

TOWN OF HERNDON, VIRGINIA

ORDINANCE

JUNE 13, 2023

Ordinance- to amend Chapter 78 (Zoning), Article XV (Decision-Making Authorities, Application Review, and Permitting), Section 78-150.3 (Board of Zoning Appeals), and Section 78-155.4 (Variances) to bring the zoning ordinance into alignment with the Code of Virginia. ~~and to consider not hearing substantially the same application for a specific period of time, not to exceed one year.~~

Section 78-150.3 – Board of Zoning Appeals

(b) *Membership.* The membership of the board of zoning appeals shall be as follows.

(5) *Training.* Newly appointed members of the board of zoning appeals shall be offered training and certification by the ~~Citizens Planning Education Association of Virginia~~ **Virginia Commonwealth University Center for Urban and Regional Analysis Land Use Education Program** or similar certification to be completed within two years of appointment.

Section 78-155.4 – Variances.

(a) *Purpose and intent.* The purpose and intent of this section is to establish procedures for the review of variances, **as authorized pursuant to the Code of Virginia.**

(c) *Variance procedures.*

(2) *Board of zoning appeals public hearing, review, and action.* After public notification and scheduling a public hearing, the zoning administrator shall transmit a copy of the application to the board of zoning appeals, which shall conduct a public hearing on the application and review the application as follows:

- b. After the close of the public hearing, the board of zoning appeals shall approve, approve with conditions, or disapprove the application based on the standards in Section 78-155.4(d), ~~standards~~ **Variance review standards**, ~~as well as any other information deemed to be relevant.~~ **and Section 15.2-2309(2) of the Code of Virginia.**

(d) *Variance review standards.*

- (1) *Variance criteria.* 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 applicable provision of this chapter, **or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability**, and all of the following:
- (a) 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;
 - (b) The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - (c) The condition or situation of the property concerned is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the **zoning** ordinance;
 - (d) The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property;
 - (e) The relief or remedy sought by the variance application is not available through a special exception process or the process for modification of a zoning ordinance at the time of the filing of the variance application.
 - ~~(f) The character of the zoning district in which the property is located will not be changed by the granting of the variance.~~
- (2) *Variances in the floodplain overlay district.* In the floodplain overlay district, variances shall be issued only in accord with the standards above and evaluated and processed as follows:

- (a) In passing upon applications for variances related to floodplain districts, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

13. ***Variances will not be issued for any accessory structure with the SFHA.***

14. Such other factors which are relevant to the purposes of this section.

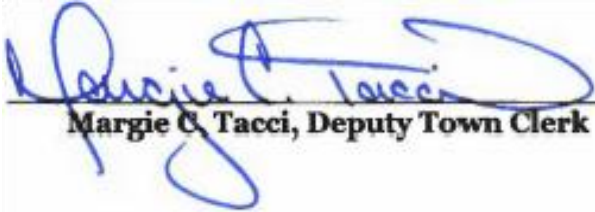
- (3) Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with disabilities Act of 1990 (42 U.S.C. § 12131 et. Seq.), as applicable.***

- (e) *Limitations on expansions once variance is granted.* Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance on or after July 1, 2006 shall be treated as conforming for all purposes under state law and town ordinance; however, the use or the structure permitted by 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 zoning 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.*** For this subsection, “property” means only the zoning rights affected by the variance and the real estate rights directly supporting or related to these zoning rights, as determined by the zoning administrator. “Property” shall not necessarily mean the entire parcel of real estate that is the subject of a variance.

- (g) *Appeal to circuit court.* Any person jointly or severally aggrieved by any decision of the board of zoning appeals, or any ***aggrieved*** taxpayer or any officer, department, board, or agency of Fairfax County or the town, may ***file a petition*** appeal the decision to ***with the clerk of*** the Circuit Court of Fairfax County ***that shall be styled “In Re: date Decision of the Board of Zoning Appeals of Town of Herndon”*** pursuant to, and within the time limits specified in, Code of Virginia §15.2-2314.

(1) If appealed, the petition shall specify the grounds on which the petitioner is aggrieved and be received by the clerk of the Circuit Court of Fairfax County within 30 days after the final decision of the board.

This is certified to be a true and accurate copy of Ordinance 23-O-14 adopted at a legally convened meeting of the Town Council of the Town of Herndon on June 13, 2023.


Margie C. Tacci, Deputy Town Clerk

