

**ALBEMARLE COUNTY BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

The Albemarle County Board of Zoning Appeals, under the authority of Virginia Code § 15.2-2308 and Albemarle County Code § 18-34.1, establishes the following rules of procedure:

1. Officers

- A. *Chair.* At its annual meeting, the Board of Zoning Appeals (“BZA”) shall elect a Chair who, if present, shall preside at the meeting and at all other meetings during the year for which elected. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- B. *Vice-Chair.* At its annual meeting, the BZA shall elect a Vice-Chair, who, if present, shall preside at meetings in the absence of the Chair and shall discharge the duties of the Chair during the Chair’s absence or disability.
- C. *Secretary.* At its annual meeting, the BZA shall elect a Secretary. The Secretary may be either a member of the BZA or another person. The duties of the Secretary shall include keeping and maintaining custody of the records of the BZA, drafting and signing all correspondence necessary for the execution of the duties and functions of the BZA, and such other duties as these rules may provide and the BZA may, from time to time, assign.
- D. *Recording Secretary.* The Zoning Administrator (or designee) may serve the BZA as its Recording Secretary. The duties of the Recording Secretary shall include keeping the minutes of the BZA’s meetings and such other duties as these rules may provide and the BZA may, from time to time, assign.
- E. *Other Offices.* At any of its meetings, the BZA may create and fill any other offices as it deems necessary.
- F. *Term of Office.* The Chair and Vice-Chair shall be elected for one-year terms, and until their respective successors take office. Either or both officers may be re-elected for one or more additional terms.
- G. *Vacancies in Office.* Vacancies in office shall be filled as soon as practicable using the election procedures provided herein.
- H. *Absence of Chair and Vice-Chair.* If the Chair and Vice-Chair are absent from any meeting, a present member shall be chosen to act as Chair.

2. **Meetings**

- A. *Annual Meeting.* The first meeting of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, the Vice-Chair and the Secretary.
- B. *Regular Meetings.* The BZA shall meet in regular session at the time and place and on the day or days established for regular meetings. The BZA may subsequently establish a different day, time, or place to conduct its regular meetings by passing a resolution to that effect.

If the Chair, or the Vice-Chair if the Chair is unable to act, finds and declares that weather or other conditions are such that it is hazardous for BZA members to attend a regular meeting, the meeting shall be continued to the next regular meeting date. This finding shall be communicated to the members of the BZA and to the press as promptly as practicable.

Without further public notice, a regular meeting may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the BZA is complete.

- C. *Special Meetings.* The BZA may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the BZA finds necessary and convenient.

A special meeting shall be held when called by the Chair or requested by two or more members of the BZA. The call or request shall be made to the Recording Secretary and shall specify the matters to be considered at the meeting. Upon receipt of the call or request, the Recording Secretary, after consultation with the Chair, shall immediately notify each member of the BZA and the County Attorney's Office. The notice shall be in writing and shall be mailed or delivered to all BZA members or to their places of residence or business or by electronic communication at least five (5) days prior to the special meeting. The notice shall state the time and place of the special meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at the meeting unless a quorum of members is present. The notice may be waived if the time of the special meeting was fixed at a regular meeting, if a quorum of members is present at the special meeting, or if all members sign a waiver for the notice.

Whenever state law requires public notice of a special meeting of the BZA, the Recording Secretary shall provide such notice in accordance with *Virginia Code* §15.2-2204.

3. Order of Business

- A. Agenda Established by Secretary. The agenda for each regular meeting shall be established by the Secretary in consultation with the Chair.
- B. Organization of the Agenda. The agenda of each regular meeting shall be organized in substantially the following order, subject to change at the request of the Chair and with the consensus of the other members of the BZA:
- (1) Call to order.
 - (2) Establish quorum.
 - (3) Matters deferred from previous meetings.
 - (4) Scheduled matters: hearings on special use permits, variances and appeals.
 - (5) Work sessions.
 - (6) Review and approval of minutes of previous meetings.
 - (7) Old business.
 - (8) New business.
 - (9) Adjournment.
- C. Time Limits for Applicants, Appellants and Other Speakers. The BZA shall offer an equal amount of time in a hearing to the applicant/appellant and County staff. The applicant/appellant and County staff shall each be allowed a total of fifteen (15) minutes to present its respective case at the outset of the hearing, and five (5) additional minutes to present rebuttal or closing remarks at the close of the hearing. Each person other than parties to the case or their legal representative(s) shall be allowed one appearance not to exceed three (3) minutes. A speaker may not reserve any initial speaking time for rebuttal or transfer any time to another speaker. The time limits set forth herein shall not include any time during which the applicant or other speaker is responding to questions asked by the BZA. The Recording Secretary shall act as the timekeeper. The BZA Chair may set alternate time limits to those listed herein at the Chair's discretion, provided that they are identified at the BZA meeting prior to the meeting at which these new limits would be used.
- D. Deferrals. The BZA may defer any matter at the request of a member of the BZA, the County staff, or the applicant or appellant. The request may be made either orally at the meeting, or in writing, and may be made at any time prior to the vote on the matter. The person making the request shall state the reasons therefor.

In considering a request for a deferral of a hearing of an appeal or an application for a variance pertaining to a zoning violation, the BZA shall consider the reasons for the deferral if the request is submitted by the appellant or applicant, the recommendation of staff, and the members of the BZA. In making its decision to grant or deny a request, the BZA shall consider the following factors: (1) whether the deferral would promote fairness in the process; (2) whether the deferral would be solely for the convenience or personal benefit of the appellant or applicant; (3) whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood or the public; (4) whether the deferral would allow the appellant or applicant to resolve the underlying issues so that BZA action might be unnecessary; and (5) whether the deferral would allow the BZA to make its decision within ninety days of the filing of the application or appeal, in conformance with *Virginia Code* § 15.2-2312.

A motion to defer shall either specify the date to which the matter is deferred or defer the matter indefinitely. If the motion to defer pertains to a matter for which a noticed public hearing is required and the motion is to defer the matter to a specific date, the Chair shall either close the public hearing or, if the public hearing was not opened, open and then close the public hearing, before the BZA votes on the motion.

4. Quorum

A majority of the members of the BZA shall constitute a quorum for any meeting of the BZA. A majority of the members of the BZA present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting from day to day or from time to time. A meeting may not be adjourned to a date and time beyond the date fixed for the next regular meeting.

If, during a meeting, less than a majority of the members of the BZA remains present, no action can be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

If disqualifications under the State and Local Government Conflict of Interests Act (*Virginia Code* § 2.2-3100 *et seq.*) leave less than a quorum, the remaining member or members of the BZA shall have authority to act for the BZA by a unanimous vote.

5. Voting Procedures

A. *Approval of Motion.* Except as otherwise provided in subparagraphs (1) and (2) and in paragraph (H), each decision of the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a

member and properly seconded by any other member. Any motion that is not seconded shall not be further considered.

1. *Variances, Special Use Permits and Other Matters.* At least three (3) affirmative votes shall be required to grant a variance, to grant a special use permit, or to decide in favor of an applicant on any other matter upon which the BZA is required to act upon under the Zoning Ordinance.
2. *Appeals.* At least three (3) affirmative votes shall be required to reverse any appeal from an order, requirement, decision or determination of an administrative officer.

B. *Time for Vote.* Any matter before the BZA requiring a public hearing shall not be decided by the BZA until the public hearing has been held. The BZA may, however, in its discretion, defer the holding of a public hearing or consideration of such matter, in conformance with paragraph 3(D) above.

C. *Manner of Vote.* The vote on a motion pertaining to any variance, special use permit, appeal, or application for interpretation of the district map shall be by roll call vote. Any other matter may be either by roll call vote or voice vote, in the discretion of the Chair; provided that a roll call vote on such a motion shall be required if requested by a member of the BZA. For each roll call vote, the Recording Secretary shall record the name of each member voting and how the member voted on the motion. For each voice vote, the Recording Secretary shall record the result of the vote.

D. *Tie Vote.* A tie vote shall defeat the motion voted upon.

E. *Effect of Defeat of Motion to Deny.* The defeat of a motion to deny a matter shall not be deemed to be approval of the matter. In such a case, the Chair shall call for another motion.

F. *Abstention.* Any member(s) abstaining from voting on any motion shall state their abstention(s). The abstention(s) shall be announced by the Chair and recorded by the Recording Secretary.

G. *Motion to Amend.* A motion to amend a motion before the BZA shall be discussed and voted by the BZA before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the BZA for its consideration. If the motion to amend is not approved, the original motion is again before the BZA for its consideration.

H. *Previous Question.* The discussion of any motion may be terminated by any member moving the “previous question.” Upon a proper second, the Chair shall call for a vote on the motion of the previous question. If approved by a two-thirds majority of those voting, the Chair shall immediately call for a vote on the original

motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

I. Motion to Reconsider. Any decision made by the BZA may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.

J. Motion for Rehearing. Any decision made by the BZA may be reheard upon the granting of a motion for rehearing approved by at least three affirmative votes. The motion may be made only after consideration of a written application by the person requesting rehearing, which shall be filed within thirty (30) days after the date of the BZA's original final decision. The BZA may grant the motion if it finds that the decision has not already been appealed to the Circuit Court and: (1) new evidence can be presented that, in the opinion of the BZA, is relevant and material to the decision but could not have been presented at the original hearing; or (2) in the opinion of the BZA, one or more relevant and material conditions or situations have changed so as to bear on the BZA's original decision. If the BZA grants the motion, it shall set the date for rehearing. Notice of the rehearing shall be provided as otherwise required for the matter being reheard.

6. Final Decision

A. Date of final decision. For the purpose of calculating the time in which an aggrieved party may submit a petition for writ of certiorari in Circuit Court requesting the court to review the decision of the BZA, the date of the BZA's final decision shall be the date on which the BZA took its final vote on the merits of the matter.

B. Deferral of final decision. If the BZA elects to defer its final decision, nothing in this rule prevents the BZA from obtaining a consensus of its members on the matter to be decided and requesting one or more of the parties to prepare a proposed written decision to be considered when a final vote is taken.

C. Effect if written decision adopted after final decision. The date of the BZA's final decision shall not be extended if the BZA later adopts a written decision.

7. **Remote Participation Policy**

A. Applicability of Policy.

1. Purposes. Pursuant to *Virginia Code* § 2.2-3708.3, the following policy:
 - a. describes the circumstances under which remote participation will be allowed and the process the BZA will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and
 - b. fixes the number of times remote participation for personal matters can be used per calendar year, not to exceed the limitations set forth in *Virginia Code* § 2.2-3708.3(B)(4).
2. Application. This policy will be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member(s) requesting remote participation or the matters that will be considered or voted on at the meeting.

B. Non-Emergency Individual Participation. Except as provided elsewhere in this policy, individual members may use remote participation instead of attending a public meeting in person only pursuant to and in compliance with the following rules:

1. Grounds for Remote Participation; Advance Notice of the Chair. Individual members may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the member notifies the Chair that:
 - a. Personal Medical Condition. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
 - b. Family Member's Medical Condition. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;
 - c. Distant Meeting Location. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
 - d. Identified Personal Matter; Limitation on Use. The member is unable to attend the meeting due to a personal matter (such as a family event or business commitment) and identifies with

specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

2. Minutes. If participation by a member through electronic communication means is approved pursuant to this Rule, the BZA shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description.
 - a. Medical Condition. If participation is approved pursuant to Rules 7(B)(1)(a) or 7(B)(1)(b), the BZA shall also 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) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance.
 - b. Distant Meeting Location. If participation is approved pursuant to Rule 7(B)(1)(c), the BZA shall 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.
 - c. Identified Personal Matter. If participation is approved pursuant to Rule 7(B)(1)(d), the BZA shall also include in its minutes the specific nature of the personal matter cited by the member.
 - d. Disapproval. If a member's participation from a remote location pursuant to Rule 7(B) is disapproved because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.
3. When Chair Requests to Participate Electronically. In the event the Chair seeks to participate through electronic communication means from a remote location, the Chair must notify the Vice-Chair or other presiding officer and should notify the Secretary on or before the day of the meeting.

C. During a Declared Emergency or When a Continuity of Government Ordinance is in Effect. The BZA may meet by electronic communication means without a quorum of the BZA physically assembled at one location when a state of emergency is declared pursuant to *Virginia Code* § 44-146.17 or a local

emergency is declared pursuant to *Virginia Code* § 44-246.21, subject to the provisions and requirements of *Virginia Code* § 2.2-3708.2. The BZA also may meet by electronic communication means when an ordinance adopted pursuant to *Virginia Code* § 15.2-1413 to ensure the continuity of County government is in effect.

8. Amendment of Rules of Procedure

Any of these Rules of Procedure may be amended by a majority vote of the BZA at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

9. Suspension of Rules of Procedure

These Rules of Procedure may be suspended by the majority vote of the members of the BZA present and voting. The motion to suspend a rule may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the BZA; provided, however, approval of a motion to suspend the rule shall not permit the BZA to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law including the Albemarle County Zoning Ordinance.

10. Rules of Procedure not Covered by These Rules of Procedure

Any rules of procedure not covered by these Rules of Procedure shall be governed by the current Robert's Rules of Order.

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(Adopted: 1-5-2016)
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