COMMONWEALTH OF VIRGINIA
PRINCE WILLIAM COUNTY

Board of Zoning Appeals

By-Laws

April 24, 2017

Part 1

1. **Re-enactment and adoption of By-Laws.**

   (a) The official title of the board shall be Prince William County Board of Zoning Appeals.¹

   (b) These By-Laws are adopted to facilitate the conduct of meetings and any other action taken by the Prince William County Board of Zoning Appeals as authorized by law.²

   (c) These By-Laws shall be construed consistent with the ordinances of Prince William County, the general laws of the Commonwealth of Virginia and laws of the United States.

   (d) If any word, clause, sentence, section, subsection or other part or parts of these By-Laws 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 By-Laws, nor shall it affect any application of these By-Laws that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of these By-Laws are hereby declared to be severable.

2. **Definitions.**

   (a) Appellant: A person or entity authorized under the Zoning Ordinance to take an appeal to the BZA.³

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

² Prince William County Code, § 32-900.00.

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

(b) Applicant: A person or entity authorized under the Zoning Ordinance to apply for relief to the BZA.5

(c) BZA: Prince William County Board of Zoning Appeals.6

(d) Case: An application for variance, an appeal or any other proceeding which comes before the BZA.

(e) Circuit Court: Circuit Court for Prince William and the Cities of Manassas and Manassas Park.

(f) County: Prince William County, including where appropriate an official acting on behalf of Prince William County.

(g) Majority: In the phrase "majority of the BZA" majority means at least four (4) members.7

(h) Member: A citizen of Prince William County (1) appointed by the Circuit Court to serve on the BZA and (2) who has taken any oath required by the Circuit Court.8

(i) Alternate Member: A citizen of Prince William County (1) appointed by the Circuit Court to serve on the BZA as an alternate and (2) who has taken any oath required by the Circuit Court. Qualifications, terms and compensation of an alternate member shall be the same as those of regular members.

(j) Meeting: Any meeting, public hearing or other proceeding before the BZA.

(k) Zoning Administrator: The Zoning Administrator of Prince William County9 or a person designated to act on behalf, or in place, of the Zoning Administrator of Prince William County.

(l) Zoning Ordinance: Chapter 32 of the Prince William County Code.

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Prince William County Code, § 32-900.00.

Code of Virginia, § 15.2-2312; Prince William County Code, §§ 32-900.11(C)(6) and 32-900.20(3).

Code of Virginia, § 15.2-2308(A); Prince William County Code, § 32-900.00(1)(a).

9 Prince William County Code, Part 100, "Zoning administrator or administrator"
3. **Officers.**

(a) The officers of the BZA shall be a Chairman and a Vice-Chairman.

(b) The Chairman and a Vice-Chairman shall be elected annually and shall serve until December 31 of the year elected or until a successor is elected.

(c) Election of a Chairman and a Vice-Chairman shall take place at the first regular meeting of each calendar year.

(d) Nominations shall be made by members from the floor. A candidate must receive four votes to be declared elected and shall take office immediately.

(e) In the event of a vacancy in the office of Chairman or Vice-Chairman, an election shall take place at the next regularly scheduled meeting to fill the vacancy for the remaining portion of the term.

(f) The Chairman and Vice-Chairman may be reelected.

4. **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.

5. **Duties of Chairman.**

The Chairman 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.\(^\text{11}\)

\(^{10}\) Code of Virginia, § 15.2-2308(C); Prince William County Code, § 32-900.00(2).

\(^{11}\) Code of Virginia, § 15.2-2312; Prince William County Code, § 32-900.20(3).
(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 Section 18(c)(2).
(l) Enter orders dismissing applications for variance and appeals when dismissal is requested by the applicant for variance or the appellant.
(m) When a regular member knows he will be absent from or will have to abstain from any application at a meeting he shall notify the Chairman and the Recording Secretary 24 hours prior to the meeting. The Chairman shall select an Alternate Member to serve and vote in the absent or abstaining Member's place and the records of Board shall so note.

6. **Duties of Vice-Chairman.**

(a) The Vice-Chairman shall assume the duties of the Chairman in the Chairman's absence, inability to act or disability.

(b) The event both the Chairman and Vice-Chairman are absent or unable to act, the BZA shall elect an acting Chairman.

7. **Duties of the Recording Secretary.**

The Recording Secretary shall:
(a) Keep a record of all business transacted by the BZA.  

(b) Serve notice to the members, applicants, appellants and all other parties designated by the Chairman, 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. 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.  

(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. Copies of the advertisement shall be placed in the case file.  

(h) Notify the 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.  

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12 Code of Virginia,§ 15.2-2308(C), last sentence; Prince William County Code,§ 32-900.00(2)(c).  

13 Code of Virginia,§§ 15.2-2204(8), second paragraph and 15.2-2309(2) and (4); Prince William County Code, § 32-700.60(2).  

14 Code of Virginia,§ 15.2-2204(8) (fourth paragraph); Prince William County Code,§ 32.700.60(3).  

15 Code of Virginia,§§ 15.2-2204(A), second paragraph and 15.2309(2) and (4); Prince William County Code, § 32.700-60(1).  

16 As to variances, see Prince William County Code, § 32-900.12(2).
(i) Assist the BZA to prepare its annual report. Upon approval by the BZA, the report shall be transmitted to the Prince William County Board of Supervisors.  

Obtain information related to BZA activities as may be requested by a member.

Part 3

8. 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.

Part 4

9. Meetings.

(a) A regular meeting shall be held at 2:00p.m. in the Supervisor's Chambers, 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 Chairman or a majority of the BZA upon reasonable notice to all members and in accordance with the Virginia Freedom of Information Act.

(c) Every meeting and all records of the BZA shall be open to the public. The BZA may hold a closed meeting only pursuant to Virginia Freedom of Information Act.

(d) All votes shall be by roll call and a record of all votes shall be kept as part of the minutes.

(e) All parties to the case shall make a reasonable effort to provide all pertinent info related to the case to the clerk to the Board of Zoning Appeals no later than ten calendar days prior to a scheduled hearing date.

17 Code of Virginia, § 15.2-2308(C), last sentence; Prince William County Code, § 32-900.00(2)(c).

18 Code of Virginia, §§ 2.2-3700 through 2.2-3714, and in particular § 2.2-3711.
10. **Quorum.**

(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.

(c) A vote of a majority of the BZA shall be necessary for an action to be taken by the BZA.

11. **Order of business.**

(1) The order of business for a regular meeting, subject to the discretion of the Chairman, ordinarily will be:

(2) Call to order.

(3) Roll call.

(4) Determination of a quorum.

(5) Swear in citizens who will speak before the BZA.

(6) New business, starting with public hearings on cases scheduled for the meeting.

(7) Unfinished business, if any.

(8) Resolution with respect to minutes of any prior meeting.

(9) Report of the Recording Secretary, if any.

(10) Report of BZA committees, if any.

(11) Report of the Zoning Administrator, if any.

(12) Adjournment.

(a) Except as otherwise set out in these By-Laws, parliamentary procedure at meetings shall be governed by Robert's Rules of Order, as amended.

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19 Code of Virginia, § 15.2-2308(C); Prince William County Code,§ 32-900.00(2)(a)
12. **Procedure 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 party requesting relief from the BZA has the burden of showing that it is entitled to the relief requested under the law, including the Code of Virginia and the Zoning Ordinance.

(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 staff shall be given an equal amount of time as given to applicant, appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia, to present its reports.

3. Applicant, appellant or other person aggrieved under § 15.2-2314 of the Code of Virginia, shall be given an equal amount of time as given to staff, to present its case.

4. Citizens will be recognized to present evidence, comment and argument in support of relief sought by applicant or appellant.

5. Citizens will be recognized to present evidence, comment and argument against the relief sought by applicant or appellant.

6. Staff evidence, comments and rebuttal to presentations by citizens.

7. Applicant or appellant evidence, comments and rebuttal to presentations by citizens.

8. Closing argument by applicant or appellant.

9. Closing argument by staff.
Closing rebuttal by applicant or appellant.

Motion by a member for entry of a resolution.

Second by another member.

Discussion on the motion.

Vote.

Applicant or Appellant shall be advised that an Appeal from the BZA’s decision must be filed within 30 days from today’s decision.

All testimony shall be given under affirmation or oath.

A party may cross-examine any person giving testimony after being duly recognized by the Chairman.

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.

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.

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 means deemed appropriate by the Recording Secretary.

Any person is authorized, at its expense, to retain a court reporter to record proceedings of a case.
13. **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.

(e) Prior to a vote on a motion, the Recording Secretary shall read the motion.

14. **Date of decision.**

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. A resolution is effective and a decision entered in a case at the time a vote is taken on a motion to enter the resolution. A copy of the resolution will thereafter be transcribed and also made part of the public record. The Recording Secretary shall certify all transcribed resolutions.
15. **Request for rehearing.**

(a) A party may request 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 which 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.

**Part 5**

16. **Posting on property of notice of a meeting.**

(a) Posting on property of a notice required by law to be given by posting of one or more signs is the responsibility of the applicant or appellant.

(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, within three (3) days after posting shall be placed in the case file.

(c) Failure of the applicant or appellant to timely post any notice on property required by law or, or to timely file any affidavit required by law with respect to posting of a notice on property, may result in dismissal of the case.

17. **Inspections.**

Any member may, on reasonable notice to the property owner, or occupant of the property, where appropriate, inspect any property subject to a case pending before the BZA. Upon refusal of the property owner to permit a member to inspect property, the member may make the refusal of record.

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20 Prince William County Code,§ 32.700.60(4).
21 Prince William County Code,§ 32.700.60(4).
18. **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.\(^\text{22}\)

(b) A case will be considered at a meeting no later than fifty-eight (58) days after it is filed.

(c) Nevertheless, there may be an occasion when an applicant, an appellant 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 Chairman upon such terms as the Chairman 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.

19. **Disqualification of a member.**

(a) A member shall be disqualified to act on a matter before the BZA when required by law\(^\text{23}\) and shall record the reason for disqualification in writing with the Recording Secretary or on the record at a meeting.\(^\text{24}\)

(b) A member may be disqualified under any circumstance, which in the opinion of the member, would create an appearance of impropriety or unfairness. A member shall state on the record a decision to be disqualified, but need not state the reason for disqualification.

(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.

\(^{22}\) 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)
20. **Advice and ex parte contacts.**

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 relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the BZA prior to the hearing but may not discuss the facts or law relative to a particular case. 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.

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23 Code of Virginia, § 2.2-3100 et seq.

24 Prince William County Code, § 32-900.00(3)(b).

(a) Amendments may be made to these By-Laws 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 By-Laws.

(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 By-Laws.

22. Repeal of previous By-Laws.

All By-Laws previously adopted by the BZA are repealed.

Enacted by the
Prince William County Board of Zoning Appeals
on
April 24, 2017

Chairman:

Recording Secretary: