

An Ordinance to repeal, amend and re-ordain Section 86-732 to the Code of the Town of Altavista, 1968, relating to powers and duties.

Be it ordained by the Town Council of the Town of Altavista:

1. That Section 86-732 of the Code of the Town of Altavista, 1968, be repealed, amended and re-ordained as follows:

**Sec. 86-732. Board of Zoning Appeals – Powers and duties.**

(a) The Board of Zoning Appeals shall have the following powers and duties:

(1) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter of the Altavista Town Code or of Va Code Ann. §§15.2-2280. 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. For 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.

(2) ~~To authorize, Notwithstanding any other provision of law, general or special, to grant upon appeal, variances under the provisions of sections 86-733 through 86-736 or original application in specific cases a variance as defined in Va Code Ann. §15.2-2201; provided that 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 Va Code Ann. §15.2-2201 and the criteria set out in this section.~~

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows 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, and

- (i) 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;
- (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- (iii) 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;
- (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in zoning classification of the property; and
- (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to Va Code Ann. §15.2-2309, subdivision 6 or the process for modification of a zoning ordinance pursuant to subdivision A.4 of Va Code Ann. §15.2-2286 at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by Va Code Ann. §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.

In 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 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.

- (3) To hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by Va Code Ann. § 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.
- (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 Va Code Ann. §15.2-2204, 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 Va Code Ann. §15.2-2309 or of this section shall be construed as granting the board the power to rezone property or to base board decisions on the merits of the purpose and intent of ordinances duly adopted by the town council.
- (6) The board by resolution may fix a schedule of regular meetings, and may also fix the day or days 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 Va Code Ann. §15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

2. This Ordinance shall become effective immediately upon passage by the Council of the Town of Altavista.