

PRINCE WILLIAM COUNTY BOARD OF ZONING APPEALS

BYLAWS<sup>1</sup>

SEPTEMBER 18, 2023

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Article I - Name

The official name of this organization is the Prince William County Board of Zoning Appeals.<sup>2</sup> It may be shortened to Board of Zoning Appeals (BZA), PWCBZA, or Board when context permits no ambiguity.

Article II - Purpose

Section (§)

1. These bylaws are adopted to facilitate the conduct of meetings, continuity of Board protocols, and any other action taken by the Prince William County Board of Zoning Appeals as authorized by law.<sup>3</sup>
2. These bylaws shall be construed consistent with the Code of Virginia, ordinances of Prince William County, laws of the Commonwealth of Virginia and the United States, and formatted per Robert's Rules of Order Newly Revised (RONR).<sup>4</sup>

<sup>1</sup> Code of Virginia, § 15.2-2308(C); Prince William County Code, § 32-900.00(2)(b)

<sup>2</sup> Prince William County Code, § 32-900.00

<sup>3</sup> Code of Virginia, § 15.2-2308(c); Prince William County Code, § 32-900.00(2)(a).

<sup>4</sup> Henry M. Robert III, Daniel H. Honemann, and Timothy J. Balch. *Robert's Rules of Order Newly Revised, 11<sup>th</sup> Edition* (hereafter RONR), copyright most recently 2011, New York/Public Affairs, Hatchett Book Group

3. If any word, clause, sentence, section, subsection or other part or parts of these bylaws shall be held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining parts of these bylaws, nor shall it affect any application of these bylaws that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of these bylaws are hereby declared to be severable.
4. The BZA is a quasi-judicial body established per the Code of Virginia and Prince William County Code.<sup>5</sup> Stipulated powers and duties include:
  - A. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of §§ 15.2-2280 et seq. or of any ordinance adopted pursuant thereto.<sup>6</sup>
  - B. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in §§ 15.2-2201; 15.2-2309; and the criteria set out in this section.<sup>7</sup>
  - C. To hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by § 15.2-2204.<sup>8</sup>
  - D. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary.<sup>9</sup>
5. “Sections” (§) comprise whole-numbered paragraphs throughout these bylaws. Thus, for example, Article III, § 1, below, pertains to “Advice and Ex Parte Communication.”

*Next page: Article III -- Definitions*

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<sup>5</sup> Code of Virginia, § 15.2-2308; Prince William County Code, §§ 32-900.00

<sup>6</sup> Code of Virginia, § 15.2-2309; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

<sup>7</sup> Code of Virginia, § 15.2-2309; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

<sup>8</sup> Code of Virginia, § 15.2-2309; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

<sup>9</sup> Code of Virginia, § 15.2-2309; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

## A r t i c l e I I I - D e f i n i t i o n s

### Section (§)

1. **Advice and Ex Parte Communication** (contact):<sup>10</sup>
  - A. The non-legal staff of the governing body may have ex parte communications with a Member of the BZA prior to the hearing but may not discuss the facts or law relating to a particular case.<sup>11</sup> The applicant, landowner or his agent or attorney may have ex parte communications with a Member or Members of the BZA prior to the hearing but may not discuss the facts or law relative to a particular case.<sup>12</sup> If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.
  - B. Any materials relating to a particular case, including a staff recommendation or report furnished to a Member of the BZA, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a Member of the BZA. If the applicant, appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia requests additional documents or materials be provided by the locality other than those materials provided to the BZA, such request shall be made pursuant to § 2.2-3704 of the Code of Virginia. Any such materials furnished to a Member of the BZA shall also be made available for public inspection pursuant to subsection F of § 2.2-3707 of the Code of Virginia.
  - C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the BZA, or who is appointed by special law or pursuant to § 15.2-1542 of the Code of Virginia. Nothing in this section shall preclude the BZA from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.
2. **Aggrieved Party:** A person or entity authorized under the Zoning Ordinance to seek relief from the BZA.<sup>13</sup> Aggrieved parties include appellants and applicants for a variance.

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<sup>10</sup> Code of Virginia, § 15.2-2301.1

<sup>11</sup> Code of Virginia, § 15.2-2308.1(A)

<sup>12</sup> Code of Virginia, § 15.2-2308.1(A)

<sup>13</sup> Code of Virginia, §§ 15.2-2309, 15.2-2310, 15.2-2311, 15.2-2312; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

3. **Appellant:** A person or entity authorized under the Zoning Ordinance to take an appeal to the BZA.<sup>14</sup>
4. **Applicant:** A person or entity authorized under the Zoning Ordinance to apply for relief to the BZA.<sup>15</sup>
5. **BZA:** Prince William County Board of Zoning Appeals.
6. **Case:** An application for variance, an appeal or any other proceeding that comes before the BZA.
7. **CAO:** Office of the County Attorney
8. **Case Brief:** This is a summary of key points during the hearing.
9. **Case Resolution:** This details the precise decisions and actions ordered by the Board.
10. **Case leader:** If the Chair decides to appoint a case leader, the purpose will be to facilitate Member development and greater depth to adjudicate cases; duties are outlined in Article IV
11. **Circuit Court:** The 31<sup>st</sup> Judicial Court of Virginia for Prince William and the Cities of Manassas and Manassas Park; also known as the Prince William Circuit Court.
12. **County:** Prince William County, including where appropriate an official acting on behalf of Prince William County. For BZA-related matters, county refers to the “locality” governed by the county’s zoning ordinance; and excludes other "localities" that have established their own zoning ordinances and boards of zoning appeals, including Dumfries, Haymarket, Manassas, Manassas Park, Occoquan, and Quantico.<sup>16</sup>
13. **Date of Decision:** The date of decision is the date when the Board decides the case as documented in the appropriate resolution, which comprises part of the public record. The Recording Secretary shall certify all transcribed resolutions.
14. **Determination:** A “determination” pertains – and in these bylaws may be considered essentially synonymous – to any “order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article [§15.2-2309] or of any ordinance adopted pursuant thereto.”<sup>17</sup>

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<sup>14</sup> Code of Virginia, §§ 15.2-2309, 15.2-2310, 15.2-2311, 15.2-2312; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

<sup>15</sup> Code of Virginia, §§ 15.2-2309, 15.2-2310, 15.2-2311, 15.2-2312; Prince William County Code, §§ 32-900.10; 32-900-11; 32-900.12; 32-900-20

<sup>16</sup> Code of Virginia, §§ 15.2-102, 15.2-2308

<sup>17</sup> Code of Virginia, § 15.2-2309. Powers and duties of boards of zoning appeals

15. **Majority:** "Majority of the BZA" is at least four (4) **Members**.<sup>18</sup>

16. **Members:**

- A. The Board is a quasi-judicial body that comprises seven regular Members and three alternate Members appointed by the Circuit Court to serve five year terms except in the case of a new Member who is initially appointed to serve the unexpired portion of a former Member's term. The practice of the 31<sup>st</sup> Judicial Court has been to appoint Members who have been nominated by the Board of County Supervisors. Members represent the county at large, not a particular magisterial district.<sup>19</sup>
- B. A Member is a citizen of Prince William County (1) appointed by the Circuit Court to serve on the BZA as a "regular" or an "alternate" Member; (2) who has taken an oath required by the Circuit Court; and (3) who has not assumed a public office in the locality of Prince William County subsequent to appointment, although one Member may be a Member of the county planning commission and any member may be appointed to serve as an officer of election as defined in Virginia Code §24.2-101, and any elected official of an incorporated town may serve on the board of the county in which the member also resides.<sup>20</sup> Duties are further described in Article IV.
- C. Qualifications, terms and compensation are the same for regular and alternate Members.
- D. Disqualification of a Member from the Board
  - 1) "Any board Member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him, after a hearing held after at least fifteen days' notice."<sup>21</sup> In the very unusual case that a Member becomes unable to serve reliably as described by law and in these bylaws, the Chair may seek resolution of BZA concerns from the Chair of the Board of County Supervisors or request the circuit court to terminate the Member's appointment per § 15.2-2308 (D).
  - 2) Disqualification of a Member to hear a case is discussed in Article VI, §5.

17. **Meeting:** Any meeting, public hearing or other proceeding before the BZA.

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<sup>18</sup> Code of Virginia, § 15.2-2308

<sup>19</sup> Code of Virginia, § 15.2-2308

<sup>20</sup> Code of Virginia, §§ 15.2-2308 and 42.1-77. Definitions; §42.1-77 states, "[a]s used in this chapter [Chapter 7 of Title 42.1] ..." The BZA is created under and its authority provided by Chapter 22 of Title 15.2 of the Virginia Code.

<sup>21</sup> Code of Virginia, § 15.2-2308 (D)

18. **Quorum:** A minimum of four **Members**; further discussed in Article VI.
19. **Zoning Administrator:** The Zoning Administrator of Prince William County or a person designated to act on behalf, or in place, of the Zoning Administrator of Prince William County.
20. **Zoning Ordinance:** Chapter 32 of the Prince William County Code; url:  
[https://library.municode.com/va/prince\\_william\\_county/codes/code\\_of\\_ordinances?nodeId=CH32ZO](https://library.municode.com/va/prince_william_county/codes/code_of_ordinances?nodeId=CH32ZO).

## A r t i c l e I V – M E M B E R S

### Section (§)

1. **Hearing participation:** To assure aggrieved parties that they are heard by the greatest possible number of appointed Members, it is the goal of the BZA that all seven regular Members will participate in each hearing. If a regular Member cannot participate, an alternate Member will be asked to substitute.
2. **Duties of Members:**
  - A. Members should familiarize themselves with key sections of the Code of Virginia to include:
    - 1) §15.2-2201: Definitions
    - 2) § 15.2-2307. Vested rights not impaired; nonconforming uses
    - 3) § 15.2-2308: Boards of zoning appeals to be created; Membership, organization, etc.
    - 4) § 15.2-2308.1: Boards of zoning appeals, ex parte communication, proceedings.
    - 5) § 15.2-2309. Powers and duties of boards of zoning appeals.
    - 6) § 15.2-2311: Appeals to the Board
    - 7) § 15.2-2312: Procedures on Appeal
    - 8) § 15.2-2313: Proceedings to prevent construction of building in violation of zoning ordinance
    - 9) § 15.2-2314: Certiorari to review decision by board
    - 10) § 32-900, Prince William County Zoning Ordinance
    - 11) Freedom of Information Act
      - a. §2.2-3700. Short title; Policy
      - b. §2.2-3701. Definitions
      - c. § 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes

d. §2.2-3708. Virtual meetings

- B. When a regular Member knows he will be absent from or must abstain from any application at a meeting he shall notify the Chair and the Recording Secretary as soon as possible and desirably no later than 24 hours prior to the meeting so that an alternate Member may be selected.
- C. Before the public hearing, Members will prepare by reviewing (1) all materials provided by concerned parties through the Recording Secretary; (2) elements of law that seem pertinent to the case (including statutory guidelines to approve variances, for example<sup>22</sup>); and 3) Article VII, if they envision making a motion. Materials that may be provided prior to the case include the appeal or request for variance submitted by the aggrieved party, and the case staff report prepared by the office of the Zoning Administrator.
- D. Members shall not engage in ex parte communication with fellow Members or others per Virginia Code § 15.2-2308.1.
- E. Members shall inform the Chair – and should inform their Magisterial District Supervisor – in writing of their intention to resign from the Board prior to the end of their appointed term. The Chair will then initiate steps to inform appropriate parties – including the Recording Secretary who will notify the circuit court per Article V, §7 K (below) – and request a replacement.<sup>23</sup>
- F. Members would be wise to establish distinctive email accounts exclusively for BZA communications.

3. **Duties of a Case Leader** (if Appointed):

If the Chair appoints a “case leader,” his or her duties are outlined below.

- A. Prepare for each public hearing like all BZA Members as outlined in § 2, above.
- B. Before the public hearing, prepare preliminary draft motions to deny and to approve the request of each aggrieved party appearing before the BZA, as outlined in Article VII. These preliminary motions are intended to help the Member determine key points of fact and law that are pertinent to the case, including the feasibility of establishing conditions on a requested variance.<sup>24</sup> This preparation is to ensure the fullest consideration is given to available information and to identify areas for further attention during the hearing; it is not intended to predetermine the outcome of the hearing.

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<sup>23</sup> Code of Virginia, §15-2-2308 (A)

<sup>24</sup> Code of Virginia, § 15.2-2308 (D)

- C. During the hearing, the case leader will give strict attention to all sworn testimony and evidence, especially that which further clarifies the case of each contending party. The case leader will then decide which party the evidence and sworn testimony best support and thus which of the preliminary draft motions to propose to the BZA for consideration. Other Members are not obligated to support the motion and should propose an alternative motion if such is the case.

## A r t i c l e V – O f f i c e r s <sup>25</sup>

### Section (§)

#### 1. Chairman and Vice-Chairman:

- A. The officers of the BZA shall be a Chairman and a Vice-Chairman, who may request to be called Chair or Vice-Chair and will be so-called throughout these bylaws.
- B. The Chair and Vice-Chair shall be elected annually and shall serve until December 31 of the year elected or until a successor is elected.
- C. Election of a Chair and a Vice-Chair shall take place at the first regular meeting of each calendar year.
- D. Nominations shall be made by a Member from the floor. A candidate must receive votes from a majority of those present and voting to be declared elected and shall take office immediately.<sup>26</sup>
- E. In the event of a vacancy in the office of Chair or Vice-Chair, an election shall take place at the next regularly scheduled meeting to fill the vacancy for the remaining portion of the term.
- F. The Chair and Vice-Chair may be reelected.

#### 2. Recording Secretary:

- A. A Recording Secretary may be appointed by the County.
- B. A Recording Secretary who is not a Member of the BZA shall not have a right to vote.<sup>27</sup>

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<sup>25</sup> Code of Virginia, § 15.2-2308(C); Prince William County Code, § 32-900.00(2)

<sup>26</sup> Code of Virginia, § 15.2-2308(C)

<sup>27</sup> Code of Virginia, § 15.2-2308(C)



**3. Duties of the Chair:**

The Chair shall:

- A. Serve as head of the BZA for legal and ceremonial purposes.
- B. Preside at meetings.
- C. Administer oaths and compel attendance of witnesses.<sup>28</sup>
- D. Preserve order and decorum.
- E. Rule on all procedural questions (subject to reversal by a majority vote of the BZA).
- F. Receive evidence presented to the BZA.
- G. Prescribe a reasonable time for the presentation of evidence, argument and comment.
- H. Sign all resolutions adopted by the BZA. A copy of a resolution, certified by the Recording Secretary, shall be presumed to be authentic.
- I. Oversee the work of the Recording Secretary.
- J. With the approval of the BZA, recommend to the County a proposed change to the Zoning Ordinance.
- K. Enter orders as may be appropriate under Article VI, § 10(b)(2).
- L. Enter orders dismissing applications for variance and appeals when dismissal is requested by the applicant for variance or the appellant.
- M. Select an alternate Member to substitute for a regular Member who cannot participate in a scheduled hearing (per Article IV § 2), which the records of Board shall so note.
- N. Facilitate the mentoring of new members.
- O. If desired, appoint a “case leader.”

**4. Duties of the Vice-Chair:**

- A. The Vice-Chair shall assume the duties of the Chair in the Chair's absence, inability to act or disability.
- B. If both the Chair and Vice-Chair are absent or unable to act, the BZA shall elect an acting Chair. Procedurally, a Member will move to nominate a *chair pro tem* for the meeting, mindful that typically the most senior Member present may be best suited to serve. When it is seconded, the board will vote, and the elected chair pro tem will preside at that meeting.

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<sup>28</sup> Code of Virginia, § 15.2-2312; Prince William County Code, § 32-900.20(3).

**5. Duties of the Recording Secretary:**

The Recording Secretary shall:

- A. Keep a record of all business transacted by the BZA.<sup>29</sup>
- B. Serve notice to the Members, applicants, appellants and all other parties designated by the Chair, or otherwise required by law to receive notice, of every meeting. The notice shall be sent at least five business days prior to the meeting and shall state the purpose, location and time of the meeting.<sup>30</sup> A copy of the notice and a copy of any affidavit with respect to notice required by law shall be placed in the case file.<sup>31</sup>
- C. Establish and maintain:
  - 1) BZA records,
  - 2) BZA reports and
  - 3) A case file for each BZA variance, appeal or other case.
- D. Certify all records of the BZA.
- E. Maintain a set of minutes of every meeting.
- F. Attend to correspondence of the BZA.
- G. Prepare and be responsible for publishing advertisements in a newspaper having general circulation in the County.<sup>32</sup> Copies of the advertisement shall be placed in the case file.
- H. Notify Members by mail or e-mail within fourteen (14) calendar days of receipt of the filing of a case and the date when a meeting will take place to consider the case. A case is deemed to be on the docket of the BZA upon receipt.<sup>33</sup>
- I. No later than 10 days prior to a scheduled hearing, forward the Zoning Administrator's staff report and all other pertinent information to each BZA Member to facilitate their preparation for the hearing.

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<sup>29</sup> Code of Virginia, § 15.2-2308(C), last sentence; Prince William County Code, § 32-900.00(2)(c).

<sup>30</sup> Code of Virginia, § 15.2-2204(8), second paragraph; Prince William County Code, § 32-700.60(2)

<sup>31</sup> Code of Virginia, § 15.2-2204(8), fourth paragraph; Prince William County Code, § 32-700.60(3)

<sup>32</sup> Code of Virginia, §§ 15.2-2204(A), second paragraph and 15.2-2309(2) (4); Prince William County Code, § 32-700.60(1)

<sup>33</sup> As to variances, cf. Prince William County Code ,§ 32-900.12(2)

- J. Assist the BZA to prepare its annual report in coordination with the Zoning Administrator. Upon approval by the BZA, transmit the report to the Prince William County Board of Supervisors.<sup>34</sup>
- K. Keep the Circuit Court informed of Membership status by promptly notifying the court if any vacancy occurs and at least thirty days in advance of the expiration of any term of office.<sup>35</sup> Provide a courtesy copy of the correspondence to the Clerk of the Board of County Supervisors and the BZA Chair.
- L. Obtain information related to BZA activities as may be requested by a Member.

## A r t i c l e V I – M e e t i n g s

### Section (§)

#### 1. Representation:

- A. The office of the County Attorney may appear on behalf of the County or any of its employees in any matter before the BZA.
- B. All other parties appearing before the BZA may be represented by an attorney who is an active Member of the Virginia State Bar.
- C. BZA Members may request legal counsel for BZA matters from the County Attorney.<sup>36</sup> If, however, the County Attorney feels constrained by statutory or professional guidelines from providing legal counsel on specific matters of controversy pending before the BZA<sup>37</sup> and so informs the Member, the Member has four options regarding a concern about a possible conflict of interest:
  - 1) Consider procedures outlined below in Article VI, §5 (Disqualification of a Member to Hear a Specific Case);
  - 2) Present one's concern for resolution at the BZA hearing in which all concerned parties are present per §15.2-2308.1.<sup>38</sup>

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<sup>34</sup> Code of Virginia, § 15.2-2308(C), last sentence and 15.2-2309(2) (4); Prince William County Code, § 32-900.00(2)(C)

<sup>35</sup> Code of Virginia, § 15.2-2308

<sup>36</sup> Code of Virginia, § 15.2-1542. Creation of office of county, city or town attorney authorized; appointment, salary and duties

<sup>37</sup> Constraints may be attributed to Section 15.2-2308.1 of the Code of Virginia; Rule 3.5(e) of the Virginia State Bar's Rules of Professional Conduct; or other applicable provisions.

<sup>38</sup> Code of Virginia, §2.2-3100 et seq. Policy; application; construction and §15.2-2308.1. Board of Zoning Appeals, Ex Parte Communication

- 3) Request an advisory opinion from the Commonwealth Attorney for Prince William County, citing §2.2-3126 of the Code of Virginia as the authority for such action;<sup>39</sup>
- 4) Request an advisory opinion from the Virginia Conflicts of Interest and Ethics Advisory (COIA) Council, citing §2.2-3126 of the Code of Virginia as the authority for such action.<sup>40</sup>
- 5) Request advice from the independent legal counsel available to the BZA. To do so:
  - a) The member would inform the chair of a need to discuss a specific matter with the independent legal counsel.
  - b) The chair would refer the member to the attorney and ask the member to inform him subsequently of the estimated time to resolve the question.
  - c) The chair would then inform the appropriate county staff director\* of the consultation and the estimated amount of time to resolve the question.\*\*  
  
\* The appropriate director in FY2024 is the Director of the Planning Office and thereafter the Director of Development Services.  
  
\*\* *The appropriate county staff director should coordinate payment of the consultation with the attorney and inform the chair of the account balance.*

## 2. Pre-Hearing Posting on Property of Notice of a Meeting

- A. Posting signs on property of a notice required by law is the responsibility of the applicant or appellant.<sup>41</sup>
- B. A copy of any affidavit required by law to be filed with the Director of Planning, or an individual designated by the Director of Planning, shall be placed in the case file.<sup>42</sup>
- C. Failure of the applicant or appellant to post in a timely manner any notice on property required by law or to file in a timely manner any affidavit required by law with respect to posting of a notice on property may result in dismissal of the case, pursuant to sign posting requirements in the County Zoning Ordinance.<sup>43</sup>

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<sup>39</sup> Code of Virginia, § 2.2-3126. Enforcement. Note: Members should directly discuss the matter of concern with the Chief of Staff for the Commonwealth Attorney for Prince William County, as coordinated on June 25, 2021.

<sup>40</sup> Code of Virginia, § 2.2-3126. Enforcement. To request a formal opinion or informal written advice from the Council on a non-hypothetical concern, send an email to [ethics@dls.virginia.gov](mailto:ethics@dls.virginia.gov) with a full disclosure of the facts of the situation and a request for an opinion.

<sup>41</sup> Prince William County Code, §§ 32-910; with posting instructions detailed at 32.700.6 (4)

<sup>42</sup> Prince William County Code, § 32.700

<sup>43</sup> At the time of this Bylaws update, the requirements were stipulated in §32-700.60.4. On October 8, 2021, the BZA proposed revisions to facilitate understanding by future appellants or applicants to the BZA.

**3. Pre-Hearing Inspections:**

Any Member may inspect any property subject to a case pending before the BZA, provided the Member gives reasonable notice to the property owner or occupant of the property, as appropriate. Members shall not discuss the case with anyone on or associated with the property.<sup>44</sup> If the property owner or occupant denies permission for the Member to inspect the property, the Member may make the refusal a matter of record.

**4. Public Hearings and other Meetings:**

- A. A regular meeting shall be held at 2:00 p.m. in the Supervisors' Board Chambers of the McCoart Building, or such other location as may be appropriate, on (1) the fourth Monday in January, February, March and April; and (2) the third Monday in May, June, July, August, September, October, November and December.
- B. A special meeting may be called at the request of the Chair or a majority of the BZA upon reasonable notice to all Members and in accordance with the Virginia Freedom of Information Act.
- C. A Member may use electronic means to participate in an in-person meeting of the Board provided he or she meets the criteria of BZA Resolution No. 2021-007\* and the requirements of §2.2-3708.2. The member seeking permission to participate remotely must notify the Chair on or before the day of the meeting and ideally one week prior to provide time for logistical preparation. The Chair shall inform the Board of the Member's request at the Board meeting and solicit a vote to resolve approval of the Member's request, using the template at Appendix B as a guide.

*\* A copy of this resolution is provided for convenient reference at Appendix A.*

- D. The BZA may conduct a virtual meeting with web conferencing technology in accordance with BZA Resolution No. 2021-007 and policy (copy appended), if circumstances do not favor an in-person meeting. Appendix C provides a template for a Board resolution to permit such a virtual meeting.<sup>45</sup>
- E. Every meeting and all records of the BZA shall be open to the public. The BZA may hold a closed meeting only pursuant to the Virginia Freedom of information Act.<sup>46</sup>
- F. All votes shall be by roll call and a record of all votes shall be kept as part of the

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<sup>44</sup> Code of Virginia, § 15.2-2308.1. re ex parte communications

<sup>45</sup> Code of Virginia, § 2.2-3708 *Meetings held through electronic communication means* and Budget Bill HB29 (Chapter 1283).

<sup>46</sup> Code of Virginia, §§ 2.2-3700 through 2.2-3714, and in particular § 2.2-3711

minutes.

- G. All parties to the case shall make a reasonable effort to provide all pertinent information related to the case to the Recording Secretary of the Board of Zoning Appeals no later than ten calendar days prior to a scheduled hearing date at which time the Recording Secretary shall forward it to Members and other concerned parties.

**5. Disqualification of a Member to hear a specific case**

- A. A Member shall be disqualified to act on a matter before the BZA when required by law<sup>47</sup> and shall record the reason for disqualification (or recusal) in writing with the Recording Secretary or on the record at a meeting.<sup>48</sup>
- B. Mindful of the importance of public perceptions of propriety, a Member would be wise to consider recusing oneself from a case if the Member is aware of circumstance that in his or her opinion would create an appearance of impropriety, a conflict of interest, or unfairness.<sup>49</sup> A Member shall state on the record a decision to recuse oneself.
- C. Any disqualification should be announced on the record prior to a case being heard or as soon as a basis for disqualification is discovered.

**6. Quorum:<sup>50</sup>**

- A. A quorum shall be necessary to transact any BZA business or for the BZA to hold a meeting.
- B. A majority of the BZA shall constitute a quorum, which is to say at least four Members. Ideal attendance at a hearing comprises seven Members, as noted in Article IV.
- C. A vote of a majority of the BZA shall be necessary for an action to be taken by the BZA.
- D. Maintaining a Physical Quorum
  - 1) If the Governor has declared a state of Emergency in accordance with § 44-146.7, a quorum need not be physically assembled in one location provided: (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency and (iii) the public body complies with

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<sup>47</sup> Code of Virginia, § 2.2-3100 et seq.

<sup>48</sup> Prince William County Code, § 32-900.00(3)(b).

<sup>49</sup> RONR §45 states “No member should vote on a question in which he or she has a direct personal or pecuniary interest not common to other members of the organization.” page 407, lines 21-31

<sup>50</sup> Code of Virginia, § 15.2-2308(C); Prince William County Code, § 32-900.00(2)(a)

requirements for holding such a meeting without a physical quorum outlined in §2.2-3708.2.

- 2) If the requirements for sub-paragraph 1) (above) have not been met, the Board of Zoning Appeal must have a physical quorum in the primary or central meeting location.<sup>51</sup>

**7. Order of Business:**

- A. The order of business for a regular meeting, subject to the discretion of the Chairman, ordinarily will be:
  - 1) Call to order
  - 2) Roll call
  - 3) Determination of a quorum
  - 4) Swear in citizens who will speak before the BZA
  - 5) New business, starting with public hearings on cases scheduled for the meeting
  - 6) Unfinished business, if any
  - 7) Resolution with respect to minutes of any prior meeting
  - 8) Report of the Recording Secretary, if any
  - 9) Report of BZA committees, if any
  - 10) Report of the Zoning Administrator, if any
  - 11) Other administrative matters
  - 12) Adjourn
- B. Except as otherwise set out in these bylaws, parliamentary procedure at meetings shall be governed as outlined in Article VII.

**8. Procedures for Adjudicating Cases:**

- A. An applicant or appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia shall appear and present their case. If an applicant, appellant or its representative does not appear, the BZA may dismiss the case.
- B. A Determination by a County administrative officer shall be presumed correct. The administrative officer shall explain the basis for his determination, after which an Appellant has the burden of rebutting that presumption of correctness by a preponderance

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<sup>51</sup> Code of Virginia, § 2.2-3708.2

of the evidence.<sup>52</sup>

C. The following order of procedure shall generally be used for consideration of cases before the BZA:

- 1) The Recording Secretary will announce the case.
- 2) The Chair will open the Public Hearing for the announced case.
- 3) Presentations by Contending Parties
  - a) Staff and the aggrieved party shall be given an equal amount of time to present their case per § 15.2-2314 of the Code of Virginia.\*
    - \* Twenty (20) minutes will typically be allocated for each contending party to present their case. Exceptions will be considered on a case by case basis.
  - b) County staff will present its case.
  - c) The aggrieved party will present its case.
- 4) Citizen testimony
  - a) Allocated time: Five minutes will be allocated for each citizen who is recognized to present testimony, although the Chair may extend the allocated time if circumstances warrant.
  - b) For the aggrieved party: Citizens will be recognized to present evidence, comment and argument in support of relief sought by the applicant or appellant.
  - c) Against the aggrieved party: Citizens will be recognized to present evidence, comment and argument against the relief sought by applicant or appellant.
- 5) Rebuttals to citizen testimony
  - a) Staff rebuttable of evidence and comments by citizens.
  - b) Aggrieved party rebuttal of evidence and comments by citizens.
- 6) Closing arguments
  - a) Closing argument by the aggrieved party.
  - b) Closing argument by staff.
  - c) Closing rebuttal by the aggrieved party.
- 7) The Chair will ask Members if they have further questions and if not, close the public hearing.

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<sup>52</sup> Code of Virginia, § 15.2-2309



- 8) Adjudication
  - a) Motion by a Member or the Chair for entry of a resolution (cf. Article VII)
  - b) Second by another Member.
  - c) Discussion on the motion. Discussion shall include Members' perspective and rationale for or against the motion, citing relevant facts and elements of law, as detailed in Article VII, §2 D. Members should state their rationale succinctly and with some consideration to how an aggrieved party might frame one's remarks in an appeal.
  - d) Vote\*
    - \* In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.<sup>53</sup>
- 9) The Chair shall then announce the Board's decision and inform the Appellant or Applicant seeking relief that an Appeal from the BZA's decision must be filed within 30 days from the date of decision.<sup>54</sup>

- D. All testimony shall be given under affirmation or oath.
- E. A party may cross-examine any person giving testimony after being duly recognized by the Chairman.
- F. At any time during the hearing, a Member of the BZA, after being duly recognized by the Chair, may ask any question the Member deems appropriate. After the contending parties have concluded their presentations, the BZA case leader (if designated), may expect to be the first person recognized by the Chair to ask questions or comment.
- G. The BZA may receive in evidence testimony, documents and other physical exhibits. The burden of authenticating documents or other physical exhibits is on the party seeking to have the document or thing considered by the BZA.
- H. The rules of evidence applicable in the courts of the Commonwealth of Virginia do not necessarily apply in cases before the BZA. The BZA may receive hearsay but may decline to give hearsay much, if any, weight. The BZA is more likely to give controlling weight to testimony based on first-hand knowledge.
- I. The Recording Secretary shall create and maintain an accurate record of all proceedings of a case. The record may be created by a tape recording, a court reporter or any other

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<sup>53</sup> Code of Virginia, § 15.2-2311D, Appeals to Board

<sup>54</sup> Code of Virginia, § 15.2-2314. Certiorari to review decision of board

means deemed appropriate by the Recording Secretary.

- J. Any person is authorized, at their expense, to retain a court reporter to record proceedings of a case.

**9. Resolutions:**

- A. Decisions, action to be taken and orders of the BZA shall be entered of record in the form of a resolution.
- B. A resolution shall come before the BZA in the form of a motion by a Member and a second by another Member. The Recording Secretary shall record the Member making and the Member seconding the motion.
- C. A motion may be made or seconded by the Chairman.
- D. A motion shall state only the decision, action to be taken or order to be entered by the BZA.
  - 1) The facts and the reasons in support of the motion shall be stated on the record, ordinarily during discussion on the motion.
  - 2) Alternatively, the BZA may determine that any facts and reasons in support of a motion be reduced to writing and presented to the BZA prior to a vote on the motion. Any written facts and reasons shall become part of the record.
  - 3) Guidance on making motions is outlined in Article VII.
- E. Prior to a vote on a motion, the Recording Secretary shall read the motion.

**10. Request for a Rehearing:**

- A. A contending party may request a rehearing in writing filed with the Recording Secretary within fourteen (14) days of the date of entry of the resolution sought to be reheard.
- B. The request must establish one or more of the following:
  - 1) The BZA overlooked or misapprehended a material fact or legal issue that would change the resolution sought to be reheard.
  - 2) The existence of new evidence, which (i) was not previously available and (ii) reasonably could not previously have been diligently discovered.
- C. A request will be considered by the BZA at its next regularly scheduled meeting.

- D. A motion to grant a rehearing must be made by a Member who voted in favor of the resolution sought to be reheard.
- E. If a resolution is entered granting a request for rehearing, (1) the BZA will set a date for rehearing and (2) notice shall be given as required by law.

**11. Request for Continuance:**

- A. Consistent with the effective administration of justice, it is the established policy of the BZA to decide cases brought before it within ninety (90) days of the date the case is filed.<sup>55</sup>
- B. Nevertheless, there may be an occasion when an aggrieved party or the Zoning Administrator may need a continuance.
  - 1) A request for a continuance shall be addressed to the BZA and shall show good cause why a continuance is necessary. Any interested party may oppose the request for a continuance.
  - 2) A request in writing for a continuance filed sufficiently ahead of a meeting at which a case is to be considered may be granted by the Chair upon such terms as the Chair deems appropriate. Otherwise, a decision to grant or deny a continuance shall be made by the BZA at the meeting at which the case is to be considered. In deciding whether to grant or deny a request for a continuance, due consideration will be given to (i) the fact that citizens have appeared in response to notice and (ii) to any inconvenience a continuance may cause a citizen. The parties should be prepared to proceed with the case in the event the request for continuance is denied.

**Article VII – Parliamentary Authority and Motions**

**Section (§)**

- 1. **Authority:** Robert’s Rules of Order Newly Revised (RONR)<sup>56</sup> shall govern the conduct of all meetings of the Board to the extent that they are not inconsistent with these rules of procedure and other protocols established by the Commonwealth of Virginia or Prince William County.

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<sup>55</sup> Code of Virginia, § 15.2-2312 ("The \*\*\* [BZA] 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 make its decision within ninety days of the filing of the application or appeal."); Prince William County Code, § 32-900.20(2)

<sup>56</sup> Henry M. Robert III, Daniel H. Honemann, and Timothy J. Balch. *Robert’s Rules of Order Newly Revised, 11<sup>th</sup> Edition* (hereafter RONR), copyright most recently 2011, New York/Public Affairs, Hatchett Book Group

2. **Motions:**

A. Purpose.

- 1) A motion is a formal proposal by a Member that the Board take the stipulated action to resolve the presented case after considering all of the facts, pertinent law, and key determinants (below).<sup>57</sup> The proposal typically is to uphold, approve, or approve with conditions the request before the Board.<sup>58\*</sup>

\* If the motion is to approve an appeal of any determination by the Zoning Administrator and consequently to overrule the Zoning Administrator, four affirmative votes will be required by our Board.<sup>59</sup>

- 2) In making a motion, the Member will decide the rationale for the motion after considering all of the facts of the case, evidence and sworn testimony presented during the public hearing, and applicable ordinances, laws, and regulations, including the Code of Virginia and Prince William County Zoning Ordinance.

B. Key Determinants

- 1) Appeals and other Administrative Orders;

- a. The BZA must determine if the administrative officer was “correct” in issuing the decision, order, etc.<sup>60</sup> §15.2-2309 requires the BZA to presume the administrative officer was correct. If, however, the appellant provides a preponderance of evidence that the administrative officer was not correct, then the BZA must act accordingly.
- b. The BZA has the authority to “reverse or affirm, wholly or partly, or may modify, [the] order, requirement, decision or determination” that is being appealed.<sup>61</sup>

- 2) Variances.

- a. The BZA must determine if the applicant’s case meets the criteria

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<sup>57</sup> RONR. P. 27

<sup>58</sup> Code of Virginia, §15.2-2312 states, “In exercising its powers the board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision or determination appealed from.”

<sup>59</sup> Code of Virginia, §15.2-2312 also states, “The concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance.” As our Board comprises seven (7) regular members, a majority is four (4) members.

<sup>60</sup> Code of Virginia, §15.2-2309

<sup>61</sup> Code of Virginia, §15.2-2312

stipulated in §15.2-2309(2).

- b. The BZA may approve, deny, or approve with conditions per §15.2-2309.

C. Rationale for a Motion

- 1) Purpose. The rationale for the motion should comprise a clear statement of specific evidence and points of law that substantiate the motion and the Board’s decision. A well stated rationale that clearly articulates the basis for the motion will help concerned parties clearly understand the basis for the motion. This can be of significant assistance to the aggrieved party and to the Circuit Court, if the aggrieved party appeals the decision.
- 2) Appeals and other Administrative Orders
  - a. Approval: The minimum rationale for approving an appeal or other administrative order shall be that the appellant provided a preponderance of evidence that demonstrated the administrative officer was **not** correct in issuing the order, requirement, decision, or determination. The rationale shall also stipulate the evidence and elements of law that substantiate the motion.
  - b. Denial: The minimum rationale for denying an appeal or other administrative order shall be that the administrative officer **was correct** in issuing the order, requirement, decision, or determination and that the appellant did not show error by a preponderance of evidence. Ideally, the rationale will also stipulate the evidence and elements of law that substantiate the motion.
- 3) Variances
  - a. Approval. The minimum stated rationale for approving a variance request shall be that the applicant’s request satisfies all of the relevant criteria stipulated by §15.2-2309 of the Code of Virginia.
  - b. Conditional approval. Conditional approval will comply with the above to the extent practical and clearly stipulate the condition(s) to be imposed, mindful of the provisions of §15.2-2309(2).<sup>62</sup>

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<sup>62</sup> Code of Virginia, §15.2-2309

- c. Denial. The minimum rationale to deny a variance request will be that it does not meet the stipulated criteria of §15.2-2309. Ideally, the rationale will stipulate which criteria are not met.

D. Procedures

- 1) After considering sworn testimony and other evidence given at the hearing, as well as such documents submitted before the hearing as the Zoning Administrator's Staff Report and application by the aggrieved party, **the Member proposing a motion will determine the facts of the case and the pertinent elements of law to determine the following points:**
  - a. In the case of ...
    - i. an appeal or other administrative order: Was the Zoning Administrator correct?
    - ii. a variance request: Did the applicant meet all of the relevant criteria outlined in §§ 15.2-2309 and 15.2-2201?
  - b. The rationale for the proposed motion. See §2 C above for guidance.
- 2) After proposing the motion, the Member making the motion will give a written copy to the Chair who will read it again and call for a second.<sup>63</sup> The proposed motion may be legibly hand-written.
- 3) If the motion is seconded, the Chair will ask those who made and seconded the motion to state their rationale for the motion, as discussed above. They should succinctly state their rationale, remaining mindful of how an aggrieved party might perceive one's remarks and perhaps use them in an appeal.
- 4) The Chair will then invite further discussion among BZA Members, during which time other Members who wish to comment will state their rationale for supporting or opposing the motion. For example, a Member may wish to state previously unmentioned reasons to support or oppose the motion. Reiterating that which has been stated is not necessary. As mentioned, the rationale should include specific facts of the case and pertinent statute(s) or ordinance(s), for example, to ensure all concerned parties understand the reason for the motion.
- 5) When no further discussion seems appropriate, the Chair will ask the Recording

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<sup>63</sup> RONR

Secretary to call on Members for their vote. If the motion carries, it becomes the Board's decision. If the motion fails, the Chair will declare it defeated and request a new motion to adjudicate the case and proceed as outlined above.

E. Sample motions

The following examples represent the most common motions:

- 1) For an appeal
  - a) I move the BZA **affirm** [or uphold]\* the Zoning Administrator's decision regarding Violation & Correction Order ZON#[stipulate], issued [date], as detailed in APL[case number] and the public hearing held on [date].
  - b) I move the BZA **reverse**\* the Zoning Administrator's determination regarding Violation & Correction Order ZON # [stipulate], issued [date], as detailed in APL[case number] and the public hearing held on [date] and thus **approve** the Appellant's appeal.\*\*

\* Note: This is but one possible action permitted by § 15.2-2312, which states: "[T]he board may **reverse** or **affirm**, wholly or partly, or may **modify**, an order, requirement, decision or determination appealed from."

\*\* A vote to reverse the Zoning Administrator's decision will require a concurring vote of four members of the Board, per § 15.2-2312, which states: "**The concurring vote of [four members] of the board shall be necessary to reverse any** order, requirement, decision or **determination** of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance."<sup>64</sup> [**Emphasis** added.]

- 2) For a variance request
  - a) I move the BZA **approve** the requested variance. as detailed in [*VAR – case no., dated* \_\_\_\_] and the public hearing held on [date].

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<sup>64</sup> Code of Virginia, § 15.2-2312, Procedures on Appeal

- b) I move the BZA **approve** a temporary variance, as detailed in [*VAR – case no., dated \_\_\_\_*] and the public hearing held on [date] **with the following conditions:** [*stipulate*].<sup>65</sup>
- c) I move the BZA **deny** the requested variance, as detailed in [*VAR – case no., dated \_\_\_\_*] and the public hearing held on [date].

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<sup>65</sup> Code of Virginia, § 15.2-2309 (2): *Boards may “impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.” Thus, for example, the board may stipulate that the variance will expire when the person(s) benefited by it is no longer in need of the modification.*



**Article VIII – Amendment to Bylaws**

**Section (§)**

**1. Amendments to Bylaws**

- A. Amendments may be made to these bylaws by a vote of a majority of the BZA taken no earlier than one (1) month of transmittal by the Recording Secretary to the Members of a proposed written resolution to amend the bylaws.
- B. In a particular case upon a showing of extraordinary circumstances where justice requires and consistent with law, the BZA may suspend any requirement of these bylaws.

**2. Repeal of previous bylaws**

All bylaws previously adopted by the BZA are repealed.

Enacted by the

**PRINCE WILLIAM COUNTY BOARD OF ZONING APPEALS**

**September 18, 2023**

**Chair<sup>66</sup>**



**Paul F. Chamberlin**

**3 Appendixes: [Pending Revision due to Statutory Changes re Remote Participation]**

- A Copy of BZA Resolution 2021-[# pending as of 3.23.2021]: “A Resolution to conduct Meetings through Electronic Communications Means” with an attached policy [4 pages] [Pg. 26](#)
- B Template for a Board resolution to approve a member’s participation in a meeting using electronic communications [2 pages] [Pg. 27](#)
- C Template for a Board resolution to approve a virtual meeting of the Board using electronic communications [2] pages [Pg. 29](#)

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<sup>66</sup> The County Attorney’s Office affirmed on November 7, 2023, that the Chair’s signature is adequate, and there is no need for anyone else to sign.