

**TOWN OF HAMILTON  
BOARD OF ZONING APPEALS**

**RULES OF PROCEDURE**

ARTICLE I

GENERAL GOVERNING RULES

1.1 The Board of Zoning Appeals (“Board”) shall be governed by the provisions of all applicable state statutes, local laws, ordinances, and these rules.

1.2 Membership

The Board of Zoning Appeals is composed of five regular members.

ARTICLE II

OFFICERS AND DUTIES

2.1 Chairperson and Vice-Chairperson

The Board shall elect annually from its regular members by a majority vote, a Chairperson and Vice-Chairperson who may be elected to succeed himself/herself. The Chairperson, or in the absence or incapacity of the Chairperson, the Vice-Chairperson, shall decide all points of order or procedure and shall be a voting member of the Board.

2.2 Secretary

The Zoning Administrator of the Town of Hamilton shall serve as Secretary to the Board of Zoning Appeals as set forth in Article of the Hamilton Zoning Ordinance.

ARTICLE III

MEETINGS

3.1 Quorum

A quorum shall consist of three voting members of the Board. The Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, shall count towards the determination of a quorum. A quorum shall be sufficient to conduct any business by the Board, except as provided in Article VI, Section 6.1 (3).

3.2 Time of Meetings

The first regular meeting in January, if possible, shall constitute the annual organization meeting of the Board and elections for officers shall be held at this meeting. Meetings shall be scheduled as needed to address business that comes before the Board.

Regular meetings shall be scheduled for the first Wednesday of the month at 7:00pm, provided that at least three (3) business days notice is given to each member and the public.

Special meetings may be called by the Chairperson at any time provided that at least three (3) working days notice shall be given each member and the public before a special meeting is held. The Chairperson shall call a special meeting within 120 days of receipt of a written request from any two (2) members of the Board for a meeting.

### 3.3 Cancellation of Meetings

Whenever there are no appeals or variances or other pertinent business to be considered at a regular meeting, the Chairperson may dispense with such meeting by so notifying each member and the public at least three (3) business days prior to the time set for such meeting. In the event of inclement weather or other emergency incident, then, at the discretion of the Chairperson, or in the absence of the Chairperson, the Vice-Chairperson, shall declare a postponement. In such an event, then any matter scheduled to be heard by the Board shall be heard at the next regularly scheduled meeting and no further advertisement shall be necessary.

### 3.4 Order of Business

The order of business shall be:

- (1) Call to order
- (2) Roll Call and Determination of Quorum
- (3) Approval of Minutes
- (4) Public Hearings conducted as prescribed in 4.3.
- (5) Old Business
- (6) New Business
- (7) Adjournment

## ARTICLE IV

### PUBLIC HEARINGS

#### 4.1 Matters Requiring Public hearings

A public hearing shall be required in all matters involving an appeal from any order, requirement, decision or determination of the Zoning Administrator or other Administrative Official arising from the enforcement of the Zoning Ordinance; an appeal for zoning variance, a question involving interpretation of the zoning map, or other matters authorized to be before the Board pursuant to Section 15.2-2309, Code of Virginia of 1950, as amended. The purpose of the hearing is for fact-finding by the Board. The Board may ask questions of the appellant, Zoning Administrator, and those providing testimony to establish the facts.

The Chairperson or, in the Chairperson's absence, the Vice-Chairperson, may compel the attendance of witnesses in accordance with Section 15.2-2311, Code of Virginia.

#### 4.2 Notice of Hearings

No appeal shall be decided until due notice has been given and a public hearing has been held thereon. Due notice of a public hearing shall be as provided in the Code of Virginia. A copy of such notice may be transmitted to the governing body for its information.

#### 4.3 Conduct of Public Hearings

Any person may appear in person, by agent or attorney, at any public hearing. Each matter before the Board will be considered in its entirety. The order of proceedings in the hearing of each case at a public hearing shall be as follows:

- (1) Conflict of Interest Disclaimer
- (2) Reading of the public notice and affidavit of publication of the hearing by the Secretary of the Board.
- (3) Notation for the record that all members of the Board have made a personal inspection, or are familiar with, the property prior to the public hearing.
- (4) Summary of Applicant's/Appellant's Request by Secretary or Chairperson.
- (5) Public Comment
- (6) Chairperson's Statement that testimony and comment be true and factual. Swearing in of the Witnesses.
- (7) Notation for the record that witness subpoenas, if any, have been served.
- (8) Reading of pertinent written comments, reports and summary concerning the appeal and/or incorporation into the record by reference. Summary and/or overview of the appeal or variance request.
- (9) Applicant's/appellant's presentation, including witness testimony give under oath.
- (10) Staff presentation, including witness testimony given under oath.
- (11) Rebuttals and/or final comment from applicants and staff. Questions to Applicant/Appellant and/or staff/Board members.
- (12) BZA Determination

### ARTICLE V

#### APPEALS/VARIANCE

##### 5.1 Time Limit for Appeals

An appeal must be made within thirty (30) calendar days after the action of the Zoning Administrator or other administrative official which is being appealed from in accordance with General Law. The appeal period shall include Saturdays, Sundays and holidays and in the event that the last day of the appeal period falls on a Saturday, Sunday or holiday, then the appeal must be filed prior to the last day of the appeal period.

##### 5.2 Filing of Appeals and Variances

The applicant shall file his or her application with the Secretary of the Board on forms available from the Zoning Administrator. Applications shall be accompanied by a Statement of Appeal and an accurate and intelligible plan drawn to suitable scale, if applicable. Statements of Appeal shall include the names, addresses and contact information for the appellant, property owner(s), if different from the appellant, nominees/representatives, and advisors/attorneys. The Application must also contain the names, addresses and contact information for witnesses that the appellant intends to call at the hearing and copies of documents to be submitted. A nonrefundable fee as shown on the current fee schedule shall be paid to the Town of Hamilton upon filing an application or appeal. Applications shall be signed by the property owner(s) or a designated agent. If the applicant intends to offer additional materials, not included in the original application, such materials must be submitted to the Zoning Administrator no later than thirty (30) calendar days before the scheduled meeting, in order to be considered by the Board.

### 5.3 Calendar

The application shall be placed on the calendar of the Board for public hearing on the next available agenda that meets advertising regulations.

At the Board's discretion, and in the event that the ninety (90) day decision period prescribed in Code of Virginia of 1950, as amended, § 15.2-2312, will not expire, the application may be retained open until the close of the next meeting, at which time, the requested information shall be provided or the case will be acted upon the same as withdrawal. In no event, however, shall the Board be required to defer decision on a matter.

### 5.4 Withdrawals

On written request from the applicant, or authorized agent, an appeal or application may be withdrawn at any time before the Board makes its decision in the case. If such request is made less than five (5) days before scheduled publication of the public notice, limitations on re-submittal of substantially the same appeal or application shall be the same as in cases where appeals or applications are denied.

## ARTICLE VI

### PUBLIC HEARING DECISIONS

#### 6.1 Forms of Decision

All decisions of the Board shall be by formal motion and roll call vote. The minutes shall reflect the basis for the determination of each appeal and a detailed summary of the facts upon which the determination was made; and, in the cases of variances, the exceptional difficulty, unusual, or undue hardship upon which the appeal was based and which the Board found present. The decision shall also state what, if any, conditions and safeguards are required. Additional procedures to be followed are:

- (1) Variance Granted: The Chairperson will execute a formal Order and Memorandum of Decision evidencing the grant of a variance to the applicant and transmit copies of the Order to the Zoning Administrator and/or other parties as deemed appropriate.
- (2) Variance Denied: The Chairperson will furnish the applicant a letter of decision followed by a Memorandum of Decision evidencing the denial of a variance and the reasons therefore together with information of the applicant's right to appeal to the Circuit Court.
- (3) Appeals from Decision of Zoning Administrator or other Administrative Official: Form of decision will be the same as for variances (1) and (2) above; provided however, that a reversal of a Zoning Administrator/Administrative Official Decision requires a vote of the majority of the membership.
- (4) Requests for Interpretation of the Zoning Map: Interpretations will appear in Memorandum of Decision form.

## 6.2 Filing of Decision

The decision of the Board shall become final on the date of its pronouncement. Such Order and Memorandum of Decision shall be prepared by the Secretary of the Board and a written copy of its decision shall be made available to the applicant or his or her designated agent.

## 6.3 Vacation of Order

No Order of the Board shall be vacated unless the beneficiary of the Order has been notified and the same procedures for the first review creating the decision are followed.

# ARTICLE VII

## AMENDMENTS

7.1 These rules may be amended at any regular meeting by an affirmative vote of not less than three (3) voting members of the Board, provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.

# ARTICLE VIII

## BOARD SUBPOENA PROCEDURES

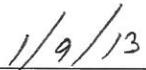
### 8.1 Procedures for Issuing Witness Subpoenas

1. Applicants shall submit written requests for witness subpoenas, if any, to the Zoning Administrator/Secretary of the Board at the time that the application is submitted.

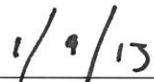
2. The Board Chairperson, or in the Chairperson's absence, the Vice Chairperson, shall inform the Zoning Administrator/Secretary at least four weeks prior to the scheduled hearing whether there are any witnesses that the Board members believe should appear to testify.
3. Zoning Administrator, with assistance of Town Attorney as necessary, will file Praecipes for Issuance of Subpoenas with Loudoun County Circuit Court as soon as possible.
4. Zoning Administrator shall request service of subpoenas by County Sheriff or private process server.
5. At least ten days before hearing, Zoning Administrator will confirm that service of subpoenas has been made and shall include return of process forms in Board Agenda packet.

ADOPTED BY THE BOARD OF ZONING APPEALS: January 25, 2012  
AMENDED:

  
\_\_\_\_\_  
\_\_\_\_\_, Chairperson

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Secretary to the BZA

  
\_\_\_\_\_  
Date