

# Appeal

# Process Guide



## **WHAT IS AN APPEAL?**

An *appeal* is a request to overturn an official determination made in the administration or enforcement of the Zoning Ordinance. The appeal must be filed within thirty (30) days after the determination being appealed is made (written notice of a zoning violation or a written order of the Zoning Administrator).

## **HOW IS THE DECISION MADE?**

Only the Roanoke City Board of Zoning Appeals (BZA), a quasi-judicial seven (7) member City Council appointed body, has the authority to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of Chapter 36.2, Zoning, of the Code of the City of Roanoke (1979), as amended. The BZA's decision on an appeal is limited to the issue of whether the Zoning Administrator correctly interpreted the Zoning Ordinance. The BZA may reverse or affirm, wholly or in part, or may modify, the decision of the Zoning Administrator.

The power to interpret the Zoning Ordinance has its limitations. Although the BZA and the Zoning Administrator must interpret the Zoning Ordinance to execute its responsibilities, they do not have the authority to rule on the validity of a zoning regulation. Declaring a Zoning Ordinance or regulation invalid is within the sole province of the courts. In addition, the BZA does not have the power to rezone property or to amend or repeal portions of a Zoning Ordinance.

## **WHAT IF THE APPEAL IS IN RESPONSE TO A ZONING VIOLATION?**

If an appeal is in response to a cited zoning violation, all proceedings for the zoning violation will be stayed, or postponed, from the date of filing until the BZA has taken action unless imminent peril to life or property could result from the violation not being promptly addressed. If the Zoning Administrator certifies that a zoning violation will not be stayed for the aforementioned reasons, the appellant may apply to the BZA or the Circuit Court for a restraining order.

## **HOW MUCH WILL IT COST?**

The application fee is \$250.00 which covers researching, reviewing, and processing the application. In addition, State Code requires that the City advertise the request two times in the local newspaper. The applicant is also responsible for paying legal advertisement fees of \$250.00. If an application is withdrawn and the legal advertisement has already run or it is too late to pull, the applicant remains responsible for the cost.

## **HOW LONG DOES IT TAKE?**

The process takes a minimum of one month once an application is filed. See schedule on page 2 for filing deadlines and hearing dates. The appeal will be placed on the agenda for the BZA meeting corresponding to the application deadline date.

## **WHAT IS THE PROCESS?**

All appeals follow the same general process as follows:

### **(1) PRE-FILING CONFERENCE**

Applicants should schedule a pre-filing conference with staff to determine the necessity, grounds, completeness, and accuracy of the appeal. To schedule a pre-filing conference, please call (540) 853-1730.

Applications must be filed by 4:00 p.m. on the 2nd Thursday of the month in order to be heard at the following month's BZA public hearing. The BZA meets on the 2nd Wednesday of each month at 1:00 p.m., in the Council Chambers on the 4th floor of the Noel C. Taylor Municipal Building.

<b>Filing Deadlines</b>	
<b>Filing Deadline</b>	<b>Board of Zoning Appeal Public Hearing</b>
December 14, 2017	January 10, 2018
January 11, 2018	February 14, 2018
February 8, 2018	March 14, 2018
March 8, 2018	April 11, 2018
April 12, 2018	May 9, 2018
May 10, 2018	June 13, 2018
June 14, 2018	July 11, 2018
July 12, 2018	August 8, 2018
August 9, 2018	September 12, 2018
September 13, 2018	October 10, 2018
October 11, 2018	November 14, 2018
November 8, 2018	December 12, 2018
December 13, 2018	January 9, 2019

\*Late applications will be held until the following filing deadline. Hearing dates will change if the application is postponed or continued by action of the applicant or Board of Zoning Appeals. Applicants are strongly advised to discuss the proposed variance with area neighborhood organizations and/or civic leagues and adjoining property owners prior to filing an application.

**(2) APPLICATION SUBMITTAL**

An appeal, consisting of the following components, must be filed in Room 166 of the Noel C. Taylor Municipal Building, 215 Church Avenue, Roanoke, Virginia 24011. An appeal may be made by any person aggrieved by any determination of the Zoning Administrator or by any officer, department, board, or bureau of the City affected by any decision of the Zoning Administrator. Because an appeal is a legal matter, it is strongly recommended that an attorney represent you and assist with the preparation of the appeal application. Staff will check the application for completeness before accepting it for filing. If there are delinquent real estate taxes owed on the subject property, the application will not be processed until such time as the taxes are paid in full.

**(a) Application Form.** The application must be signed by the applicant(s). If the applicant(s) is not the property owner(s), the property owner(s) must also sign the application form or submit a consent letter at the time of filing. If a legal representative signs for a property owner, a copy of the executed power of attorney is required.

**(b) Written Narrative.** An informative yet concise explanation of the appeal, specifying the grounds for the appeal.

(c) **Exhibits.** Exhibits such as documents, renderings, or plans used to illustrate the grounds for the appeal. If a rendering or plan is larger than 11" x 17", 10 copies must be provided by the applicant.

(d) **Filing Fee.** Check for \$250.00 made payable to *Treasurer, City of Roanoke*.

**(3) POST-FILING PROCESS:**

(a) **Staff Review:** Once an appeal has been filed, it is distributed to the BZA; applicable City staff; affected neighborhood organizations, and adjoining localities (if applicable) for comment. Staff then prepares a report for the BZA's consideration which include pertinent code sections and the basis upon which the appealed decision, determination, or order was made. A copy of the staff report is mailed to the applicant approximately one week prior to the public hearing.

(b) **Public Notice:** Notice of public hearing is published two times as a legal advertisement in the Roanoke Times and mailed to adjoining property owners, including those immediately across the street. The notice includes a general description of the appeal as well as the time and location of the public hearing

(c) **Board of Zoning Appeals Public Hearing:** The BZA's public hearing is held the second Wednesday (see page 2 for specific dates) of each month at 1:00 p.m. on the 4<sup>th</sup> floor of the Noel C. Taylor Municipal Building in Council Chambers. Applicant's are not required to attend the public hearing, but attendance is highly recommended. Anyone from the public may speak or submit written comments in favor of, or in opposition to, any request.

At the BZA's public hearing, the applicant presents the appeal; staff presents its report; the BZA takes public comment; and the BZA discusses the appeal and takes action. The concurring vote of a majority of the membership of the BZA is necessary to reverse the determination of the Zoning Administrator. This means at least four (4) members of the seven (7) member BZA must vote in favor of reversing the determination, even if there are only four (4) members present.

Any decision of the Board is final; however, the applicant or an aggrieved party may file an appeal with the Clerk of the Circuit Court within thirty (30) days after the final decision of the Board. Once the board considers and renders a decision on an application the board cannot reconsider a substantially similar request for one (1) year, except when the decision is the subject of a motion to rehear as set forth in the Board's bylaws.

# Appeal

# Application



Planning Building and Development  
Room 166, Noel C. Taylor Municipal Building  
215 Church Avenue, S.W.  
Roanoke, Virginia 24011  
Phone: (540) 853-1730 Fax: (540) 853-1230

- Application Checklist:
- Application Form
  - Written Narrative
  - Exhibits
  - Filing Fee

Date:

## Property Information:

Street Address:

Official Tax No(s):

Size of Property (acres or square feet):

Base Zoning District:  Overlay Zoning District:

Request is made for an appeal from Section 36.2- , Zoning, Code of the City of Roanoke (1979), as amended.

Briefly describe the appeal, specifying the grounds for the appeal:

## Applicant Information:

Name:  Phone Number:

Address:  E-Mail:

Applicant's Signature: \_\_\_\_\_

## Owner Information:

Name:  Phone Number:

Address:  E-Mail:

Owner's Signature: \_\_\_\_\_

Application accepted as submitted in accordance with the provisions of Chapter 36.2, Zoning, Code of the City of Roanoke (1979), as amended.

Secretary to the Board's Signature

Intake Date

Public Hearing Date