

ARTICLE XIII
Board of Appeals

§ 225-13-1. Creation; organization; rules of conduct.

- A. The board of appeals is hereby created. The Board shall consist of three members. The members shall be appointed by the Mayor and confirmed by the Town Council, and they shall be removable for cause upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Of the members first appointed, one shall be appointed for a term of one year, one for a term of two years and one for a term of three years. Thereafter, members shall be appointed for terms of three years each. The Mayor and Council shall designate one alternate member for the Board, who may be empowered to sit on the Board in the absence of any member of the Board; when the alternate is absent, the Mayor and Council may designate a temporary alternate.
- B. The Board shall adopt rules for the conduct of its business, such rules to be made available to the public. For the conduct of any hearing, a quorum shall be not less than two members, and an affirmative vote of two members of the Board shall be required to overrule any decision, ruling or determination of the official charged with enforcement of this chapter or to approve any special exception or variance. All meetings of the Board shall be open to the public and all voting shall be conducted in public session.

§ 225-13-2. Appeals procedure.

- A. Application for interpretations, conditional uses, and variances may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the Administrator, in accordance with rules adopted by the Board. The application and accompanying maps, plans or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket, advertise a public hearing thereon and give written notice of such hearing to the parties in interest. The Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
- B. An appeal to the Board may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Administrator. Such appeal shall be taken within 30 days after the date of the decision appealed, by filing with the Administrator and with the Board a notice of appeal specifying the grounds thereof. The Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed, unless the Administrator certifies to the Board that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Administrator and on due cause shown.
- C. The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within 60 days following the hearing. Upon the hearing, any party may appear in person or by agent or

by attorney. Public notice of hearing shall consist of publication at least 15 days prior to the hearing in a newspaper of general circulation in the Town, specifying the time, place and nature of the hearing. In addition, the Board shall cause the date, time, place and nature of the hearing to be posted conspicuously on the property in accordance with the rules of the Board. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Administrator.

- D. The Board shall keep minutes of its proceedings and other official actions, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the Board and shall be a public record. The Chairman of the Board or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.

§ 225-13-3. Powers and duties.

The Board of Appeals shall have the following powers:

- A. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this chapter.
- B. To hear and decide on application for conditional uses upon which the Board is specifically authorized to pass under this chapter.
- C. To authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, the enforcement of the provisions of this chapter will result in unwarranted hardship and injustice, but which will most nearly accomplish the purpose and intent of this chapter.
- D. To hear and decide applications for interpretation of the Zoning District Map where there is any uncertainty as to the location of a District boundary.

§ 225-13-4. Variances.

- A. Subject to the provisions of § 225-13-3 of this article, the Board shall have the power to grant variances to provide for adjustments in the relative location of structures of the same or different classifications, to promote the usefulness of these regulations as instruments for fact-finding, interpretation, application and adjustment and to supply the necessary elasticity to their efficient operation, special yard and special pier length adjustments are permitted by the terms of these regulations. Such grant of variance shall comply, as nearly as possible, in every respect with the spirit, intent and purpose of this chapter, it being the purpose of this provision to authorize the granting of variations only for reasons of demonstrable and exceptional hardship, as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice.

(1) Special yard variances.

- (a) A variance in the yard regulations on a lot where, on the adjacent lot, there is a

front, side or rear yard that does not conform to such yard regulations in a way similar to the exception applied for, but not in cases where granting such exception would result in encroachment upon an existing or proposed right-of-way.

- (b) A variance in the depth of a rear yard on a lot, in a block where there are nonconforming rear yards.
 - (c) A variance where there are irregularities in depths of existing front yards on a street frontage on the side of a street between two intersecting streets, so that any one of the existing depths shall, for a structure hereafter constructed or extended, be the required minimum front yard depth.
- (2) Special pier length variances:
- (a) A variance to the projection length of docks, wharves, piers or piles which is limited to 25% of the width of the waterway by Article VI of this chapter.
 - (b) Adjustment may be made only if the strict application of this chapter would produce an unwarranted hardship and such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - (c) The applicant or appellant shall have the burden of proof of going forward with the evidence and the burden of persuasion of all questions of fact which are to be determined by the Board.
 - (d) A variance to the 25% limit of projection length of docks, wharves, piers, or piles shall not exceed an additional 10% of the width of the waterway.
- B. No variance shall be authorized by the Board unless it finds that:
- (1) The strict application of the Ordinance would produce unwarranted hardship.
 - (2) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - (3) The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
- C. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned or the intended use of the property 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.

§ 225-13-5. Conditions attached to approvals.

Where, in these regulations, variances are permitted, provided that they are approved by the Board, and where the Board is authorized to decide appeals and where the Board is authorized to approve variances, such approval, decision or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

- A. No outside signs or advertising structures except professional or directional signs.
- B. The limitation of signs as to size, type, color, location or illumination.
- C. The amount, direction and location of outdoor lighting.
- D. The amount and location of off-street parking and loading space.
- E. The cleaning or painting of structures.
- F. A gable roof or other roof type.
- G. Structure construction and materials.
- H. Structure connected or disconnected with other structures.
- I. Exits or entrances, doors and windows.
- J. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges.
- K. The time of day or night for operating.
- L. A prohibition against storefronts.
- M. A prohibition against structural changes.
- N. The control or elimination of smoke, dust, gas, noise or vibration caused by operations.
- O. Such other conditions as are necessary.

§ 225-13-6. Lapse of variance.

After the Board of Appeals has granted a variance, the variance so granted shall lapse after the expiration of one year, if no substantial construction or change of use has taken place in accordance with the plans for which such variance was granted. The Board may grant a one-year extension for good cause shown if the application for extension is filed during the period in which the variance is valid. A fee shall be charged for such hearing.

§ 225-13-7. Amendments to variance.

The procedure for amendment of a variance already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.

§ 225-13-8. Appeals to courts.

Appeals to courts from a decision of the Board may be filed in the manner prescribed by law.

§ 225-13-9. Variance from the Critical Area Overlay District provisions.

- A. Authority. The Town of Rock Hall Board of Appeals is empowered to grant variances to the provisions of the Critical Area Overlay Zone where owing to special features of a site or other circumstances, a literal enforcement of provisions of the Critical Area Natural Resource Ordinance would result in unwarranted hardship.

B. General powers.

- (1) Due to special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area Overlay District ("O") would result in unwarranted hardship to a property owner, the Board of Appeals may grant a variance from the provisions of the Critical Area Overlay District. Variance requests in the Critical Area Overlay District shall not be granted unless the decision is based on the following criteria in addition to any other requirements contained in the Article:
 - (a) That special conditions or circumstances exist that are unique to the subject property or structure and that strict enforcement of the provisions within the Critical Area Overlay District would result in unwarranted hardship which is not generally shared by owner of property in the same management areas (i.e., IDA, LDA, RCA) of the Critical Area.
 - (b) That strict enforcement of the provisions within the Critical Area District would deprive the property owner of rights commonly shared by other owners of property in the same management area within the Critical Area District.
 - (c) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District.
 - (d) That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or nonconforming which are related to adjacent parcels.
 - (e) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District, and that the granting of the variance will be consistent with the spirit and intent of the Town's Critical Area Program and associated ordinances as well as Subtitle 18 of the Natural Resources Article and COMAR 14.15.
 - (f) The greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.
- (2) A variance will not be granted by the Board of Appeals unless and until:
 - (a) A completed application for a variance is submitted which demonstrates the applicability of the above criteria. In addition, requests for variance in the Critical Area Overlay District ("O") shall not be heard unless the state's Critical Area Commission has received a copy of the variance request at least two weeks prior to the scheduled public hearing.
 - (b) The Board of Appeals shall find that the reason set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land or structures. In making this determination for variance requests in the Critical Area Overlay District ("O"), the Board of Appeals shall consider the following as tantamount to a minimum

variance:

- [1] That the granting of a variance to the Buffer requirement results in the new structures or impervious surfaces being located as far back from mean high water, tidal wetlands, or tributary streams in the Critical Area as is feasible; and
 - [2] That the applicant takes steps to offset impacts consistent with the provisions of Article V, § 225-5-11J, which may include:
 - [a] Reforestation on the site to offset disturbed forested or developed woodlands on at least an equal area basis;
 - [b] Afforestation of areas of the site so that at least 15% of the gross site is forested; and
 - [c] Implementation of offset measures which relate to Habitat Protection Areas as delineated in the Town of Rock Hall Critical Area Program, and recommended by state agencies, are included as conditions of approval.
 - [3] The Board of Appeals shall further find that the granting of the variance will be in harmony with the general purpose and intent of this chapter, shall not result in a use not permitted in the zone in which the property subject to variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
 - [4] For variances in the Critical Area Overlay District ("O"), the Board of Appeals shall find that the granting of the variance will be in harmony with the general purpose and intent of this chapter and the Town of Rock Hall Critical Area Program, shall not result in a use not permitted in the management area (i.e., IDA, LDA, RCA) or an increase in the number of permitted dwelling units (i.e., density limits) in which the property subject to the variance is located, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
 - [5] In addition and to the extent possible based on best available information, all property owners immediately contiguous to the application shall be notified by certified mail and furnished a copy of the said application.
- (3) In granting the variance, the Board of Appeals may prescribe such conditions and safeguards as it deems appropriate which comply with the intent of this chapter and the Town of Rock Hall Critical Area Program. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this chapter.