WEST VIRGINIA CODE CHAPTER 8A ARTICLE 9

WV Legislature

§8A-9-1. Petition for writ of certiorari.

(a) Every decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals is subject to review by certiorari.

(b) Within thirty days after a decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals, any aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari setting forth:

(1) That the decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals is illegal in whole or in part; and

(2) Specify the grounds of the alleged illegality.

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§8A-9-2. Notice to adverse parties.

(a) Upon filing a petition for a writ of certiorari with the clerk of the circuit court of the county in which the affected premises are located, the petitioner shall cause a notice to be issued and served by the sheriff of the county upon:

(1) The adverse party, as shown by the record of the appeal in the office of the planning commission, board of subdivision and land development appeals, or board of zoning appeals; and

(2) The chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals, as applicable.

(b) The adverse party is any property owner appearing at the hearing before the planning commission, board of subdivision and land development appeals, or board of zoning appeals in opposition to the petitioner.

(c) If the record shows a written document containing the names of more than three property owners opposing the request of the petitioner, then the petitioner is required to cause notice to be issued and served upon the three property owners whose names first appear upon the written document. Notice to the other parties named in the written document is not required.

(d) The notice shall:

(1) State that a petition for a writ of certiorari has been filed in the circuit court of the county asking for a review of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals;

(2) Designate the affected premises; and

(3) Specify the date of the decision or order that is the subject of the petition for a writ of certiorari.

(e) Service of the notice by the sheriff on the chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals shall constitute notice to the commission or boards. Service of the notice by the sheriff to the governing body and to any official or board thereof charged with the enforcement of the subdivision and land development ordinance, subdivision or land development plan and plat, or zoning ordinance. No further summons or notice with reference to the filing of such petition shall be necessary.

(f) As an alternative to the requirements for notice prescribed in the preceding subsections of this section, notice is sufficient upon a showing that the chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals and all adjacent landowners to the affected premises have received personal service

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of process of the notice containing information as required in subsection (d) of this section. As to all other interested parties, notice shall be sufficient if notice containing information as required in subsection (d) of this section, is published as a Class III-0 legal advertisement, in the county or counties wherein the affected premises are located.

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§8A-9-3. Court action on petition.

(a) Within twenty days after a petition for a writ of certiorari is presented, the planning commission, board of subdivision and land development appeals, or board of zoning appeals must show the circuit court, or a judge in vacation, of the county in which the affected premises are located, cause why a writ of certiorari should not be issued.

(b) If the planning commission, board of subdivision and land development appeals, or board of zoning appeals fails to show the court or judge that a writ should not be issued, then the court or judge may allow a writ of certiorari directed to the planning commission, board of subdivision and land development appeals, or board of zoning appeals.

(c) The writ shall prescribe the time in which a return shall be made to it. This time shall be not less than ten days from the date of issuance of the writ and may be extended by the court or judge.

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§8A-9-4. Stay of work on allowance of writ.

(a) The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review.

(b) The court or judge may, upon application and on notice to all parties to the decision or order and on due cause shown, grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the court or judge.

(c) The staying order may be issued by the court or judge without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.

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§8A-9-5. Return to writ.

(a) The return to the writ of certiorari by the planning commission, board of subdivision and land development appeals, or board of zoning appeals must concisely set forth the pertinent facts and data and present material to show the grounds of the decision or order appealed. The return must be verified by the secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals.

(b) The planning commission, board of subdivision and land development appeals, or board of zoning appeals does not have to return the original papers acted upon by it. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.

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§8A-9-6. Action by circuit court or judge.

(a) The court or judge may consider and determine the sufficiency of the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals on the facts set out in the petition and return to the writ of certiorari.

(b) If it appears to the court or judge that testimony is necessary for the proper disposition of the matter, the court or judge may take evidence to supplement the evidence and facts disclosed by the petition and return to the writ of certiorari, but no such review shall be by trial de novo.

(c) In passing upon the legality of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals, the court or judge may reverse, affirm or modify, in whole or in part, the decision or order.

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§8A-9-7. Appeal from final judgment of circuit court or judge.

An appeal may be taken to the West Virginia Supreme Court of Appeals from the final judgment of the court or judge reversing, affirming or modifying the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals within the same time, in the same manner, and upon the same terms, conditions and limitations as appeals in other civil cases.

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