

CHAPTER 1 ZONING ADMINISTRATION
ARTICLE 1307 – BOARD OF ZONING APPEALS

1307.01 Board of Zoning Appeals created.

There is hereby created a board of zoning appeals to hear appeals on zoning issues to be known as the City of Fairmont Board of Zoning Appeals

1307.02 Membership; eligibility requirements.

(a) The City of Fairmont Board of Zoning Appeals shall have five (5) members to be appointed by the governing body.

(b) The members of the City of Fairmont of Board of Zoning Appeals shall be:

(1) Residents of the City of Fairmont for at least three years preceding his or her appointment.

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

(3) Cannot hold any other elective or appointive office in the City of Fairmont.

(c) 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 the first day of January of the first, second and third years, respectively, following their appointment. Thereafter, members shall serve three year terms. If a vacancy occurs, the governing body shall appoint a member for the unexpired term.

(d) The governing body may appoint up to three additional members to serve as alternate members of the City of Fairmont 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 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 City of Fairmont Board of Zoning Appeals shall establish written rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of regular board member.

(g) The members and alternate members of the City of Fairmont Board of Zoning Appeals shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

1307.03 Meeting of the Board of Zoning Appeals.

(a) The City of Fairmont Board of Zoning Appeals shall meet at least quarterly 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.

1307.04 Quorum.

The City of Fairmont Board of Zoning Appeals must have a quorum to conduct a meeting. A majority of the members of the Board shall constitute a quorum. No action of the Board is official unless it is authorized by a majority of the members present at a regular or properly called special meeting.

1307.05 Officers.

At its first regular meeting of each year, the City of Fairmont 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.

1307.06 Powers and duties of the City of Fairmont Board of Zoning Appeals.

The City of Fairmont Board of Zoning Appeals shall have the following powers and duties:

- (1) Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this 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 only as provided in this ordinance, a variance to the zoning ordinance.
- (5) Reverse, affirm or modify the order, requirement, decision or determination appealed from so long as the action of the Board taken on appeal is consistent with the rules, regulations and requirements of this ordinance;
- (6) Authorize, upon appeal the substitution of one legal non-confirming use existing at the effective date of this ordinance for another similar non-conforming use, provided however that no substitution shall be made in any General Residential District, however, in any other residential district no substitution shall be permitted to any use prohibited in a Neighborhood Mixed Use District or lesser restrictive district and in any commercial district no substitution shall be permitted to any use prohibited in an Industrial District. Provided further that upon substitution all applicable Landscaping and Architectural Requirements of this Code shall be satisfied.
- (7) Promulgate and adopt written rules and regulations concerning:
 - (a) The filing of appeals, including the process and forms for appeal;
 - (b) Application 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.
- (8) Keep minutes of its proceedings;
- (9) Keep an accurate and complete audit record of all its 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;
- (10) Record the vote on all actions taken;

(11) Take responsibility for the custody and preservation of all papers and documents of the Board. All minutes and record shall be filed in the office the Board and shall be public records.

(12) With consent of 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

(13) Supervise the fiscal affairs and responsibilities of the Board.

1307.07 Variance.

(a) A variance is a deviation from the minimum standards of the rules, regulations and requirements of the zoning ordinance. A variance shall not include, involve or permit a land use that is otherwise prohibited in the zoning district nor shall it include, involve or permit the changing of the zoning classifications of a parcel of land.

(b) The City of Fairmont Board of Zoning Appeals may grant a variance to the zoning ordinance if it finds that the variance:

(1) Will not adversely effect the public health, safety or welfare or the rights of adjacent property owners, residents or the neighborhood;

(2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;

(3) Would eliminate an unnecessary hardship and permit a reasonable use of the land;

(4) Will allow the intent of the zoning ordinance to be observed and substantial justice done; and

(5) Is the minimum variance that will accomplish this purpose

1307.08 Appeal to Board of Zoning Appeals

(a) An appeal from any order, requirement, decision or determination made by the administrative official charged with the enforcement of this zoning ordinance shall be filed with the City of Fairmont Board of Zoning Appeals.

(b) The appeals shall:

(1) Specify the grounds for appeal;

(2) Be filed within thirty (30) days of the date of the original order, requirement, decision or determination made by the administrative official, which time period shall be jurisdictional in nature;

(3) Be on the form prescribed by the Board.

(c) Upon request of the City of Fairmont Board of Zoning Appeals, the administrative official shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.

1307.09 Notice and hearing of appeal.

(a) Within ten days of receipt of the appeal by the City of Fairmont 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 shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.

(c) In addition to any other filing fee which may be required, prior to the hearing, the party taking the appeal shall reimburse the Board for the actual 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 shall be in writing and state specific 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 attorney's fees required to permit the person appealing the board's decision to return the matter to the circuit court for the completion of the appeal.

1307. 10 Stays; exception.

When an appeal has been filed with the City of Fairmont Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, unless the official from the appeal was taken certifies in writing to the Board that a stay would cause imminent peril to life or property. If the written certification is filed, proceedings or work on the premises shall not be stayed. Nothing in this section prevents obtaining an injunction.

1307.11 Petition for writ of certiorari.

The final decision of the City of Fairmont Board of Zoning Appeals shall be subject to review by the Circuit Court of Marion County, West Virginia, by certiorari, as provided by West Virginia Code §8A-9-1 et seq.