
WEST VIRGINIA CODE CHAPTER 8a
ARTICLE 8

WV Legislature

PART I. BOARD OF ZONING APPEALS.

§8A-8-1. Board of zoning appeals authorized.

If a governing body adopts a zoning ordinance, then as part of that zoning ordinance it shall create a board of zoning appeals to hear appeals on zoning issues.

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§8A-8-2. Continuation of established boards of zoning appeals.

A board of zoning appeals established prior to the effective date of this chapter shall continue to operate as though established under the terms of this chapter. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this chapter.

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§8A-8-3. Municipal board of zoning appeals.

- (a) A municipal board of zoning appeals shall have five members to be appointed by the governing body of the municipality.
- (b) The members of a municipal board of zoning appeals must be:
- (1) Residents of the municipality for at least three years preceding his or her appointment;
 - (2) Cannot be a member of the municipal planning commission; and
 - (3) Cannot hold any other elective or appointive office in the municipal government.
- (c) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on January 1, of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the municipality shall appoint a member for the unexpired term.
- (d) The governing body of the municipality may appoint up to three additional members to serve as alternate members of the municipal board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) of this section. The term for an alternate member is three years. The governing body of the municipality may appoint alternate members on a staggered term schedule.
- (e) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.
- (f) The municipal board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.
- (g) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

§8A-8-4. County board of zoning appeals.

(a) A county board of zoning appeals shall have five members to be appointed by the governing body of the county.

(b) The members of a county board of zoning appeals must be:

(1) Residents of the county for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in that county's government: *Provided*, That a member of the county board of zoning appeals may also serve as a member of the county board of subdivision and land development appeals.

(c) Where only a portion of the county is zoned, the members of the board of zoning appeals for that part of the county that is zoned, must be:

(1) Residents of that part of the county that is zoned for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in the county government: *Provided*, That a member of the county board of zoning appeals may also serve as a member of the county board of subdivision and land development appeals.

(d) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on January 1, of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the county shall appoint a member for the unexpired term.

(e) The governing body of the county may appoint up to three additional members to serve as alternate members of the county board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) or subsection (c) of this section, as applicable. The term for an alternate member is three years. The governing body of the county may appoint alternate members on a staggered term schedule.

(f) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.

(g) The county board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a

regular board member.

(h) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

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§8A-8-5. Board of zoning appeals meetings.

(a) When there is business to conduct, a board of zoning appeals shall meet at least semiannually, and may meet more frequently at the written request of the chairperson or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

§8A-8-6. Quorum.

A board of zoning appeals must have quorum to conduct a meeting. A majority of the members of a board of zoning appeals is a quorum. No action of a board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

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§8A-8-7. Officers.

At its first regular meeting each year, a board of zoning appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

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§8A-8-8. Governing body's duties.

The county commission in the case of a county board of zoning appeals, and the governing body of the municipality in the case of a municipal board of zoning appeals, shall provide the board of zoning appeals with:

- (1) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and
- (2) Appropriate money to defray the reasonable expenses of the board.

§8A-8-9. Powers and duties of board of zoning appeals.

A board of zoning appeals has the following powers and duties:

- (1) Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;
- (2) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;
- (3) Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;
- (4) Authorize, upon appeal in specific cases, a variance to the zoning ordinance;
- (5) Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;
- (6) Adopt rules and regulations concerning:
 - (A) The filing of appeals, including the process and forms for the appeal;
 - (B) Applications for variances and conditional uses;
 - (C) The giving of notice; and
 - (D) The conduct of hearings necessary to carry out the board's duties under the terms of this article;
- (7) Keep minutes of its proceedings;
- (8) Keep an accurate and complete audio record of all the board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four hours of demand, for three years;
- (9) Record the vote on all actions taken;
- (10) Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the board and shall be public records;
- (11) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the board: Provided, That the governing body sets the salaries; and
- (12) Supervise the fiscal affairs and responsibilities of the board.

PART II. APPEAL PROCESS TO BOARD OF ZONING APPEALS.

§8A-8-10. Appeal to board of zoning appeals.

(a) An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance, or rule and regulation adopted pursuant to a zoning ordinance, shall be filed with the board of zoning appeals.

(b) The appeal shall:

(1) Specify the grounds of the appeal;

(2) Be filed within thirty days of the original order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance; and

(3) Be on a form prescribed by the board.

(c) Upon request of the board of zoning appeals, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.

§8A-8-11. Notice and hearing of appeal.

(a) Within ten days of receipt of the appeal by the board of Zoning Appeals, the board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must be held within forty-five days of receipt of the appeal by the board.

(b) At least fifteen days prior to the date set for the hearing on the appeal, the board of Zoning Appeals shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.

(c) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.

(d) At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.

(e) Every decision by the board must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the board and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the court returns the matter with or without restrictions, the board shall pay any additional costs for court filing fees, service of process and reasonable attorneys' fees required to permit the person appealing the board's decision to return the matter to the circuit court for completion of the appeal.

(f) The written decision by the board shall be rendered within thirty days after the hearing. If the board fails to render a written decision within thirty days after the hearing, then any party may pursue additional legal remedies to obtain a decision, including, but not limited to, seeking a writ of mandamus.

§8A-8-12. Stays; exception.

(a) When an appeal has been filed with the board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, except as provided in subsection (b) of this section.

(b) A stay may not be had:

(1) If the official or board from where the appeal was taken certifies in writing to the board of Zoning Appeals that a stay would cause imminent peril to life or property;

(2) Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or

(3) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work or other tests.

(c) If the written certification is filed pursuant to subdivision (1), subsection (b) of this section, then proceedings or work on the premises shall not be stayed.

(d) Nothing in this section prevents a party from obtaining a restraining order.