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## PART ONE — ADMINISTRATIVE CODE

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### ARTICLE 134 Board of Zoning Appeals

- 134.01 Establishment; objectives.**
- 134.02 Membership and term of service; removal from office.**
- 134.03 Alternate members.**
- 134.04 Meetings.**
- 134.05 Quorum.**
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- 134.08 Powers, duties and authority.**

#### CROSS REFERENCES

Board of Zoning Appeals—see WV Code 8A-8-1 *et seq.*  
Appeals to the Board of Zoning Appeals—see Ord. Art. 1328

#### **134.01 Establishment; objectives.**

For the purpose of hearing and determining appeals and reviewing any order, requirements, decisions or determination made by an administrative official or board charged with the enforcement of any Ordinance or Rule and Regulation regarding zoning within the incorporated areas of the Town, a Board of Zoning Appeals is hereby created, consisting of 5 members appointed by the Town Council. <sup>[134.01]</sup>

#### **134.02 Membership and term of service; removal from office.**

- (a) The members of the Board shall be residents of the Town for at least three years preceding his or her appointment; cannot be a member of the Planning Commission; cannot hold any other elective or appointive office in the Town government. Members of the Board and alternates shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.
- (b) Upon creation of the Board, its members shall be appointed for the following terms: two for a term of one year, two for a term of 2 years, and one for a term of 3 years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, as their terms expire, each new appointment shall be a term of 3 years.
- (c) If a vacancy occurs, by resignation or otherwise among the members of the board, the Town Council shall appoint a member for the unexpired term.
- (d) Members of the Board of Zoning Appeals may be removed in accordance with the provisions of Ordinance Article 130. <sup>[134.02]</sup>

#### **134.03 Alternate members.**

- (a) The Town Council may appoint up to three additional members to serve as alternate members of the Board of Zoning Appeals.
- (b) The alternate members must meet the same eligibility requirements as regular

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#### **HISTORY:**

Ord. 2015-02 (passed 01-29-2015, effective 02-16-2015) created this article, which was recodified as Article 134 by Town Council action on 02-09-2015.

#### **FOOTNOTES:**

- 134.01 Ord. 2021-04 (passed 11-18-2021) amended this section to bring it into compliance with WV Code § 8A-8-1.
- 134.02 Ord. 2015-09 (passed 11-09-2015) added subsection (d), concerning removal from office.

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members and will serve a three-year term, although the Town Council may appoint alternate members on a staggered term schedule.

- (c) An alternate member shall serve on the board when one of the regular members is unable to serve and shall serve until a final determination is made in the matter to which the alternate member was initially called to serve.
- (d) An alternate member shall have the same powers and duties of a regular board member.
- (e) The Town Council may remove an alternate member of the Board to meet the requirements of Article 134.01(a) above or when the scope of Board responsibilities changes substantially or for cause such as inactivity, neglect of duty, or malfeasance. The reason(s) for removal must be provided to the person being removed in a written statement of the reason(s) for removal and the person must be given an opportunity to be heard on the matter.

### **134.04 Meetings.**

- (a) The Board of Zoning Appeals shall meet 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.

### **134.05 Quorum.**

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

### **134.06 Office and expenses.**

The Town Council shall provide the Board of Zoning Appeals with:

- (a) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and
- (b) Appropriate money to defray the reasonable expenses of the board.

### **134.07 Election of officers.**

At its first regular meeting each calendar year, the 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.

### **134.08 Powers, duties and authority.**

The Board of Zoning Appeals has the following powers and duties:

- (a) Hear, review and determine appeals from an 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 pursuant thereto;
- (b) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;
- (c) Hear and decide conditional uses of the zoning ordinance upon which the Board is

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- required to act under the zoning ordinance;
- (d) Authorize, upon appeal in specific cases, a variance to the zoning ordinance;
- (e) Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or the Planning Commission from which the appeal was taken;
- (f) Adopt rules and regulations concerning:
  - (1) The filing of appeals, including the process and forms for the appeal;
  - (2) Applications for variances and conditional uses;
  - (3) The giving of notice; and
  - (4) The conduct of hearings necessary to carry out the Board's duties under the terms of this article.
- (g) Keep minutes of its proceedings;
- (h) Keep an accurate and complete audio record of all the Board's proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within 24 hours of demand, for three years;
- (i) Record the vote on all actions taken;
- (j) Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the Board and shall be public records;
- (k) With consent from the Town Council, hire employees and consultants necessary to carry out the duties and responsibilities of the Board provided that the Town Council sets the compensation; and
- (l) Supervise the fiscal affairs and responsibilities of the board. <sup>[134.08]</sup>

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### FOOTNOTES:

134.08 Ord. 2021-04 (passed 11-18-2021) amended this section to bring it into compliance with WV Code § 8A-8-9.

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