



BOARD OF ZONING APPEALS MEETING

Tuesday, June 04, 2024 at 5:00 PM

AGENDA

CALL TO ORDER.

DETERMINATION OF A QUORUM.

ELECTION OF OFFICERS.

APPROVAL OF MINUTES.

- [1.](#) October 3, 2023- Draft Meeting Minutes

UPDATES.

- [2.](#) Discussion of Board By-Laws

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 OCTOBER 3, 2023, AT 5:00 P.M. IN WARRENTON, VIRGINIA

PRESENT Mr. Larry Kovalik; Ms. Melea Maybach; Mr. Amos Crosgrove; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official; Mr. Martin Crim, Town Attorney

PRESENT VIA ZOOM

ABSENT Ms. Betsy Sullivan

CALL TO ORDER AND DETERMINATION OF A QUORUM

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

APPROVAL OF MINUTES

Draft Minutes – September 9, 2023 Meeting

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

Ayes: Mr. Larry Kovalik, Chair; Ms. Melea Maybach; Mr. Amos Crosgrove

Nays:
Absent During Vote: Ms. Betsy Sullivan

UPDATES

Remote Participation Policy

Ms. Jenkins gave a brief overview of the remote participation policy and advised the Board did not currently have this policy in place but had previously expressed interest in remote participation at prior meetings.

Mr. Kovalik pondered if this policy was similar to those used by the Town Council and Planning Commission.

Ms. Jenkins confirmed the policy was the same.

Mr. Kovalik asked if Section Two of the policy requiring a reason for remote participation be publicly disclosed was HIPPA compliant.

Mr. Crim advised the reasoning for remote participation does not necessarily need to be specific, but noted the Board can deny a remote participation request if they are not in agreement.

There were no further questions.

Mr. Crosgrove Motioned to approve the remote participation policy as presented, Seconded by Ms. Maybach. All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Mr. Amos Crosgrove*

Nays:

Abstention:

Absent During Vote: *Ms. Betsy Sullivan*

Board of Zoning Appeals- By-Laws Update

Ms. Jenkins gave a brief overview of the By-Laws the Board currently has in draft form. She added the last time these were adopted was in November of 1996, and these documents were provided to the Board to review at last month's meeting.

The Board discussed changes to Article 2 of the By-Laws which states, "one of the five members of the Board shall be an active member of the Planning Commission." The Board requested this be updated to say, "may also be an active member of the Planning Commission".

Mr. Crim advised he is not the Board of Zoning Appeals legal counsel, he represents the Town of Warrenton only.

Mr. Kovalik pondered what protections the board has against legal proceedings.

Ms. Heflin and Ms. Jenkins advised they would research this matter and bring their findings to the next meeting of the Board.

Discussion ensued regarding the granting of several variances for fencing and when the Zoning Ordinance text amendment process is triggered.

Mr. Crim stated the Planning Commission should be notified in some way that a text amendment may be required due to the increasing number of variances granted for the same request.

The Board requested deletion of Article 3-8 of the By-Laws which discusses vacancies occurring within the Board. The Board felt that Article 3-7 of the By-Laws covered this topic in its entirety.

Mr. Kovalik questioned the yearly report requirement under Article 5-10 of the By-Laws.

Mr. Crim advised the report is a statutory requirement and must be provided.

The Board discussed Article 7 of the By-Laws relating to procedures for hearing cases and questioned when discussion on a motion is appropriate.

Ms. Heflin recalled last month's Board meeting, where a second was not received for an active motion and discussion ensued on the active motion.

Mr. Crim advised no second on an active motion is required to have discussion on the motion.

Ms. Heflin asked if the Board had any further questions for Mr. Crim.

There were no further questions.

Ms. Heflin stated staff would revise the By-Laws for Board consideration, and requested if the Board felt they needed input from the Town Attorney, to let staff know as far in advance as possible.

The board agreed and there was no further discussion.

ADJOURNMENT

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

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach; Mr. Amos Crosgrove*

Nays:
Absent During Vote: *Ms. Betsy Sullivan*

The meeting was adjourned at 5:45pm.

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 15.1, Chapter 11 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. In the absence of the Chairman, the Vice-Chairman must call 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 (or Vice-Chair if the Chair is unable to act) 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