



BOARD OF ZONING APPEALS MEETING

Tuesday, July 02, 2024 at 4:00 PM

AGENDA

CALL TO ORDER.

DETERMINATION OF A QUORUM.

AGENDA REVIEW.

APPROVAL OF MINUTES.

- [1.](#) Draft Minutes- June 4, 2024

PUBLIC HEARING.

- [2.](#) Draft BZA By-Laws
- [3.](#) Draft Remote Participation Policy

UPDATES.

BOARD MEMBER'S TIME

ADJOURN.



**BOARD OF ZONING APPEALS OF THE TOWN OF WARRENTON
TOWN HALL
21 MAIN STREET
WARRENTON, VIRGINIA 20186**

MINUTES

A REGULAR MEETING OF THE BOARD OF ZONING APPEALS WAS HELD ON JUNE 4, 2024, AT 5:00 P.M. IN WARRENTON, VIRGINIA

PRESENT Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair; Mr. Geoffrey Fiutak; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official; Mr. Martin Crim, Town Attorney

ABSENT

CALL TO ORDER AND DETERMINATION OF A QUORUM

The meeting was called to order at 5:00pm. There was a quorum of members present.

ELECTION OF OFFICERS

Ms. Maybach motioned to keep the existing Chair and Vice Chair in their roles. Mr. Fiutak seconded. The vote was as follows:

Ayes: Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair; Mr. Geoffrey Fiutak

Nays:

Absent During Vote:

APPROVAL OF MINUTES

Draft Minutes – October 3, 2023, Meeting

Ms. Maybach motioned to approve the minutes, and Mr. Fiutak seconded. All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Mr. Geoffrey Fiutak*

Nays:

Absent During Vote:

AGENDA REVISION

Mr. Kovalik motioned to amend the agenda to include citizen's time to allow any citizen wishing to address the board to do so, and Mr. Fiutak seconded. All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Mr. Geoffrey Fiutak*

Nays:

Absent During Vote:

CITIZENS' TIME

Mr. Kovalik opened citizens' time at 5:02 pm. No one spoke.

Mr. Kovalik closed citizens' time at 5:02 pm.

UPDATES

Remote Participation Policy

Mr. Crim advised the Remote Participation Policy has come before the Board again due to changes in the Virginia State Code, requiring localities to re-adopt their electronic participation policies on an annual basis. He added there were also changes to the policy for Americans with Disabilities Act (ADA) requirements.

A discussion ensued regarding the policy, and what constitutes a disability as well as HIPAA requirements and the requirement to disclosure sensitive health information.

Mr. Crim clarifies all points of discussion regarding the State Code update.

There were no further questions.

Discussion of Board By-Laws

Ms. Heflin gave a brief overview of the draft By-Laws before the Board, stating the updates the Board requested have been made as well as additional revisions due to changes in the State Code.

Mr. Kovalik did not have any additional changes.

Mr. Fiutak asked to remove Articles 3-6(a) and 3-9 from the By-Laws citing redundancy. He added the information contained at the beginning of the By-Laws; Article 2-6 covers the

requirement for the Vice-Chair to assume the duties of the Chair in their absence.

Mr. Crim advised redundancy can be favorable. Mr. Kovalik agreed.

Ms. Heflin advised she would make the requested changes and bring the revised document forward next month for consideration.

There were no further questions.

Ms. Jenkins advised the Board that staff had additional items to share with the Board.

Board of Zoning Appeals Handbook

Ms. Heflin gave a brief overview of the handbook provided to the Board stating the handbook is a guide for use by the Board members. It contains pertinent information for their roles on the Board of Zoning Appeals such as frequently used references from Robert's Rules of Order, Freedom of Information Act/Conflict of Interest Act (FOIA/COIA), guidelines for motions/ meeting procedures, and staff contact information.

Ms. Heflin advised the board is not required to adopt this document as it is a reference document only.

The Board thanked Ms. Heflin for the information.

There were no further questions.

Discussion Regarding Retention of Legal Counsel

Mr. Kovalik expressed interest in obtaining separate legal counsel for the Board citing a recent appeal application.

Ms. Jenkins advised staff would look into this option.

Mr. Crim discusses ex parte communications with the Board.

Mr. Kovalik again expressed his concerns about the recent appeal application and felt it was appropriate for the Board to see any appeal application filed with the Town.

Mr. Crim advised the appeal in question is pending a circuit court determination.

Mr. Kovalik stated he feels the events have been dismissive of the Board functions.

Mr. Crim stated the issue in question is whether the appeal falls within the scope of The Board of Zoning appeals or should go to another body.

Mr. Kovalik outlined his interpretations of the by-laws in favor of hearing the appeal.

Mr. Crim reiterates that the matter is pending determination with the circuit court.

Mr. Kovalik states the Board is ready to hear the appeal should it come to them.

Live Streaming of Meetings

Ms. Jenkins shared the projected cost of live streaming meetings with the Board.

Mr. Kovalik asked about the process to request streaming BZA meetings.

Ms. Jenkins advised a written request from the Board would be needed to submit for review and potential allocation of funding by the Town Council.

Mr. Kovalik asked if other Board members have questions and restates his reasons for pursuing this line of questioning.

Ms. Heflin advised the Board of Zoning Appeals is not the only body not providing live streamed meetings.

Mr. Crim clarified the process to request funding for live streaming.

Mr. Kovalik stated that he is open to cheaper alternatives that protect the character and integrity of the Board. He added transparency is paramount.

Digital Devices

Ms. Jenkins advised no tablets are available for the Board currently and a motion to request them would be needed.

July Board Meeting Discussion

Ms. Jenkins advised the Board the next scheduled meeting of the Board fell on the same week as a holiday and requested the Board provide their ability to attend a July 2nd meeting date.

All members of the Board advised they would be available to attend the July meeting.

There were no further questions or updates from staff.

ADJOURNMENT

Mr. Fiutak motioned to adjourn. Ms. Maybach seconded, all in favor. No discussion. The vote was as follows:

Ayes:

**Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Mr. Geoffrey Fiutak**

Nays:
Absent During Vote:

The meeting was adjourned at 5:33pm.

I hereby certify that this is a true and exact record of actions taken by the Board of Zoning Appeals of the Town of Warrenton on June 4, 2024.

Lawrence "Larry" Kovalik
BZA Chair

DRAFT

TOWN OF WARRENTON, VIRGINIA
BOARD OF ZONING APPEALS
BY-LAWS

ARTICLE 1 – MEMBERSHIP

- 1-1 The Board of Zoning appeals of the Town of Warrenton, known hereafter as “The Board”, adopts the subsequent articles in order to facilitate its powers and duties in accordance with Article 15-2, Section 2309 of the 1950 Code of Virginia as amended and Article 11-2 Board of Zoning Appeals of the Town of Warrenton Zoning Ordinance.
- 1-2 The Board shall consist of five members who are residents of the Town and who shall be appointed by the Circuit Court of Fauquier County. The term of office shall be for five years. One of the five members appointed may be an active member of the Planning Commission. Members may be removed for just cause by the appointing authority upon written charges and a public hearing.

ARTICLE 2 – ANNUAL MEETING; DUTIES OF OFFICERS

- 2-1 The first meeting of the Board in the calendar year, to be held in January, shall be its annual meeting, and the first items of business shall be as follows:
- a. Election of Officers.
 - b. Appointment of persons to accept service on behalf of the Board.
- 2-2 If no items are to be considered in January, the nominations shall take place at the next regularly scheduled meeting.
- 2-2 The officers elected from the Board membership consist of a Chairman, Vice-Chairman, and a secretary. The Board secretary may be a member of staff.
- 2-3 Each candidate for office shall be nominated and seconded by two members of the board. A majority vote shall be required to be elected to office.

- 2-4 In the event any officer's position becomes vacant at any time during the year, an elections must be held at the earliest opportunity to fill the vacancy.
- 2-5 The Chair presides at all meetings and hearings of the Board. The Chair decides all points of order and procedure, subject to appeal to the full Board. The Chair shall:
- a. announce the business before the assembly in its proper order;
 - b. preserve order and decorum;
 - c. state and put all questions properly before the assembly;
 - d. rule on all procedural questions;
 - e. be informed immediately of any official communication and report same at the next regular meeting; and
 - f. affix his signature to all orders issued by the Board as evidence of such approve.
- 2-6 The Vice-Chair assumes the duties of the Chair in the Chair's absence.
- 2-7 The secretary may be appointed by the Board in accordance with the Code of Virginia. The duties of the secretary are as follows:
- a. prepare official correspondence at the direction of the Board;
 - b. send out notices of hearings as required by these By-laws, the Town of Warrenton Zoning Ordinance, and the Code of Virginia;
 - c. keep minutes and records of the Board's proceedings and other official actions;
 - d. keep a file on each case which comes before the Board;
 - e. send copies of appeals and applications to the Planning Commission as required by the Zoning Ordinance;
 - f. maintain and certify other Board records;
 - g. in response to Writs of Certiorari served upon the Board, prepare and file with the court, in a timely fashion, certified copies of the record of any Board decision that has been appealed;
 - h. prepare for the Board's review and approval the Annual Report of the Board with the Town Council and file it when approved by the Board; and
 - i. notify the Board promptly of any appeals filed from actions of the Board, any legal challenges to the Board's actions, and any notices to the Board.
- 2-8 The secretary must notify the Circuit Court of any vacancies on the Board and must perform duties as assigned by the Board.

- 2-9 The Board shall submit a report of its activities to the Town Council at least once each year per Article 11-2.3.6 of the 2006 Zoning Ordinance.

ARTICLE 3 – MEETINGS, QUORUM, VOTING, AND MINUTES

- 3-1 The Board shall hold its regular meetings on the first Tuesday of the month at 5:00pm except when a meeting is cancelled as provided in these By-laws.
- 3-2 If the regular meeting date falls on a legal holiday, the meeting shall be held on the following Tuesday unless otherwise designated by the Chairman.
- 3-3 When there are no cases pending, no meeting shall be held.
- 3-4 All meetings are open to the public in accordance with the requirements and exceptions of Title 2.2, Chapter 37 of the 1950 Code of Virginia as amended unless a closed meeting is held pursuant to the Virginia Freedom of Information Act.
- 3-5 Quorum
- a. A quorum is necessary to transact any Board business. In the absence of a quorum, the Board may not vote on any Board business except adjournment. However, the Board may engage in discussion of internal matters such as training, procedures, or personnel in open session without a quorum. The secretary must record such discussion in the meeting minutes.
 - b. Except as otherwise provided by law, a quorum consists of three (3) members (i.e., a majority) of the Board assembled in person.
- 3-6 Voting
- a. Except when the Board adopts a different method of voting, all votes will be by roll call, with the Chairman calling the roll.
 - b. The concurring vote of three (3) members (including any members participating remotely, to the extent provided in these By-laws) is required to:
 - i. grant variances;
 - ii. reverse decisions or determinations of the Zoning Administrator (i.e., appeals);
 - iii. grant a rehearing;
 - iv. reject an appeal;

- v. amend these By-laws
- c. The concurring vote of a majority of all members present and voting, or such other greater number as may be required by the Code of Virginia, is required to effect all other actions of the Board.
- d. Disclosure by a Board member.
 - i. A member must make a disclosure of the member's interest in a specific matter before the Board when required by law.
 - ii. Any disclosure must be announced and made part of the record of the Board prior to the case being heard or as soon as the basis for disclosure is discovered, except as otherwise provided by law.
- e. Disqualification and recusal of a Board member
 - i. A member is disqualified to act on a specific matter before the Board only as provided by law. The reason for disqualification must be made a part of the record of the Board.
 - ii. Members may recuse themselves from voting under any circumstance which in the opinion of the individual member would create an appearance of impropriety or unfairness. The decision to recuse must be entered into the record of the Board, but a member need not disclose the reasons for the recusal.
 - iii. Any disqualification or recusal must be announced and made a part of the record of the Board prior to the case being heard or as soon as the basis for disqualification or recusal is discovered.

3-7 The Order of business at all regular meetings of the Board is as follows unless adjusted by majority vote of the Board members present and voting:

- a. Call to Order by Chairman
- b. Determination of a Quorum
- c. Adoption of Minutes
- d. Public Hearings
 - i. Unfinished Business
 - ii. New Business
- e. Board Member's Discussion
- f. Adjournment

3-8 Special provisions addressing remote participation by the Board members are addressed in the separate “Remote Participation” document adopted by the Board on October 3, 2023.

3-9 In the event of inclement weather or other conditions that require closure of the Town of Warrenton Town Hall building, or if the Chair finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting, all agenda items scheduled to be heard must be rescheduled promptly to be heard at the next available meeting.

3-10 The Board may approve as its minutes any of the following document formats: (a) the video recording of its meeting, (b) a transcript thereof, (c) a set of resolutions, (d) a summary of its meetings, or (e) any combination of formats (a) through (d). It may adopt such formats for any meeting, including meetings held prior to adoption of these By-laws. If the Board approves one format of minutes, it may later approve a different format as the official minutes of that meeting.

ARTICLE 4 – DUTIES

4-1 It is the duty of the Board, in accordance with the provisions of the Code of Virginia to hear and decide cases involving the following:

1. Variances in accordance with the provisions of the Zoning Ordinance and Code of Virginia.
2. Appeals from a decision of the Zoning Administrator, or other administrative officer, in accordance with the provisions of the Zoning Ordinance and the Code of Virginia.
3. Applications for the interpretations of the district map where there is any uncertainty as to the location of the district boundary.

ARTICLE 5 – APPLICATIONS TO THE BOARD

5-1 All applications to the Board for appeals, variances, and district map interpretations must be made on forms supplied by Town staff. All other applications or requests, for which there is no required form, must be made in writing. The Board may make, alter, or rescind these forms, consistent with the Zoning Ordinance and general laws of the Commonwealth.

5-2 All applications must include all of the information required by the Zoning Ordinance before being scheduled for public hearing.

- 5-3 All applications must be filed with Town staff. The processing and scheduling of applications must comply with the requirements of the Town of Warrenton Zoning Ordinance and the Code of Virginia.
- 5-4 The secretary of the Board must, in accordance with the Code of Virginia and the Zoning Ordinance, cause to be advertised by publication, in a newspaper of general circulation in the area of the application, the required legal notice of the application.
- 5-5 The secretary of the Board must, in accordance with the Code of Virginia and the Zoning Ordinance, send applicable property notification letters to adjacent and vicinity property owners at the expense of the applicant for the appeal/variance request.
- 5-6 The Board, Town staff, and applicants must comply with the Code of Virginia with respect to ex parte communications.

ARTICLE 6 – PROCEDURES FOR HEARING CASES

- 6-1 The following is intended to serve as a general guideline for Public Hearing procedures of the Board:
 - 1. Call to Order
 - 2. Chairman calls the item with the starting time of the hearing item
 - a) The Chairman may, in its discretion, remind all parties present that the Code of Virginia requires a concurring vote of three (3) members of the Board to approve a variance, and, in an appeal, to reverse the determination of the Zoning Administrator or other officer.
 - 3. Comments/Presentations from the Town staff
 - 4. Comments/Presentations from the applicant
 - 5. Questions on Staff report from Board Members
 - 6. Questions of Applicant presentation from Board Members
 - 7. Comments from the public.
 - a) When the last person from the public has finished speaking, the Chairman shall declare the public hearing closed.
 - b) This testimony is limited to three (3) minutes for individuals and five (5) minutes for representatives of groups, e.g., civic, condominium, and homeowner's associations.
 - 8. The hearing item reverts back to the Board at this point.
 - a) No comments from anyone other than the Board and Staff are permitted.
 - 9. Discussion and motions are made
 - 10. Discussion of main motion and amendments, if necessary
 - 11. Chairman repeats motion and question is called

12. Vote on motion

ARTICLE 7 – AMENDMENTS

- 7-1 These by laws may be amended by affirmative vote of the majority of the members of the Board at a regularly scheduled meeting, provided that the proposed amendment to these By-Laws be delivered to members of the Board at least 30 days prior to the meeting at which the vote on the amendment is to be taken.

ADOPTED: ~~November 6, 1996~~

DRAFT

TOWN OF WARRENTON BOARD OF ZONING APPEALS
POLICY ON REMOTE PARTICIPATION OF MEMBERS

AUTHORITY AND SCOPE:

This policy is adopted pursuant to the authorization of Va. Code § 2.2-3708.3 and is to be strictly construed in conformance with the Virginia Freedom of Information Act (VFOIA), Va. Code §§ 2.2-3700—3715.

1. Members of the Town of Warrenton Board of Zoning Appeals (“BZA”) may participate from remote locations in meetings where a quorum is physically assembled at a single meeting place when consistent with Virginia law and this policy. (The BZA may hold a virtual meeting, where members of the BZA participate from remote locations without a quorum physically assembled at a single meeting place, only when authorized under Virginia law; this policy applies to such virtual meetings to the extent its provisions are consistent with such law.)
2. This policy must be reviewed and readopted annually. (Va. Code § 2.2-3708.3(D).)
3. The Chair of the BZA is responsible for implementing this policy on remote participation meetings.
4. This policy must be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.
5. This policy does not prohibit or restrict any individual member of a public body who is lawfully either participating in an all-virtual meeting or who is using remote participation from voting on matters before the public body. See Va. Code § 2.2-3708.3(D).
6. Remote participation is subject to the approval of the Chair, appealable to the body as a whole in accordance with Robert’s Rules of Order.

DEFINITIONS

- a. **“BZA”** means the Town of Warrenton Board of Zoning Appeals
- b. **“Member”** means any member of the Board of Zoning Appeals or “BZA”
- c. **“Remote participation”** means participation by an individual member of the BZA by electronic communication means in a public meeting where a quorum of the BZA is physically assembled, as defined by Va. Code § 2.2-3701.

- d. **“Meeting”** means a meeting as defined by Va. Code § 2.2-3701.
- e. **“Notify”** or **“notifies”** for purposes of this policy, means written notice, such as email or letter. Notice does not include text messages or communications via social media.
- f. **“Person with a disability”** means a person who has a physical or mental impairment that substantially limits one or more of his major life activities or who has a record of such impairment.;
- g. **“Caregiver”** means an adult related by blood, marriage, or adoption or the legally appointed guardian of the person with a disability for whom he is caring.

PROCESS TO REQUEST REMOTE PARTICIPATION:

- 7. On or before the day of a meeting, a member of the BZA wishing to participate remotely must notify the Chair that such member is unable to attend the meeting due to:
 - a. a temporary or permanent disability or other medical condition that prevents physical attendance,
 - b. a medical condition of a member of the member's family requiring the member to provide care that prevents the member's physical attendance;
 - c. the member's principal residence being more than 60 miles from the meeting location identified in the required notice for such meeting; or
 - d. the member being unable to attend the meeting due to personal reasons, in which case the member must identify with specificity the nature of the personal reason.
- 8. The requesting member shall also notify the Board of Zoning Appeals staff liaison of their request, but their failure to do so shall not affect their ability to remotely participate.
- 9. For purposes of determining whether a quorum is physically assembled, an individual member of a public body who is either a person with a disability or who must act as a caregiver at the time of the meeting for a person with a disability, and is thus prevented from physically attending the meeting and who thus uses remote participation, will count toward the quorum as if the individual was physically present;
- 10. A member's participation from a remote location will only be approved if

the member’s voice is clearly audible to BZA members and citizens at the BZA’s central meeting location and if the member can hear persons speaking into the microphones at that location.

- 11. If a member’s participation from a remote location is disapproved because such participation would violate this policy, such disapproval must be recorded in the minutes with specificity.
- 12. Each member’s remote participation due to personal reasons is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
- 13. Members participating in person must be physically assembled at the meeting location that was announced in the notice of the meeting or, if no location was specified, at Town Hall.
- 14. The BZA must record in its minutes all instances of remote participation, and the remote location from which a member participates. The remote location need not be open to the public and may be identified in the minutes by a general description.
- 15. The Chair (or Vice-Chair if the requesting member is the Chair) shall promptly notify the requesting member whether their request is in conformance with this policy, and therefore approved or disapproved.
- 16. If participation is approved pursuant to subdivision 7.a. or 7.b. of this Policy, the BZA must include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member’s physical attendance or (ii) a family member’s medical condition that required the member to provide care for such family member, thereby preventing the member’s physical attendance. If participation is approved pursuant to subsection 7.c., the BZA must also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member’s principal residence and the meeting location. If participation is approved pursuant to subsection 7.d., the BZA must also include in its minutes the specific nature of the personal matter cited by the member.
- 17. A statutorily conforming policy must be adopted by this BAC at least once annually.

Introduced on _____
Approved on _____

Secretary, Board of Zoning Appeals
Town of Warrenton