on the Board's website.**

#### ARTICLE V. VALIDITY

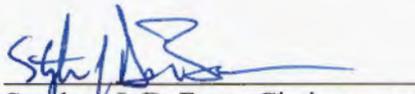
- 5-1. Should any section, subsection, or provision of the Bylaws be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of these Bylaws as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.
- 5-2. Should any provision of these Bylaws conflict with the Chesapeake City Code, Chesapeake Zoning Ordinance, or the Code of Virginia; said codes shall take precedence over these Bylaws.

#### ARTICLE VI. CONFLICT OF INTEREST

- 6-1. No member shall hear an application in which the member has a conflict of interest in accordance with the State and Local Government Conflict of Interest Act (Section 2.2-3100, et seq. of the Code of Virginia, 1950, as amended).
- 6-2. Members shall not discuss the substance of an application with any other party or their representative prior to any hearing.

Adopted the 27th day of August, 2020, by the Board of Zoning Appeals of Chesapeake, Virginia.

Attested by:

  
Stephen J. DeBoer, Chairperson