



# City of Hampton, Virginia

## Ordinance - Zoning Text

22 Lincoln Street  
Hampton, VA 23669  
[www.hampton.gov](http://www.hampton.gov)

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File Number: 10-0128

Enactment Number: Z10-01

**Ordinance to amend and re-enact Chapter 22 of the Zoning Ordinance of the City of Hampton, Virginia entitled "Board of Zoning Appeals" by amending sections 22-1, 22-2, and 22-6 through 22-10 to bring said sections into compliance with the Code of Virginia, and amending section 22-13 by increasing fees for one-family residential applications from \$75.00 to \$100.00 and fees for other applications from \$200.00 to \$250.00 as authorized by VA Code §15.2-2286.A (6) which allows for the collection of fees to cover the costs of administration and enforcement of the zoning ordinance.**

**BE IT ORDAINED** by the Council of the City of Hampton, Virginia that Chapter 22 of the Zoning Ordinance of the City of Hampton, Virginia, be amended and re-enacted as follows:

### BOARD OF ZONING APPEALS

#### Sec. 22-1. Creation, Appointment, Term, etc.

There shall be a Board of Zoning Appeals (hereinafter called the board), which shall consist of five (5) residents appointed by the Circuit Court of the City of Hampton, as provided by law. Their terms of office shall be for five (5) years each, except that the original appointments shall be made for such terms that the term of one member shall expire each year. 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. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the city except that one may be a member of the planning commission. A member whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit court shall appoint at least one but not more than three alternates to the board. The qualifications,

terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.

Any member of the board or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or other just cause, by the circuit court that appointed him, after a hearing held after at least fifteen days' notice.

#### Sec. 22-2. Officers.

The board shall elect from its own membership a chairman and vice- chairman who shall serve annual terms as such, and may succeed themselves. The board shall appoint a secretary who shall not be a member of the board. It shall be the secretary's duty to keep the minutes and other records of the actions and deliberations of the board and to perform such other ministerial duties as the board shall direct.

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#### Sec. 22-6. Meetings.

The board by resolution may fix a schedule of regular meetings, and the chairman with the concurrence of two other members may call for special meetings. The time, date and location of any special meeting shall be communicated to the members and the press as promptly as possible. The chairman, or in his absence the vice-chairman, may administer oaths and compel attendance of witnesses. All meetings of the board shall be open to the public.

#### Sec. 22-7. Powers and Duties.

The board shall have the following powers and duties:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of the zoning ordinance. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The board shall consider the purpose and intent of any applicable ordinances, laws and regulations in making its decision.

(b) To authorize, upon appeal or original application, in specific cases such variance from the terms of the ordinance 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 the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance 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 such variance will alleviate a clearly demonstrable hardship 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 the ordinance.

No such variance shall be authorized by the board unless it finds:

(1) That the strict application of the ordinance would produce undue hardship relating to the property;

- (2) That the hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (3) That the authorization of the variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
- (4) That any delinquent real estate taxes owed to the City of Hampton on the subject property have been paid, with the exception of applications sponsored by the City of Hampton.

No variance shall be authorized except after notice and hearing as required by section 15.2-2204 of the Code of Virginia.

A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.

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 the ordinance.

In authorizing 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, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and city 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.

(c) To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by section 15.2-2204 of the Code of Virginia.

(d) 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 section 15.2-2204 of the Code of Virginia, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

(e) No provision of this chapter 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 local ordinances duly adopted by the city.

(f) To hear and decide applications for such special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted 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.

No such special exception may be granted except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia. Unless the application is sponsored by the City of Hampton, the board shall not grant any special exception until any delinquent real estate taxes owed to the City of Hampton on

the subject property have been paid.

(g) To 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. No special exception may be revoked except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia.

(h) When giving any notice required by this chapter 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.

#### Sec. 22-8. Applications for Special Exceptions and Variances.

Applications for special exceptions and variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the board, who shall place the matter on the docket to be acted upon by the board. No such special exceptions or variance shall be authorized except after notice and hearing as provided by section 15.2-2204 of the Code of Virginia. The zoning administrator 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.

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#### Sec. 22-9. Appeals to the Board.

An appeal to the board may be taken by any person aggrieved or 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 any modification of zoning requirements pursuant to section 15.2-2286 of the Code of Virginia.

Any written notice of a zoning violation or written order of the zoning administrator 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 thirty (30) days in accordance with this section, and that the decision shall be final and unappealable if not appealed within thirty (30) days. The appeal period shall not commence until the statement is given. A written notice of a zoning violation or written order of the zoning administrator 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. The appeal shall be taken within thirty (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. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator, and for good cause shown.

In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative

officer after sixty (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 zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The sixty (60) day limitation period shall not apply in any case where, with the concurrence of the city attorney, modification is required to correct clerical or other nondiscretionary errors.

#### Sec. 22-10. Procedure on Appeal.

The board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within ninety (90) days. In exercising its powers, the board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. The concurring vote of three (3) members shall be necessary to reverse any order, requirements, decision, or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance, or to effect any variance from the ordinance. The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the board and shall be public records.

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#### Sec. 22-13. Fees

Every application that comes before the board, whether an appeal of the zoning administrator's decision, a variance or a special exception, shall be accompanied by the nonrefundable fee from the following schedule. The sum shall be payable to the City of Hampton, incidental to reviewing, publishing, and reporting the application:

- (1) one hundred dollars (\$100.00) for any application that is associated with a

current or proposed one-family residential use of property; and

(2) two hundred fifty dollars (\$250.00) for any application that is associated with a current or proposed use of property that is not one-family residential.

Adopted at the regular meeting of the City Council of the City of Hampton, Virginia held on April 14, 2010.

**Signed by** \_\_\_\_\_ **Date** \_\_\_\_\_  
Molly Joseph Ward, Mayor

**Attested by** \_\_\_\_\_ **Date** \_\_\_\_\_  
Katherine K. Glass  
Clerk of the Council