



BOARD OF ZONING APPEALS MEETING

Tuesday, August 06, 2024 at 5:00 PM

AGENDA

CALL TO ORDER.

DETERMINATION OF A QUORUM.

APPROVAL OF MINUTES.

- [1.](#) Draft Minutes- July 2, 2024

OLD BUSINESS.

- [2.](#) Remote Participation Policy Discussion

BOARDMEMBER'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 JULY 2, 2024, AT 5:00 P.M. IN WARRENTON, VIRGINIA

PRESENT Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair; Mr. Geoffrey Fiutak; Ms. Susan Helander; Mr. A. Van Baggett; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official; Ms. Ruth Griggs, Town Attorney

ABSENT

PRE-MEETING WORK SESSION

Call to Order

The Meeting was called to order at 4:00pm.

Work Session

Mr. Kovalik greeted the new board members.

Mr. Kovalik asked the new board members if they had any questions on the agenda items.

Mr. Kovalik indicated several typographical errors in the draft by-laws and remote policy.

Mr. Baggett indicated another typographical error.

Mr. Kovalik briefly outlined the discussions regarding the live streaming of board meetings and publishing of meeting minutes.

Ms. Heflin responded discussing the availability of previous meeting minutes and the process moving forward.

Mr. Fiutak asked about the lead time required to set up a live stream.

Ms. Jenkins replied that she does not know, and the IT department would need to be consulted.

Mr. Fiutak asked about the potential for live streaming upon request.

Ms. Jenkins advised that the meetings are recorded and available on request.

Mr. Kovalik and Mr. Fiutak continued to discuss the availability of recordings.

Ms. Heflin advised that there are costs associated with web hosting the recordings.

Mr. Kovalik put forward the question of citizens' time during Board meetings.

Mr. Fiutak asked if a mechanism is in place for citizens to sign up to speak.

Ms. Jenkins advised that no mechanism is currently in place, but one can be prepared if citizens time is added as a permanent fixture of the agenda.

Ms. Maybach provided her opinion on the matter, advising that it would distract from the purpose of the Board.

Mr. Kovalik and Ms. Maybach continued to discuss citizens' time.

Mr. Kovalik asked Ms. Jenkins about the matter of independent council for the Board of Zoning Appeals.

Ms. Jenkins advised the process to request funding for independent legal counsel.

Mr. Kovalik asked for further clarification on the Board's need for an independent legal counsel.

Ms. Jenkins responded briefly outlining cases in which the Board may wish to have its own legal counsel.

Mr. Kovalik and Ms. Jenkins briefly discussed the process of hearing cases if the funding request for legal counsel is denied.

Ms. Maybach asked about the costs and processes involved in retaining independent legal counsel.

Ms. Jenkins responded providing what information was currently available.

Mr. Fiutak asked for clarification on the difference in legal representation requirements between the Board of Zoning Appeals and the Planning Commission.

Mr. Kovalik responded outlining the differences and potential need for independent legal representation.

Ms. Maybach asked staff if legal representation would be provided if the Board had to go to court.

Ms. Jenkins responded that she did not have the answer but would ask.

Mr. Kovalik reiterated several previously discussed points regarding independent legal counsel for the Board.

Mr. Kovalik moved the discussion to a series of appeals to the Warrenton Data Center site plan, providing a brief overview of their status, seeking to have the Board add the appeal to the agenda.

Mr. Fiutak asked for clarification regarding the approval of the site plan, noting that the Board of Zoning appeals has no authority over items approved by the Town Council.

Mr. Kovalik responded advising that the appeals relate to the site plan which was approved by town staff.

Mr. Fiutak and Mr. Kovalik continued to discuss limits of the Boards authority.

Mr. Fiutak asked the Town Attorney to assist in clarifying the limits of responsibility and authority.

Ms. Griggs indicated the section of state code previously read by Mr. Kovalik.

Mr. Fiutak and Mr. Kovalik continued to discuss the appeal and limits of the Boards authority.

Ms. Maybach asked for clarification on the type and status of the appeal.

Mr. Kovalik responded attempting to clarify.

Mr. Fiutak spoke identifying two points for examination by the Board potentially requiring legal assistance.

Mr. Kovalik and Mr. Fiutak continued to discuss whether the appeal should be heard by the Board.

Mr. Fiutak asked staff for clarification of the timeline for the submitted appeals.

Ms. Jenkins provided clarification of the receipt and rejection of the appeals.

Ms. Griggs corrected the phrasing of part of Ms. Jenkins clarification.

Mr. Kovalik thanked Ms. Griggs for the correction and clarifies that they are present in their capacity as town attorney and have a conflict of interest.

Mr. Fiutak asked Ms. Griggs about the process for rejected appeals.

Ms. Griggs responded that she does not want to interject if the Chair prefers, she doesn't.

Mr. Kovalik reiterated his opinion that the Board needs its own counsel and need to hear all cases submitted to the Board.

Mr. Fiutak and Mr. Kovalik briefly discussed the status of the appeals and whether a rejected applicant can still be heard by the Board or would need to be directed by the Circuit Court.

The discussion moved to the process for submission and review of an application and whether an applicant can approach the Board with an application directly.

Mr. Kovalik ends the work session and begins the regular meeting.

CALL TO ORDER AND DETERMINATION OF A QUORUM

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

AGENDA REVIEW

Ms. Jenkins gave a brief overview of the agenda.

APPROVAL OF MINUTES

Draft Minutes – June 4, 2024, 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; Ms. Susan Helander; Mr. A. Van Baggett*

Nays:
Absent During Vote:

Public Hearing

Draft BZA By-Laws

Ms. Heflin provided a brief overview of the draft by-laws.

Mr. Kovalik opened the public hearing.

Mr. Kovalik closed the public hearing

Mr. Fiutak motioned to approve the draft by-laws with the changes noted in the work session. Ms. Maybach seconded. All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Mr. Geoffrey Fiutak; Ms. Susan Helander; Mr. A. Van Baggett*

Nays:
Absent During Vote:

Draft Remote Participation Policy

Ms. Jenkins gave a brief overview of the draft remote participation policy.

Mr. Kovalik asks if the policy is on parity with the Planning Commission.

Ms. Jenkins responded advising that the draft was provided by the town attorney.

Mr. Kovalik opened the public hearing.

Mr. Kovalik closed the public hearing.

Mr. Kovalik asked for a motion.

Ms. Maybach motioned to approve the remote participation policy. Ms. Helander seconded. The discussion was as follows.

Mr. Baggett asked for clarification on the language in section 7 subsection C.

Mr. Kovalik responded clarifying the intent of the language.

Mr. Baggett indicated another point in subsection D.

Mr. Kovalik asked if the notes from previous discussions were available.

Ms. Jenkins directed the Board to the minutes.

Ms. Heflin added that the Town Attorney had extensive discussions on the topic.

Mr. Baggett provided his thoughts on the wording.

Ms. Heflin advised that they could revisit the topic with the town attorney.

Mr. Baggett suggested that the language in section 11 could be clarified.

Mr. Baggett also indicated that he has concerns about the language in section 14.

Ms. Griggs advised that the draft can be reviewed to ensure that it meets state requirements while addressing the privacy concerns.

Mr. Baggett suggested a change to the language in section 16.

Ms. Maybach withdrew the motion to approve.

The matter was postponed until the next regularly scheduled meeting.

UPDATES

Annual Report

Ms. Jenkins provided a brief overview of the Boards 2023 activity and advised that work is in progress to update the zoning ordinance to current standards and best practices.

Mr. Kovalik asked for clarification on the review process for the revised zoning ordinance.

Ms. Jenkins responded briefly outlining the planned review process.

Agenda Amendment

Mr. Kovalik asked if agenda amendments and motions could still occur during the work session.

Ms. Jenkins advised that requests for funding would need to be added to the agenda and approved via vote prior to being taken before the Town Council.

Mr. Kovalik motioned to amend the agenda to add the topic of independent legal representation. Seconded by Mr. Baggett. All in favor. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair;
Mr. Geoffrey Fiutak; Ms. Susan Helander; Mr. A. Van Baggett*

Nays:
Absent During Vote:

Independent Legal Representation

Mr. Kovalik provided a summary of the prior discussions regarding independent legal representation.

Ms. Maybach motioned to ask the Town Council to appropriate funds for independent legal counsel for the Board of Zoning Appeals. Seconded by Mr. Baggett. Discussion was as follows.

The Board briefly discussed the source of the funding and the need for independent legal counsel.

Ms. Heflin asked Mr. Kovalik to clarify the scope of the request.

Mr. Kovalik responded outlining the initial request.

The Boards briefly discussed clarifying the scope of the request.

Mr. Bagget asked if a value is needed prior to consideration.

Ms. Jenkins advised that a value would be recommended.

Mr. Kovalik asked for the timeline to be heard by the Town Council.

Ms. Jenkins stated she would consult the Town Clerk and Town Administrator for the timeline.

Mr. Kovalik briefly discussed possible attendance for the upcoming Town Council meeting.

Ms. Jenkins asked for the motion to be revised to add further specificity.

Mr. Kovalik asked Ms. Griggs for assistance in estimating costs of legal counsel.

Ms. Griggs responded, outlining several courses of action for the request.

Mr. Kovalik asked if the Town Council is aware of the two issues being discussed.

Ms. Jenkins responded advising that she cannot speak for the Town Council, but the Town Manager is aware.

Mr. Kovalik and staff briefly discussed the logistics of adding the request to the upcoming Town Council meeting.

Mr. Kovalik and staff discussed the proposed motion.

Ms. Maybach motioned to ask the Town Council to appropriate funds for independent legal counsel for the Board of Zoning Appeals. Seconded by Mr. Baggett. The vote was as follows:

Ayes: *Mr. Larry Kovalik, Chair; Ms. Melea Maybach, Vice Chair; Mr. Geoffrey Fiutak; Ms. Susan Helander; Mr. A. Van Baggett*

Nays:
Absent During Vote:

Digital Device Funding

Mr. Kovalik and Staff discussed the previous question of funding for digital devices.

Mr. Kovalik and the Board discussed their concerns on the matter.

The discussion is tabled for the time being.

Board Members Time

Mr. Kovalik briefly commented on the topic of citizens' time.

ADJOURNMENT

Ms. Helander motioned to adjourn. Mr. Fiutak 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 5:45pm.

Post Meeting Work Session

Call to Order

The Meeting was called to order at 5:46pm.

Work Session

Mr. Fiutak expressed his thoughts that legal counsel is needed prior to a decision.

Mr. Kovalik presented his reasons for hearing the appeals.

Mr. Fiutak again expressed his concerns that not following formal processes opens the Board to ex parte discussion.

Mr. Kovalik reiterated his interpretation of the state code.

Mr. Fiutak and Mr. Kovalik briefly discussed the application process and if a party can directly approach the Board with an appeal.

Ms. Helander asked about the lack of precedent for direct submission of applications.

Mr. Kovalik responded highlighting the types of cases historically heard by the Board.

Ms. Helander and Mr. Kovalik discussed the matter further.

Mr. Kovalik again reiterated his reasons for hearing the appeal.

Ms. Helander indicated that as no decision can be made and a request for legal counsel has been made further discussion is not beneficial at this time.

Mr. Kovalik continues to readdress his reasons and concerns hearing the appeal.

Ms. Griggs advised Mr. Kovalik that the level of discussion occurring requires the notification and presence of all involved parties.

Ms. Maybach advised that without legal counsel no decision can be made, and no further discussion can occur.

Mr. Kovalik continued to outline his concerns and offer access to his copy of the appeal for review by board members.

Ms. Maybach expressed her thoughts on the current situation and concerns with applicants approaching the Board directly.

Mr. Kovalik reiterated his concerns and reasons for seeking swift action on the appeal.

Ms. Maybach asked about the timeframe for the presented appeals.

Ms. Jenkins advised that she cannot answer without consulting legal counsel.

Ms. Griggs provided a brief overview of the larger legal proceeding surrounding the appeals.

ADJOURNMENT

With no further questions Mr. Kovalik asked for a motion to adjourn the work session.

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.

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 July 2, 2024.

Lawrence "Larry" Kovalik
BZA Chair

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