

**ORDINANCE NO. 7648-20**

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 45, ZONING ORDINANCE, OF THE CODE OF THE CITY OF NEWPORT NEWS, VIRGINIA, ARTICLE XXXII., BOARD OF ZONING APPEALS, SECTION 45-3207, APPEALS TO COURT OF RECORD.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That Chapter 45, Zoning Ordinance, of the Code of the City of Newport News, Virginia, Article XXXII., Board of Zoning Appeals, Section 45-3207, Appeals to court of record, be, and the same hereby is, amended and reordained as follows:

**CHAPTER 45**

**ZONING ORDINANCE**

**ARTICLE XXXII. BOARD OF ZONING APPEALS**

**Sec. 45-3207. Appeals to court of record.**

(a) Any person or persons jointly or severally aggrieved by any decision of the board or any taxpayer or any administrative official, department, board or bureau of the city, may file with the clerk of the circuit court of the city a petition specifying the grounds upon which aggrieved within thirty (30) days after the final decision of the board.

(b) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board and shall prescribe therein the time within which a return must be made and served upon the secretary of the board of zoning appeals or, if no secretary exists, the chair of the board of zoning appeals, which shall not be less than ten (10) days and may be extended by the court. Once the writ of certiorari is served, the board of zoning appeals shall have 21 days or as ordered by the court to respond. The allowance of the writ shall not stay proceedings from the decision appealed. The court may grant a restraining order subject to proper application, notice to the board, all based on due cause.

(c) The board shall not be required to return the original papers acted upon by it but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(d) If, upon hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(e) In the case of an appeal from the board to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, the findings and conclusions of the board on questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the board, that the board erred in its decision. Any party may introduce evidence in the proceedings in the court. The court shall hear any argument on questions of law *de novo*.

(f) In the case of an appeal by a person of any decision of the board that denied or granted an application for a variance, exception to the Chesapeake Bay preservation requirements, or application for a special exception, the decision of the board shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the board applied erroneous principles of law, or where the discretion of the board is involved, the decision of the board was plainly wrong and in violation of the purpose and intent of the zoning ordinance, or Chesapeake Bay preservation ordinance, where applicable.

(g) Costs shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of certiorari. If the petition is withdrawn subsequent to the filing of the return, the board may request that the court hear the matter on the question of whether the appeal was frivolous.

2. That this ordinance shall be in effect on and after the date of its adoption, September 8, 2020.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 8, 2020

Mabel Washington Jenkins, MMC  
City Clerk

McKinley L. Price, DDS  
Mayor

A true copy, teste:

City Clerk