

# Dinwiddie County Board of Zoning Appeals

January 15, 2020

Organizational\Regular Meeting Agenda - 7:00 PM

**Community Meeting Room - Government Center Building**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. APPROVAL OF AGENDA**
- 4. MINUTES**

Documents:

[September 18 2019 Regular Meeting.pdf](#)

- 5. ELECTION OF OFFICERS FOR 2020**

Documents:

[Chair, Vice Chair and Secretary Resolutions.pdf](#)

- 6. DETERMINATION OF MEETING SCHEDULE FOR 2020**

Documents:

[Meeting Schedule Resolution.pdf](#)

- 7. CITIZEN COMMENTS**

- 8. OLD BUSINESS**

Documents:

[BZA Bylaws.pdf](#)

[BZA Code of Ethics and Standards of Conduct.pdf](#)

- 9. NEW BUSINESS**

- 10. BOARD MEMBER COMMENTS**

- 11. ZONING ADMINISTRATOR COMMENTS**

- 12. ADJOURNMENT**

VIRGINIA: MINUTES OF THE ORGANIZATIONAL AND REGULAR MEETING FOR THE DINWIDDIE COUNTY BOARD OF ZONING APPEALS HELD IN THE BOARD MEETING ROOM OF THE DINWIDDIE COUNTY GOVERNMENT CENTER BUILDING ON THE 18<sup>st</sup> DAY OF SEPTEMBER 2019 AT 7:00 P.M.

PRESENT: TRACY SHEETS CHAIRMAN  
LANCE EVERETT  
WILSON YAGER VICE CHAIRMAN  
WILLIAM SEAY  
DONNIE BOSTIC

OTHERS: JAMIE SHERRY ZONING ADMINSTRATOR  
MICHAEL DREWRY COUNTY ATTORNEY

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**IN RE: CALL TO ORDER**

The Chairman called the meeting to order at 7:00 p.m.

**IN RE: ROLL CALL**

The roll was taken and four members were present. Mr. Seay arrived right before the public hearing.

**IN RE: APPROVAL OF AGENDA**

The Chairman asked if there were any additions or corrections to the agenda. He said since there are none he would entertain a motion to accept the agenda as presented.

Mr. Everett made a motion to accept the agenda as presented. Mr. Bostic seconded it and with Mr. Bostic, Mr. Everett, Ms. Sheets and Mr. Yager voting “Aye” the Agenda was accepted as presented.

**IN RE: MINUTES**

The Chairman asked if there were any additions or corrections from the January 19, 2018 Organizational/Regular meeting minutes. He said since there are none he would entertain a motion to accept the minutes as presented.

Ms. Sheets made a motion to accept the minutes as presented. Mr. Everett seconded it and with Mr. Bostic, Mr. Everett, Ms. Sheets and Mr. Yager voting “Aye” the Minutes were accepted as presented.

**IN RE: CITIZEN COMMENTS**

The Chairman opened the citizen comment period and asked if anyone had signed up to speak. He said since there is no one he was closing the citizen comments portion of the meeting.

**IN RE: PUBLIC NOTICE**

Mr. Seay arrived during Ms. Sherry's presentation of the case.

## Board of Zoning Appeals Staff Report

|                   |   |
|-------------------|---|
| File:             | V-19-1  |
| Applicants:       | Central Baptist Church, and their agent, H. Keith Henshaw |
| Property Address: | 6405 Courthouse Road, Church Road, Virginia               |
| Acreage:          | 2.40 Acres  |
| Tax Map Parcel:   | 17-56   |
| Current Zoning:   | Agricultural, General, District A-2                       |

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### **SUMMARY OF CASE**

The applicant, Central Baptist Church, and their agent, H. Keith Henshaw, are seeking a variance from Section 22-73. – Setback, which requires structures in the agricultural, general, district A-2 to be located 105 feet or more from the centerline of any street right-of-way. The applicant is requesting a variance of 18 feet from the minimum setback of 105 feet. The subject parcel is located at 6405 Courthouse Road, Church Road, Virginia, and is designated as Tax Map Parcel 17-56, and is currently zoned as Agricultural, general, district A-2.

### **ATTACHMENTS**

The following are included:

- Application
- Location Map
- Pictures

### **PURPOSE OF THE STANDARD:**

As described in Section 22-2, of the Dinwiddie County Zoning Ordinance, the regulations of the zoning ordinance are for the “*purpose of promoting health, safety, and the general welfare of the public.*” The zoning regulations are also a planning tool utilized by the County for improving the orderly development of land.

More specific to this application, Sec. 22-70. States:

Generally, agricultural, general, district A-2 covers the portion of the county into which urban-type development could logically expand as the need occurs. As a general rule it surrounds residential sections. This district is established for the specific purposes of:

1. Providing for the orderly expansion of urban development into territory surrounding incorporated areas within or adjacent to the county;
2. Confining such development to such locations as can feasibly be supplied urban-type facilities; and
3. Discouraging the random scattering of residential, commercial and industrial uses into the area.

## **APPLICABLE CODE SECTION**

The Code of Virginia provisions, which are relevant to this variance request are:

### **Sec. 15.2-2201. Definitions**

"Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

### **Sec. 15.2-2309. Powers and duties of boards of zoning appeals.**

The Board of Zoning Appeals has authority to grant a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

“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 ordinance, and (i) 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; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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; (iv) 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; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.”

The Dinwiddie County Code provisions, which are relevant to this variance request are:

### **Sec. 22-73. - Setback.**

Structures in agricultural, general, district A-2 shall be located 105 feet or more from the centerline of any street right-of-way, except that signs may be erected up to the property line, however, such signs shall not block the view of traffic from a roadway. This shall be known as the "setback line".

### **Sec. 22-1. - Definitions**

*Nonconforming structure:* An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage or other area regulations of this chapter, or is designed or intended for a use that does not conform to the use regulations of this chapter for the district in

which it is located, either at the effective date of the ordinance from which this chapter derives [September 1, 1964] or as a result of subsequent amendments to such ordinance or this chapter.

**Sec. 22-250. - Extension or enlargement.**

- (a) A nonconforming structure to be extended or enlarged shall conform with the provisions of this chapter.

**CASE ANALYSIS**

The applicant is seeking a variance of 18 feet from the front yard setback for a single-family dwelling located at 6405 Courthouse Road, Church Road, Virginia and is designated as Tax Map Parcel 17-56. The subject property is zoned Agricultural, general, District A-2 and contains a portion of the Central Baptist Church building, as well as a single-family house which is currently being use as the church parsonage and is the subject of this request. The house was built in 1953, prior to the adoption of the Zoning Ordinance in September 1964.

The reason for this request is to allow for an addition to be built onto the house. The proposed addition would be on the north side of the property. The addition would fall within the required minimum 105 foot setback from the centerline of the street right-of-way, which is Route 627/Courthouse Road. The addition is not anticipated to impact the side yard setback requirement of a minimum of 35 feet from the northern property line.

The house, which was constructed in 1953, predates the adoption of the Dinwiddie County zoning ordinance, which was adopted in September 1964. Adoption of the ordinance created the legal nonconforming status of the building, as it does not meet the setbacks of the district. Because of its nonconforming status, it is now subject to Article VI of the Dinwiddie County Code –Nonconforming uses. In this case, any expansion or enlargement of the house must meet the requirement of Sec. 22-250. - Extension or enlargement, which only allows for an addition of a nonconforming structure to be allowed if it meets the minimum required setbacks.

**AUTHORIZATION FOR GRANTING VARIANCES**

**The Code of Virginia, specifically Sec. 15.2-2309. Powers and duties of boards of zoning appeals, states:**

The Board of Zoning Appeals has authority to grant a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

“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 ordinance, and (i) 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; (ii) the granting of

the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) 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;

(iv) 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; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.”

### **STAFF EVALUATION**

Strict application of the ordinance, meaning not allowing the building to be expanded within 105 feet from the centerline for the front setback for the A-2 zoning district, does not prevent the building from being used. In fact, there is nothing preventing it from being used as a house, therefore does not unreasonably restrict the utilization of the property.

In addition, there is no hardship due to a physical condition relating to the property or improvements to the property. The building may be expanded outside the front yard setback, to the north, to the south and to the rear of the house. The applicant states the septic systems is located in the rear of the house, although it may not be ideal for the applicant, the septic system could be relocated. The same holds true for the parking area to the south of the house, the side facing the church.

Additionally, and most importantly, the property could be rezoned to the Residential, limited, R-1 zoning district. Rezoning the property would allow the house to be expanded within the allowed confines of the ordinance, as the front setback in this zoning district is a minimum of 65 feet from the centerline of any street right-of-way. As indicated in the Dinwiddie County Comprehensive Land Use Plan, the subject property is located within the Rural Conservation Area, which allows for low-density residential development.

For case, V-19-1, staff recommends **DISAPPROVAL** of the variance of 18 feet from the front yard setback requirement for an existing building because it does not meet the requirement of the Code of Virginia for a variance. The Code of Virginia states in 15.2-2309 that, 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 ordinance, and

- (i) 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;**

The applicant did not create the hardship as the building was made nonconforming when the zoning ordinance was adopted in 1964.

- (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;**

In the event the variance is granted, there is no indication that the use will be of any detriment to the adjacent property owner, as the addition will fall within the allowed side yard setback of 35 feet.

- (iii) 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;**

The situation should be remedied with an amendment to the ordinance, specifically to the zoning map by rezoning the portion of the property, where the house is located, to the Residential, limited R-1 zoning district, to allow for the expansion of the building.

The rezoning would be supported by the Dinwiddie County Comprehensive Plan, as the plan has the subject property located within the Rural Conservation Area, which allows for low-density residential development.

- (iv) 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; and**

Granting the variance would not add to or subtract from to the legal uses of the property.

- (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.**

There is no relief in this instance offered by a special exception or the process for modification of the ordinance.

**BOARD OF ZONING APPEALS ACTION:**

The final statement of action would be similar to the following. If a BZA member chooses to make this motion, it should be read aloud:

I move that the Board of Zoning Appeals adopts the following resolution:

WHEREAS, the Code of Virginia, specifically § 15.2-2309, states that the Board of Zoning Appeals shall grant a variance 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 ordinance, and:

- i. 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;
- ii. the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- iii. 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;
- iv. 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; and

- v. the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application; and

**WHEREAS, the Board (FINDS AS TRUE or DOES NOT FIND AS TRUE) the factual statements and rationale set forth in the staff report,**

**BE IT THEREFORE RESOLVED THAT pursuant to Virginia Code Section 15.2-2309, after full examination of the facts and law related to the case, the Board of Zoning Appeals finds the foregoing criteria are (MET or NOT MET) and the Board of Zoning Appeals (APPROVES or DENIES) variance request V-19-1, to grant the request for a variance of 18 feet from the minimum setback of 105 feet.**

Mr. Sherry asked if there were any questions.

Mr. Yager asked if the current building and church were constructed at the same time.

Ms. Sherry said she does not believe they were.

Mr. Everett asked if rezoning the property was a difficult and costly process.

Ms. Sherry said a rezoning does cost more money (an additional \$1,000.00), but the process is not difficult.

Ms. Sheets asked if the applicant rezoned the property, would that give them a permanent relief to do the addition and remodeling of the parsonage.

Ms. Sherry said that is correct. The property would no longer be non-conforming. It would be a legal structure meeting all applicable sections of the zoning ordinance.

Mr. Seay asked if the main reason for disapproval has to do with the eighteen-foot setback that does not go with the guidelines of their zoning.

Ms. Sherry said that is correct. The property does not meet the code requirement for strict application. There is an opportunity for them to build out in other places. The ordinance is not so restrictive that it prevents them from expanding. There could be an amendment to the ordinance via the zoning map. The zoning map is actually a part of the zoning ordinance, and if that were changed to R-1, for example, they would be allowed to expand. Those are the reasons staff is recommending disapproval.

Mr. Everett asked Mr. Drewry if there would be any liability on the Board's part if we granted the variance.

Mr. Drewry said variances were created in the State of Virginia, so that a local government could not take property from a homeowner because it was too restrictive on its setbacks. It has to be a hardship. What the State of Virginia does not want a BZA (Board of Zoning Appeals) to do is legislate. That just means, if a zoning ordinance needs to be changed, the State prefers a locality to change it. With that being said, I want to make it known that this is not a true variance case. This is an ordinance amendment case. Therefore, Mr. Everett, the liability that you are referring to will



only happen if this case gets an approval. Because someone who may be disgruntled about the approval can appeal this case within the next thirty days, and I will not be able to protect your approval decision. The reason I will not be able to is because, the case is not a legal variance case and it could be overturned. No one will be coming after you personally for liability.

Mr. Everett asked if there has been any opposition to this case.

Mr. Sherry said there has not been any opposition.

Mr. Drewry wanted the Board members to know that, even though he is here to explain or answer any of the Board member's questions, he represents his client, Dinwiddie County. The Board of Zoning Appeals is its own body appointed by the Court. His client, Dinwiddie County, could appeal this case if they felt it was setting a bad precedent.

The Chairman asked if there were any more questions for Ms. Sherry. He said if not would the applicant like to come forward and add anything.

Mr. H. Keith Henshaw who resides at 16500 Hanna Drive, Sutherland VA, said he would answer any of the questions the members have.

Mr. Yager asked if the purpose of the addition was to add on to the house or church.

Mr. Henshaw said the addition is for the house. It is the parsonage for the Pastor.

Mr. Yager asked why the addition could not be place on the other side of the parsonage.

Mr. Henshaw said there is a garage on that side and the addition would eat into the parking area.

Mr. Everett asked why the addition could not be place on the backside of the parsonage.

Mr. Henshaw said there is a septic drain field behind the house. Building the addition on the backside of the house would require us to tear it up and move it. That would be very costly.

The Chairman asked if there any more questions for the applicant. He said since there are none he was opening the public hearing portion of the case. He asked if anyone had signed up to speak.

Mr. Barrett Chappell who resides at 4704 Stone Glen Drive, Church Road, VA, said he appreciates Ms. Sherry's analysis, but he wanted to give the members more grounds to grant the variance within the code section that is given. He said on page three of the staff report and beginning with the last paragraph in the first sentence it says, "Shall grant a variance if the strict application of the terms of the ordinance would unreasonably restrict to the utilization of the property." I believe that is the case here as the Pastor would not be able to stay in the parsonage without the addition. The sentence also says, "Or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements there on." This would alleviate the hardship of not being able to put the addition on the back of the property because of the septic system. It would also alleviate the hardship of not being able to put the addition on the parking lot side.

The Chairman asked if anyone else had signed up. He said since there is no one he closed the public hearing portion of the case. He opened the discussion among the members.

Mr. Drewry reminded the members that Ms. Sherry could not analyze this case in any other direction but denial. The issue is that in Section 22-250 it says, "A non-conforming structure, one that was present when the zoning ordinance was put in place, shall not be extended or enlarged unless it conforms to the provision of the Zoning Code. There are two provision in the Dinwiddie Code that complies with the Virginia Code and they prohibit Ms. Sherry from approving this variance Case, because if she did, she would be out of compliance with the Virginia Code and she would have gotten an earful from me.

Mr. Seay said he is sorry the church had to come here. Ms. Sherry does an excellent job. She has presented us with facts from the County. However, this is rural property. I cannot penalize the church for this one time accordance.

Ms. Sheets made a motion and read the following: WHEREAS, the Board FINDS AS TRUE the factual statements and rationale set forth in the staff report,

BE IT THEREFORE RESOLVED THAT pursuant to Virginia Code Section 15.2-2309, after full examination of the facts and law related to the case, the Board of Zoning Appeals finds the foregoing criteria are MET and the Board of Zoning Appeals APPROVES variance request V-19-1, to grant the request for a variance of 18 feet from the minimum setback of 105 feet. It was seconded by Mr. Seay and with Mr. Seay, Mr. Bostic, Mr. Everett, Mr. Sheets and Mr. Yager voting "AYE" the variance request was approved.

**IN RE: BOARD MEMBER COMMENTS**

Ms. Sheets said she appreciates all the hard work from staff on this case.

**IN RE: ZONING ADMINISTRATOR COMMENTS**

Ms. Sherry thanked all the members for their time and service since she has been a part of the BZA. She said it has been a pleasure working with the Board of Zoning Appeals members. However, this will be her last meeting. She has accepted a position in Goochland County.

**IN RE: ADJOURNMENT**

The Chairman said if there is nothing else, she would entertain a motion for adjournment. Mr. Everett made a motion to adjourn and Ms. Sheets seconded it and with all members presents voting "AYE" the meeting adjourned at 738 p.m.

Respectfully submitted:

Jamie Sherry, Principal Planner/  
Zoning Administrator

Signed: \_\_\_\_\_  
Wilson Yager, BZA Chairman

Dated: \_\_\_\_\_

DRAFT



# Resolution

## of the BOARD OF ZONING APPEALS of DINWIDDIE COUNTY, VIRGINIA

MOTION: \_\_\_\_\_ SECOND: \_\_\_\_\_

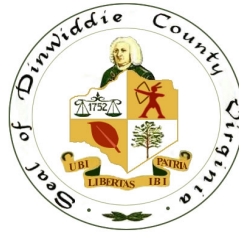
BE IT RESOLVED, by the Board of Zoning Appeals of Dinwiddie County, Virginia that \_\_\_\_\_ shall be appointed as the Chairman of the Board of Zoning Appeals of Dinwiddie County, Virginia for the year 2020, or until he or she resigns, is unable to hold office, or until a successor assumes office.

MOTION: \_\_\_\_\_ SECOND: \_\_\_\_\_

BE IT RESOLVED, by the Board of Zoning Appeals of Dinwiddie County, Virginia that \_\_\_\_\_ shall be appointed as the Vice-Chairman of the Board of Zoning Appeals of Dinwiddie County, Virginia for the year 2020, or until he or she resigns, is unable to hold office, or until a successor assumes office.

MOTION: \_\_\_\_\_ SECOND: \_\_\_\_\_

BE IT RESOLVED, by the Board of Zoning Appeals of Dinwiddie County, Virginia that \_\_\_\_\_ shall be appointed as the Secretary of the Board of Zoning Appeals of Dinwiddie County, Virginia for the year 2020, or until he or she resigns, is unable to hold office, or until a successor assumes office.



# Resolution

of the BOARD OF ZONING APPEALS of DINWIDDIE COUNTY, VIRGINIA

## ORGANIZATIONAL MEETING OF THE BOARD OF ZONING APPEALS SCHEDULE OF MEETINGS AND DATES FOR 2020

*WHEREAS*, the Board of Zoning Appeals of Dinwiddie County, Virginia, in accordance with the Code of Virginia, 1950, as amended may adopt a regular meeting schedule,

*NOW THEREFORE BE IT RESOLVED* by the Board of Zoning Appeals of Dinwiddie County, Virginia, that the following rules shall apply for the year 2020:

1. Regular Meetings of the Board shall be held every other month, on the third Wednesday of the month, as shown on the attached 2020 calendar, in the Board Meeting Room in the Pamplin Administration Building, 14010 Boydton Plank Road, Dinwiddie, Virginia. The Regular Meeting time shall be 7:00 p.m. unless otherwise noted.
2. If a meeting with an advertised public hearing is canceled due to weather or other conditions, it shall be continued for 7 days to the same time and place. If no cases are pending, the Board may cancel the meeting or the Board may hold the meeting to receive training or to consider matters brought before it by the Secretary of the BZA.

The regular meeting dates are as follows:

January 15, 2020  
March 18, 2020  
May 20, 2020  
July 15, 2020  
September 16, 2020  
November 18, 2020

\*Note: The organizational meeting for the calendar year 2021 will be held on January 20, 2021 at 7:00 p.m.

# *Dinwiddie County Board of Zoning Appeals Bylaws*

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*These bylaws are written rules of conduct for the Dinwiddie County Board of Zoning Appeals and are intended to establish best practices for meeting behavior and structure, but are not required by code.*

## ARTICLE 1 - OBJECTIVES

- 1 *The Dinwiddie County Board of Zoning Appeals (“Board”) is established to administer the powers and duties set forth in Title 15.2, Article 7 of the Code of Virginia and all amendments or changes thereto. As defined in Chapter 22, Article 3 of the Code of Dinwiddie County these powers and duties are:*
  - a. *To hear appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of zoning ordinances.*
  - b. *To authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest, and the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance.*
  - c. *To hear and decide appeals from the decision of the zoning administrator or applications for such special exceptions as may be authorized by Chapter 22 of the Code of Dinwiddie County.*
- 2 *The official title of this Board shall be the Dinwiddie County Board of Zoning Appeals.*

## ARTICLE 2 - MEMBERS

- 1 *The Board shall consist of five (5) members appointed by the Circuit Court of the County. One of the members may be a member of the Planning Commission. All members must reside within Dinwiddie County.*
- 2 *The term of the members are terms for five (5) years. Their successors shall be appointed for terms of five (5) years. Any member shall be eligible for reappointment. Any vacancy in membership shall be filled by an appointment by the Circuit Court of the County and all vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term. Members shall not hold any other public office in the locality with the exception that one member may be a member of the Planning Commission.*
- 3 *Any appointed member may be removed for cause by the appointing authority upon written notice and after a public hearing. Any member shall be disqualified to act upon a matter before the Board with respect to property in which the said member has an interest.*

### ARTICLE 3 - OFFICERS AND THEIR SELECTION

- 1 *The officers of the Board shall consist of a Chairman, Vice-Chairman, and a Secretary.*
- 2 *Nomination of the Chairman and Vice-Chairman shall be made from the floor at the first meeting of each calendar year. Election of officers shall follow immediately.*
- 3 *A candidate receiving a majority vote of the entire membership of the Board shall be declared elected. He shall take office immediately and serve for one (1) year or until his successor takes office.*
- 4 *At the Board's first meeting of each year, the Board shall appoint a Secretary who shall be a salaried employee of the Planning Department. The Secretary shall not be entitled to vote on matters before the Board. In the absence of the Secretary, the Director of Planning shall designate a staff member to serve as Temporary Secretary.*
- 5 *Officer vacancies shall be filled immediately by regular election procedures.*

### ARTICLE 4 - DUTIES OF OFFICERS

- 1 *The Chairman shall be a member of the Board and shall:*
  - a. *Preside at all meetings and hearings of the Board.*
  - b. *Appoint committees, special and/or standing, that are necessary for the business of the Board.*
  - c. *Promote the orderly and expeditious conduct of meetings.*
  - d. *Rule on all procedural questions. (Subject to a reversal by two-thirds (2/3) majority of the members present).*
  - e. *Ensure new members are properly oriented to the Board bylaws and rules of order.*
  - f. *The Chairman may speak in discussion, and vote on all questions.*
  - g. *Carry out other duties as assigned by the Board.*



2 *The Vice-Chairman shall be a member of the Board and shall:*

- a. *Perform the duties of the Chairman in the absence or disability or at the request of the Chairman.*

3 *The Secretary shall be a non-member of the Board and shall:*

- a. *Receive all applications for appeals to the Board and shall request of the applicant all information and collect other such information required to advise the Board fully of the issues before it.*
- b. *Advertise all public hearings and notify the parties in interest of all hearing as required by law and these bylaws.*
- c. *Keep all papers relating to an application, including written documentation of the decision of the Board, as part of the records of the Board and shall file such records in the Office of the Board as public records.*
- d. *Keep the minutes of the Board's proceedings and other official actions and shall file them in the Office of the Board as public records.*
- e. *Notify all applicants of the final action of the Board on applications for variances and special exceptions, appeals, and any other item over which the Board has jurisdiction.*
- f. *Notify the Vice-Chairman, by telephone or in person, as soon as possible after the Secretary is informed that the Chairman (~~or Vice-Chairman~~) will not attend a Board meeting.*
- g. *The Secretary or another member of the Planning staff, on behalf of the Secretary, shall prepare and file an Annual Report of the BZA with the Board of Supervisors.*

## ARTICLE 5 - MEETINGS

- 1 *The Board shall adopt a regular meeting time, location and schedule for the year at its first regular meeting of each year. If no cases are pending, the Board may hold its regular meeting to receive training or to consider matters brought before it by the Secretary of the Board of Zoning Appeals.*
- 2 *All regular meetings shall be open to the public.*
- 3 *A quorum must be present at all meetings to transact any official business. A quorum of the Board shall consist of three (3) of the five (5) members of the Board.*

- a. *If a quorum is not present, the Board's agenda shall be moved to the next regular or special meeting of the Board.*
  - b. *An abstention, although not a vote in favor or against a motion, shall be counted as a vote for the purpose of determining a quorum.*
- 4 *The order of business for a regular meeting shall be as follows, unless amended by a majority of the Board:*
  - a. *Call to order by Chairman.*
  - b. *Roll Call to determine quorum.*
  - c. *Review and approval of minutes from previous meetings.*
  - d. *Review agenda.*
  - e. *Citizen Comments - unrelated to agenda items.*
  - f. *Public Hearings.*
  - g. *Old Business.*
  - h. *New Business.*
  - i. *Adjournment.*
- 5 *All motions shall be restated by the Chairman before a vote is taken. The names of persons making and seconding motions shall be recorded.*
- 6 *The Chairman of the Board may, at his discretion, administer oaths and compel the attendance of witnesses.*
- 7 *The Board shall keep a set of minutes of all regular meetings, and these minutes shall be a public record.*
- 8 *Board members are encouraged to attend all meetings, regular and special, and to notify the Chairman or Secretary as soon as possible if unable to attend a meeting. Any member who misses three (3) regular meetings in succession, or fails to attend at least sixty percent (60%) of regular scheduled meetings during any calendar year, without sufficient justification, is subject to recommendation by the Board to the appointing authority for removal from office.*
- 9 *Non-legal staff of the governing body, applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the meeting but may not discuss the facts or law relative to a particular case, and must be in accordance with Va. Code § 15.2-2308.1.*
- 10 *If a meeting exceeds four hours, the Chairman may continue the meeting until the next meeting. If there is a public hearing on the agenda, it can be continued without the need to re-advertise.*

11 *Special meetings of the Board may be called at any time by the Chairman or in the absence or unavailability of the Chairman, by the Vice-Chairman. The Secretary shall contact all members, at least fourteen (14) days in advance of a special meeting, informing them to the time and place of the meeting and the purpose thereof. If the special meeting is to hear a variance case or an appeal to the Board, then all advertisement requirements of a public hearing shall be met.*

## ARTICLE 6 - GENERAL RULES OF PARLIMENTARY PROCEDURE

- 1 *The Board's Parliamentary Procedures shall be the most current edition of Robert's Rules of Order, in all matters not covered by the Board's bylaws, to the extent compatible with law and the historical practices of the Board. The County Attorney, or his or her designee, shall act as Parliamentarian to the Board. Any questions involving the interpretation or application of Robert's Rules shall be addressed to the County Attorney. The Board may amend, by Resolution, the rules as it deems appropriate. The following rules shall apply:*
  - a. *Members are not required to obtain the floor before making motions or speaking, which they may do while seated.*
  - b. *Motions need not be seconded. If a motion is not seconded, the Chairman shall decide if vote is taken on the motion or if a motion is dead.*
  - c. *There is no limit to the number of times a member can speak to a question, and motions to close or limit debate generally should not be entertained.*
  - d. *Informal discussion of a subject is permitted while no motion is pending.*
  - e. *The Chairman may speak in discussion without leaving the chair, can vote on all questions, but cannot make motions unless by consent of a majority of Board members present.*
  - f. *When any Board member determines, prior to the calling of any issue before the Board, that he, because of conflict or otherwise, will abstain from voting on such issue, he shall announce such intention at the time the issue comes before the Board and shall not participate in the discussion on such issue or question.*
  - g. *In the incidence of a tie, the voted upon issue by the Board is dead and therefore voted down, except any appeal taken pursuant to Va. Code § 15.2-2311, in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.*

- h. Only Board members and the Parliamentarian shall have standing to raise noncompliance with these General Rules of Procedure, and only during the current meeting at the time of violation. Failure of the Board to comply with these General Rules of Procedure shall not invalidate any action taken by the Board.*

## **ARTICLE 7 - CITIZEN COMMENT PERIOD**

*To ensure that the affairs of the Board and its committees may be conducted in an orderly manner, to ensure that all persons desiring to address the Board on matters pertinent to it are afforded an opportunity to do so, to permit persons in attendance to observe and hear the proceedings of the Board without distraction, and to permit to the fullest extent the Board to conduct County business with minimal disruption the following rules are established. Any individual, who does not abide by the following rules, after a warning, may be asked to leave the meeting.*

### **1 Rules for Citizen Comment Period**

- a. Each person desiring to speak must sign up in advance of the opening of the Citizen's Comment Period on the agenda.*
- b. Each speaker shall be limited to a period of three (3) minutes per comment period; when two (2) minutes have passed the speaker will be reminded that there is one (1) minute remaining. Specified time limits may vary at the discretion of the Chairman.*
- c. Speakers who have signed up may use their allotted time only for themselves and may not donate their time to other speakers.*
- d. Comments must not be related to agenda items and must be confined to matters germane to the business of the Board of Zoning Appeals and shall not be cumulative or repetitive.*
- e. Speakers should address the Board with decorum – loud, boisterous, and disruptive behavior, obscenity, and vulgarity should be avoided, as well as other words or acts tending to evoke violence or deemed to be a breach of the peace.*
- f. The Citizens' Comment Period is not intended to be a question and answer period or for dialogue with County officials. Questions which are raised during a comment period may at the discretion of the Board be responded to by County officials after sufficient time for investigation.*
- g. Speakers shall remain at the podium while addressing the Board.*

- h. Speakers shall not be interrupted by audience comments, calls/whistles, laughter, or other gestures.*

#### ARTICLE 8 - VOTING

- 1 All matters to be voted upon shall be stated in the form of a motion.*
- 2 All matters before the Board that require a majority vote shall be by roll call.*
- 3 A favorable vote of three members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.*
- 4 A tie vote means the defeat of the motion, except any appeal taken pursuant to Va. Code § 15.2-2311, in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.*
- 5 No member shall abstain from voting on a roll call unless he/she has a conflict of interest in the matter being voted upon, and so states for the record, or unless by the consent of a majority of members present.*

#### ARTICLE 9 – PUBLIC HEARINGS

- 1 All public hearings will be advertised in accordance with the Virginia Code. No action at a public hearing shall be taken until after notice of intention so to act has been published once a week for two (2) successive weeks in a newspaper published or having general circulation in Dinwiddie County. The term two successive weeks shall mean that such notice shall be published at least twice in such newspapers with not less than six (6) days elapsing between the first and second publication. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, which the time of hearing shall be not less than five (5) days nor more than twenty-one (21) days after the second advertisement appears in the newspaper.*
- 2 In addition to those required by law, the Board at its discretion may hold public hearings when it decides that a hearing will be in the public interest.*
- 3 The procedure for a public hearing shall be as follows:*
  - a. The Chairman calls for the item.*
  - b. The Secretary, or staff, reads the request and recommendation.*
  - c. Applicant's presentation.*
  - d. Interested citizens' presentation in support/opposition.*

- e. *Applicant rebuttal.*
- f. *Additional time for presenters, as permitted by the Chairman.*
- g. *Questions, if any, from the Board members.*
- h. *Chairman closes public hearing and the Board votes.*

*4 The following rules shall govern the conduct of public hearings:*

- a. *The applicant shall have ten (10) minutes to address the Board and present written and/or oral comments. Individuals who have signed up to comment on the case shall have three (3) minutes to present written and/or oral comments. All comments shall be directed to the Board, not the audience or other individuals. Specified time limits may vary at the discretion of the Chairman.*
- b. *After all persons who desire to address the Board have had the opportunity to do so, the Chairman may grant additional time to persons who have spoken previously.*
- c. *The Chairman may terminate the hearing at any time after all persons who desire to address the Board have had one (1) opportunity to do so.*
- d. *Board members may question each speaker at the end of his/her presentation.*
- e. *When a matter is set for a public hearing, it shall be heard even though no one in favor of, or in opposition to, the matter appears at the hearing unless it is deferred or withdrawn. In the absence of a personal appearance by the applicant or agent, the Board may proceed to dispose of the application or defer it to another meeting. The applicant may withdraw an application at any time prior to the Board's action.*
- f. *Upon the BZA making a decision, the applicant or appellant shall be advised that an appeal of such decision must be filed within 30 days from the date of that decision.*

**ARTICLE 10 - COMMITTEES**

- 1 Special Committees may be appointed by the Chairman for the purposes and terms approved by the Board.*

**ARTICLE 11 - AMENDMENTS**

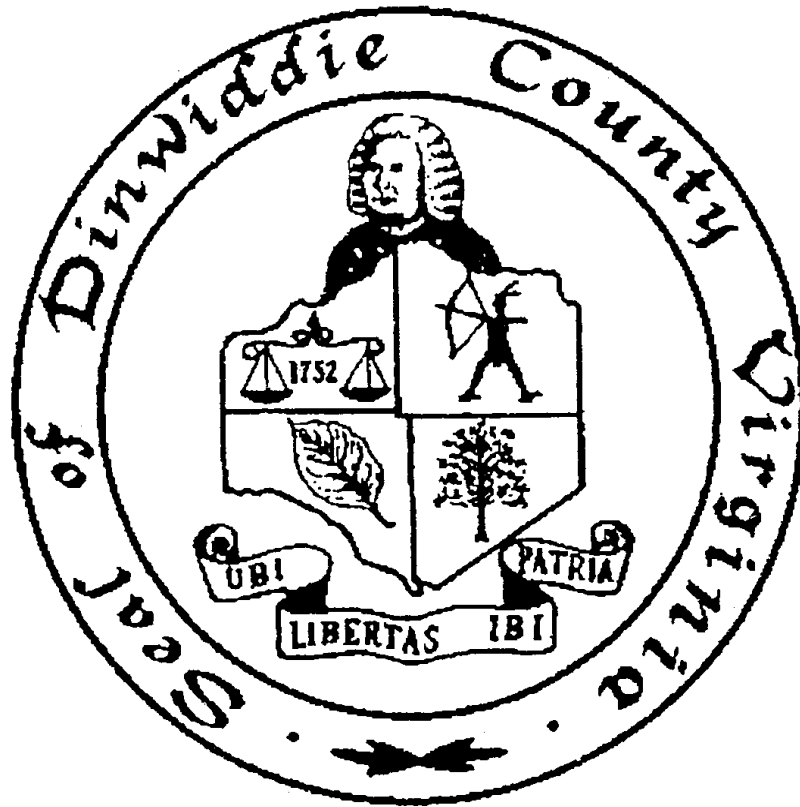
- 1 The Board bylaws may be amended by a recorded majority vote of the entire membership of the Board provided that written notice has been given to all members of the Board and a copy of the proposed amendment is sent with the notice, prior to said meeting.*

*2 The Board bylaws may be suspended in whole or in part upon the unanimous vote of Board members present, relating to any matter before it.*

**ARTICLE 12 – SEVERABILITY**

*1 If any word, clause, sentence, section, subsection or other part of parts of these Bylaws shall be held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining parts of these Bylaws, nor shall it affect any application of these Bylaws that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of these Bylaws are hereby declared to be severable.*

# Board of Zoning Appeals Code of Ethics



*DINWIDDIE COUNTY*

*Dinwiddie, Virginia*



## CODE OF ETHICS AND STANDARDS OF CONDUCT FOR MEMBERS OF THE DINWIDDIE COUNTY BOARD OF ZONING APPEALS

Recognizing that persons who hold public office have been given a public trust and that the stewardship of such office demands the highest levels of ethical and moral conduct, any person serving on the Dinwiddie County Board of Zoning Appeals should adhere to the following Code of Ethics:

1. Uphold the Constitution, laws and regulations of the United States and of all governments therein and never knowingly be a part to their evasion.
2. Put loyalty to the highest moral principles and to the County as a whole above loyalty to individuals, districts, or particular groups.
3. Give a full measure of effort and service to the position of trust for which stewardship has been granted; giving earnest effort and best thought to the performance of duties.
4. Seek to find and use the most equitable, efficient, effective, and economical means for getting tasks accomplished.
5. Adopt policies and programs that provide equal opportunity to all citizens without regard to national origin, race, color, religion, gender, age, disability, pregnancy, or sexual orientation.
6. Ensure the integrity of the actions of the Board by conducting official and private affairs in a way that clearly conveys that you cannot be improperly influenced in performing your official duties.
7. Make no private promises of any kind binding upon the duties of any office, since a public servant has no private word, which can be binding on public duty.
8. Engage in no business with the County government, or the school system, either directly or indirectly, which is inconsistent with the conscientious performance of Board duties except as may be consistent with the conflict of interest statutes in the Code of Virginia.
9. Never use any information gained confidentially in the performance of Board duties as a means of making private profit.
10. Expose, through appropriate means and channels, corruption, misconduct, or neglect of duty whenever discovered.
11. Adhere to the principle that the public's business should be conducted in the public view by observing and following the letter and spirit of the Freedom of Information Act using closed sessions only to deal with sensitive personnel, legal or contractual matters as provided by the Code of Virginia.
12. Avoid using the position of public trust to gain access to the media for the purposes of criticizing colleagues or citizens, impugning their integrity or vilifying their personal beliefs.
13. Make sure, when responding to the media, that a clear distinction is made between personal opinion or belief and a decision made by the Board.
14. Review orally and in public session, at the annual organizational meeting, each of these principles.
15. Pledge to honor and uphold these principles, ever conscious that public office is a public trust.