

ARTICLE XV. - BOARD OF APPEALS

Footnotes:

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Cross reference— *Authorities, boards and commissions, § 2-91 et seq.*

Sec. 74-451. - Establishment; jurisdiction.

A board of appeals consisting of three members who shall be residents of the county is hereby established and it shall be known as the Banks County Planning Board of Appeals ("board of appeals"). The board of appeals shall be appointed by the board of commissioners for three-year terms or until their successors are appointed; and having been appointed, shall have full and complete jurisdiction as provided by law. Each member of the board of appeals in office shall continue in office for the remainder of his term. In all actions or decisions of the board of appeals, at least two members must concur.

(Res. No. 2001-08, § 1(1601), 3-13-2001)

Sec. 74-452. - Meetings; officer to administer oaths and compel attendance of witnesses; minutes required and filed as public record.

Meetings of the board of appeals shall be held at the call of the chairman, and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. The board of appeals shall keep minutes of its proceedings, 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 immediately filed in the office of the board of appeals and shall be a public record. The board of appeals may appoint a secretary who shall maintain all records and perform all services required by the board to fulfill its responsibilities.

(Res. No. 2001-08, § 1(1602), 3-13-2001)

Sec. 74-453. - Appeal—Procedure.

Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the planning commission and/or the county planning department. Such appeals shall be taken within 30 days of the date of the decision being appealed, by notifying the person in charge of the county planning department. The notice of the appeal shall specify the grounds for the appeal. All papers constituting the record upon which the action appealed from was taken shall be transmitted to the board of appeals members.

(Res. No. 2001-08, § 1(1603), 3-13-2001)

Sec. 74-454. - Same—Notice of hearing.

The board of appeals shall fix a reasonable time for the hearing of the appeal or other matters referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the appeal within a reasonable time. Upon a hearing any party may appear in person or by agent or by attorney.

(Res. No. 2001-08, § 1(1604), 3-13-2001)

Sec. 74-455. - Same—Stay of proceedings: exception.

Any appeal stays all legal proceedings in furtherance of the action appealed from, unless an officer of the county planning department certifies to the board of appeals, after the notice of the appeal shall have been filed, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a competent court: on application, on notice to the county planning department, and on due cause shown.

(Res. No. 2001-08, § 1(1605), 3-13-2001)

Sec. 74-456. - Powers enumerated.

The board of appeals shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official and/or the planning commission in the enforcement of this chapter.
- (2) To hear and decide special exceptions to the terms of this chapter upon which such board is required to pass under this chapter.
- (3) To authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to the public interest where owing to special conditions, a literal enforcement of the provisions of the chapter will in an individual case result in practical difficulty or unnecessary hardship, to that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of practical difficulty or unnecessary hardship upon a finding by the board of appeals that:
 - a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;
 - b. The application of the standards to this particular piece of property would create practical difficulty or unnecessary hardship;
 - c. Such conditions are peculiar to the particular piece of property involved; and

d. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this chapter.

(4) In order to make a variance permissible, certain conditions shall be shown:

- a. There must be a proven hardship by showing beyond a doubt the inability to make a reasonable use of the land if the development regulations were applied literally.
- b. The hardship cannot be self-created; e.g., it cannot be claimed in terms of prospective sales, loss of time, economic losses due to market conditions, financial losses or gains, etc.
- c. No variance shall be granted which would result in an increase in public cost for maintenance or damages in the foreseeable future.

(Res. No. 2001-08, § 1(1606), 3-13-2001)

Sec. 74-457. - Use variance.

No variance may be granted for a use of land or building or structure that is prohibited by this chapter or other resolutions of this county.

(Res. No. 2001-08, § 1(1607), 3-13-2001)

Sec. 74-458. - Action on appeal.

In exercising its powers, the board of appeals may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirements, decisions or determination, and to that end shall have all the powers of the officer and/or the planning commission from whom the appeal is taken and may issue or direct the approval of a subdivision or other land development proposal but only in accordance with this chapter.

(Res. No. 2001-08, § 1(1608), 3-13-2001)

Secs. 74-459—74-480. - Reserved.