
PART THIRTEEN — PROJECT AND ZONING CODE

ARTICLE 1328 Appeals

- 1328.01 Appeal to Board of Zoning Appeals.**
- 1328.02 Notice and hearing of appeal.**
- 1328.03 Stays; exception.**
- 1328.04 Appeal to the Circuit Court of Jefferson County.**

CROSS REFERENCES

Generally—see WV Code 8A-7-1 *et seq.*
Appeal process—see WV Code 8A-8-10 *et seq.*
Board of Zoning Appeals established—see Ord. Art. 134

1328.01 Appeal to Board of Zoning Appeals.

- (a) An appeal from any order, requirement, decision or determination made by the Planning Commission or an administrative official charged with the enforcement of a zoning ordinance or rule and regulation adopted under this 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 30 days of the written order, requirement, decision or determination made by the Planning Commission or an administrative official charged with the enforcement of a zoning ordinance ; and
 - (3) Be on a form prescribed by the Board of Zoning Appeals.
- (c) Upon request of the Board of Zoning Appeals, the Planning Commission or administrative official shall transmit all documents, plans and papers constituting the record of the action from which the appeal originated. ^[1328.01]

1328.02 Notice and hearing of appeal.

Notice and hearing timelines for an appeal shall conform to the following:

- (a) Within ten days of receipt of the appeal, the Board of Zoning Appeals shall set a time for a hearing of the appeal and give notice. A hearing must be held within 45 days of receipt of the appeal.
- (b) At least 15 days before 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 59 of West Virginia Code and written notice shall be given to the interested parties.
- (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 of Zoning Appeals must be in writing and state findings of

HISTORY:

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) superseded all previous zoning and related ordinances to bring the Town into compliance with current WV Code. Ord. 2015-02 was further refined by Ord. 2015-07 (passed 07-13-2015) and 2017-01 (passed 02-25-2017). This article was previously codified as 1321. Recodified as Article 1328 by Town Council action on 02-09-2015.

FOOTNOTES:

1328.01 Ord. 2021-05 (passed 11-18-2021) amended this section to bring it into compliance with WV Code § 8A-8-10.

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fact and conclusions of law on which the board based its decision. If the Board of Zoning Appeals fails to provide findings of fact and conclusions of law adequate for its decision by the circuit court and, as a result of the failure, the Circuit Court of Jefferson County returns an appealed matter to the Board of Zoning Appeals and dismisses jurisdiction over an applicant's appeal without deciding the matter, whether the Circuit Court of Jefferson County returns the matter with or without restrictions, the Board of Zoning Appeals shall pay any additional costs for court filing fees, service of process and reasonable attorneys' fees required to permit the person appealing the Board of Zoning Appeals' decision to return the matter to the Circuit Court of Jefferson County for completion of the appeal.

- (f) The written decision by the Board of Zoning Appeals shall be rendered within 30 days after the hearing. If the Board of Zoning Appeals fails to render a written decision within 30 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*.

1328.03 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 below.
- (b) A stay may not be had:
 - (1) If the decision-making body or official 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 proceedings, including, but not limited to, submissions to and reviews by any official or any decision-making 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 the above, then proceedings or work on the Site shall not be stayed.
- (d) Nothing in this Article prevents a party from obtaining a restraining order.

1328.04 Appeal to Circuit Court of Jefferson County.

- (a) Every decision or order of the Planning Commission or Board of Zoning Appeals is subject to review by certiorari.
- (b) Within thirty days after a decision or order by the Planning Commission or Board of Zoning Appeals, any aggrieved person may present to the Circuit Court of Jefferson County, a duly verified petition for a writ of certiorari setting forth:
 - (1) That the decision or order by the Planning Commission or Board of Zoning Appeals is illegal in whole or in part; and
 - (2) Specify the grounds of the alleged illegality.
- (c) Upon filing a petition for a writ of certiorari with the Clerk of the Circuit Court of Jefferson County, the petitioner shall cause a notice to be issued and served by the sheriff of Jefferson County upon:
 - (1) The adverse party, as shown by the record of the appeal in the office of the Planning Commission or Board of Zoning Appeals; and
 - (2) The chairperson or secretary of the Planning Commission or Board of Zoning Appeals, as applicable.
- (d) The adverse party is any property owner appearing at the hearing before the Planning Commission or Board of Zoning Appeals in opposition to the petitioner.
- (e) If the record shows a written document containing the names of more than three property owners opposing the request of the petitioner, then the petitioner is required

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to cause notice to be issued and served upon the three property owners whose names first appear upon the written document. Notice to the other parties named in the written document is not required.

- (f) The notice shall:
 - (1) State that a petition for a writ of certiorari has been filed in the Circuit Court of Jefferson County asking for a review of the decision or order of the Planning Commission or Board of Zoning Appeals;
 - (2) Designate the affected premises; and
 - (3) Specify the date of the decision or order that is the subject of the petition for a writ of certiorari.
- (g) Service of the notice by the sheriff on the chairperson or secretary of the Planning Commission or Board of Zoning Appeals shall constitute notice there to the Planning Commission or Board of Zoning Appeals. Service of the notice by the sheriff to the Town and to any official or board of the Town charged with the enforcement of this Zoning Ordinance shall constitute notice to the Town. No further summons or notice with reference to the filing of such petition shall be necessary.
- (h) As an alternative to the requirements for notice prescribed in the preceding subsections of Section 1328.04 of this Article, notice is sufficient upon a showing that the chairperson or secretary of the Planning Commission or Board of Zoning Appeals and all adjacent landowners to the affected premises have received personal service of process of the notice containing information as required by this Article. As to all other interested parties, notice shall be sufficient if notice containing information as required in Section 1328.04(f) of this Article is published as a Class III-0 legal advertisement in Jefferson County.
- (i) Within 20 days after a petition for a writ of certiorari is presented, the Planning Commission, or Board of Zoning Appeals must show the Circuit Court of Jefferson County cause why a writ of certiorari should not be issued.
- (j) If the Planning Commission or Board of Zoning Appeals fails to show the court or judge that a writ should not be issued, then the Circuit Court of Jefferson County may allow a writ of certiorari directed to the Planning Commission or Board of Zoning Appeals.
- (k) The writ shall prescribe the time in which a return shall be made to it. This time shall be not less than ten days from the date of issuance of the writ and may be extended by the Circuit Court of Jefferson County.
- (l) The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review.
- (m) The Circuit Court of Jefferson County may, upon application and on notice to all parties to the decision or order and on due cause shown, grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the Circuit Court of Jefferson County.
- (n) The staying order may be issued by the Circuit Court of Jefferson County without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.
- (o) The return to the writ of certiorari by the Planning Commission or Board of Zoning Appeals must concisely set forth the pertinent facts and data and present material to show the grounds of the decision or order appealed. The return must be verified by the secretary of the Planning Commission or Board of Zoning Appeals.
- (p) The Planning Commission or Board of Zoning Appeals does not have to return the original papers acted upon by it. It shall be sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.
- (q) The Circuit Court of Jefferson County may consider and determine the sufficiency of

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the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the Planning Commission or Board of Zoning Appeals on the facts set out in the petition and return to the writ of certiorari.

- (r) If it appears to the Circuit Court of Jefferson County that testimony is necessary for the proper disposition of the matter, the Circuit Court of Jefferson County may take evidence to supplement the evidence and facts disclosed by the petition and return to the writ of certiorari, but no such review shall be by trial de novo.
- (s) In passing upon the legality of the decision or order of the Planning Commission or Board of Zoning Appeals, the Circuit Court of Jefferson County may reverse, affirm or modify, in whole or in part, the decision or order.