



AGENDA

WYTHEVILLE BOARD OF ZONING APPEALS

THURSDAY, OCTOBER 19, 2023 AT 11:00 AM
COUNCIL CHAMBERS, 150 EAST MONROE STREET
WYTHEVILLE, VA 24382

1. **CALL TO ORDER - VICE-CHAIRMAN JOHN MATTHEWS**
2. **ESTABLISHMENT OF QUORUM - VICE-CHAIRMAN JOHN MATTHEWS**
3. **CONSENT AGENDA**
 - A. **Annual Training of the Board of Zoning Appeals** - *No action will be taken at any time during this meeting.*
4. **OTHER BUSINESS**
 - A. Review of the draft Board of Zoning Appeals Rules of Procedure by Assistant Town Manager Elaine Holeton
 - B. Presentation by Assistant Town Manager Elaine Holeton regarding appeal and variance applications for the Town of Wytheville Board of Zoning Appeals
 - C. Presentation of the draft Unified Development Ordinance (UDO) by Planning Director John Woods
5. **ADJOURNMENT**

4-A

**TOWN OF WYTHEVILLE
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

Be it resolved that the Board of Zoning Appeals (BZA) does hereby accept and adopt these Rules of Procedure in order to facilitate its powers and duties in accordance with provisions of Title 15.2, Code of Virginia of 1950, as amended.

INTRODUCTION

These Rules of Procedure were designed and adopted for the benefit and convenience of the Board of Zoning Appeals (BZA). Their purpose is to help the Board conduct its affairs in a timely and efficient manner. They incorporate the general principles of parliamentary procedure found in *Robert's Rules of Order Newly Revised* and applicable Virginia laws. The Rules of Procedure do not create substantive rights for third parties or participants in proceedings before the BZA. Further, the Board reserves the right to suspend or amend the Rules of Procedure whenever a majority of the Board decides to do so. When the Rules of Procedure do not address a procedural issue, the Board may consider the most recent edition of *Robert's Rules of Order* for guidance. The failure of the Board to strictly comply with the Rules of Procedure shall not invalidate any action of the Board.

ARTICLE I. PURPOSE AND BASIC PRINCIPLES

1.1 Purpose of Rules of Procedure

- A. To enable the Board to transact business fully, expeditiously and efficiently while affording every opportunity to citizens to witness the operations of government;
- B. To protect the rights of each individual Board member;
- C. To preserve a spirit of cooperation among Board members; and,
- D. To operate in accordance with the enabling statutes of the Code of Virginia.

1.2 Basic Principles Underlying Rules of Procedure

- A. The business of the Board should proceed in the most efficient manner possible;
- B. The Rules of Procedure must be followed consistently;
- C. Actions should be the result of a decision on the merits and not a manipulation of the procedural rules;
- D. Only one subject may claim the attention of the Board at one time;
- E. Each item presented for consideration is entitled to full and free discussion;
- F. Every member has equal rights to participate and vote on all issues;
- G. Every member must have equal opportunity to participate in decision making;
- H. The will of the majority must be carried out, and the rights of the minority must be preserved; and,
- I. The Board must act as a body.

ARTICLE II – TITLE, ESTABLISHMENT AND POWERS

- 2.1 **Title.** The official title of this Board shall be the Town of Wytheville Board of Zoning Appeals. As referenced in this document, shall also be known as the “Board” or “BZA.”
- 2.2 **Establishment.** This Board of Zoning Appeals for Town of Wytheville established pursuant to Article § 15.2-2308, Code of Virginia, has adopted these Rules of Procedure in order to facilitate its powers and duties in accordance with the provisions of Title 15.2, Chapter 22, Code of Virginia. The Bylaws and Rules of Procedure can be amended, as needed, and updated accordingly by the Board of Zoning Appeals.
- 2.3 **Powers.** The BZA shall have the powers and duties set forth in § 15.2-2309 Code of Virginia, including related provisions of § 15.2-2308 – 2312, and those powers enumerated in the Unified Development Ordinance or Zoning Ordinance for the Town of Wytheville.
- 2.4 **Validity.** If any word, clause, sentence, article, 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

ARTICLE III – MEMBERS AND APPOINTMENT TO SERVE

- 3.1 **Members.** The Board of Zoning Appeals shall consist of five (5) members, who shall all be citizens of the Town of Wytheville.
- 3.2 **Sole Membership.** Members of the Board shall hold no other public office except that one member thereof may be a member of the Town’s Planning Commission.
- 3.3 **Term.** The standard and regular term of office for BZA members shall be five (5) years each. Appointments to fill vacancies shall be for the unexpired portion of the term.
- 3.4 **Term Limits.** There are no term limits. Members may be reappointed to succeed themselves for another term. A member whose term expires shall continue to serve until his successor is appointed and qualifies.
- 3.5 **Attendance.** Members shall make every effort possible to attend meetings. At such a time that a Board member knows of a potential absence they shall let the Clerk know as far in advance as possible.
- 3.6 **Conflict of Interest.** Members have a responsibility to determine whether they

have a conflict of interest and, when needed, act in accordance with the State and Local Government Conflict of Interests Act § 2.2-3100 et seq. Code of Virginia. Any Board member may request a “Conflict of Interest Opinion Letter” from the Commonwealth Attorney prior to hearing an application at a Board of Zoning Appeals Meeting. The request shall be made in the manner described in Section 2.2-3121(B) of the Code of Virginia.

- 3.7 **Resignation.** A Board of Zoning Appeals member who chooses to resign shall submit a written correspondence to the Clerk indicating the decision to resign and the effective date of resignation. Any member who misses more than three (3) consecutive meetings and who has failed to respond to either the Clerk or the Chair regarding the absences, has by their actions indicated that they are no longer interested in serving and this action shall be considered a resignation.
- 3.8 **Removal.** Any member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court that appointed him/her, when a hearing is held in accordance with the Code of Virginia § 15.2-2308. E.
- 3.9 **Application to Serve.** Any person who desires to serve on the BZA shall complete the Town of Wytheville Application. The application to serve on a Town Board or Committee is available on the Town website. <https://www.wytheville.org/index> Upon such time that a BZA vacancy exists or an appointment is required, the Town Clerk shall compile the received applications for the seat and prepare the applications for the Town Council’s consideration.
- 3.10 **Appointments.** The official appointment to serve on the BZA is made by the Wythe County Circuit Court Judge. The Circuit Court has traditionally made appointments based upon the recommendation of the Town Council. The Circuit Court, however, has the statutory authority to appoint any citizen willing to serve.
- 3.11 **Recommendation from Council.** When a recommendation has been provided by the Town Council the following shall occur: The Town Clerk will direct the Town Attorney to file a petition in the Wythe County Circuit Court seeking appointment of the recommended appointee. If there is no recommended appointee, the Town Council will direct the Town Attorney to file a petition advising the Circuit Court that a vacancy exists and requesting that the Circuit Court appoint an individual of the Court’s choosing.
- 3.12 **Onboarding.** At such time that the court order for a new appointment or re-appointment on the BZA arrives, the Town Clerk shall notify the new member of the appointment and when needed, schedule a new member orientation and any onboarding activity which may be needed prior to service on the Board.

ARTICLE IV – OFFICERS

- 4.1 **Election.** Election of officers for the Board of Zoning Appeals shall occur every year at the Organization Meeting. The term shall be one year. The Board shall

elect a Chair and a Vice-Chair, and the nomination of officers shall be made from the floor. A candidate receiving a majority vote of the membership of the Board present, and voting shall be declared elected. The Secretary/Clerk to the Board of Zoning Appeals shall be assigned at the direction of the Town Manager.

- 4.2 **Duties.** Duties of elected officers are determined by the Board of Zoning Appeals and subject to change as needed and determined by the Board. The guidance below conveys the typical activities associated with each role.
- 4.3 **Chair.** The Chair shall preside at all meetings and hearings of the BZA, appoint Committees as necessary, administer oaths and compel the attendance of witnesses, decide all points of order or procedural questions and maintain order within the meetings, call special meetings when needed and cancel meetings when needed. When needed by the staff, assist with agendas and correspondence.
- 4.4 **Vice-Chair.** The Vice-Chair shall act in the absence or inability of the Chair to act.
- 4.5 **Clerk to the BZA.** The Clerk to the BZA shall keep the minutes and records of the BZA's proceedings, including the date, time and location of the meeting. Record members absent or present. Compose a summary of the discussion, matters proposed, deliberated and decided. Record votes taken and outcomes. Compile meeting minutes for review and approval. Maintain all BZA records and applications. Coordinate with Town staff who are presenting or preparing for meetings. Prepare and be responsible for the publishing of advertisements relating to meetings and public hearings in accordance with State law. Send out public hearing and other types of notices required by these By-laws, applicable to Town Ordinances and the Code of Virginia. Prepare BZA packets and communicate official correspondence for the BZA. Notify the Town Clerk of any vacancy on the BZA. Maintain records of the BZA membership.

ARTICLE V – MEETINGS, AGENDAS, APPLICATIONS BEFORE THE BZA

- 5.1 **Meeting Location.** Meetings shall be held at the Town Municipal Office, Town Council Chambers, 150 East Monroe Street, Wytheville, VA 24382. The mailing address is P.O. Box 533. Contact phone is 276-223-3353. If required, the Chair may determine, prior to a meeting, that the location shall be changed, and the change of location shall be advertised in any required public notices for the meeting and posted on the building the day of the meeting.
- 5.2 **Open Meetings.** Meetings of the BZA shall be open to the public, unless a closed meeting is scheduled by the Chair and approved by the Town Attorney prior to the meeting and qualified in accordance with the Virginia Freedom of Information Act. Records of the meeting shall be available to the public in accordance with the Virginia Freedom of Information Act (FOIA), § 2.2-3707 et seq. Code of Virginia.
- 5.3 **Organizational Meeting.** The BZA will hold an organizational meeting in May of each year to review and approve the By-laws, set the regular meeting day and time

for the following year and elect officers for the following year. In the event of inclement weather or unforeseen circumstances, the organizational meeting can be rescheduled, and operations shall continue until the organizational meeting can be held.

- 5.4 **Regular Meetings.** The BZA regular meeting day is the third Thursday of the month at 11:00 a.m. The regular meeting day shall be considered at the organizational meeting and can be amended at that time upon consideration and a vote of the Board. Regular meetings will only be held when an application has been submitted for consideration or when it has been determined by the Chair that a meeting is required. If the Chair or Vice-Chair in their absence, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting, a continued meeting shall be scheduled for the following Thursday at the same time and in the same place. In the event a meeting date falls on a Town Holiday, the meeting shall be postponed to the next available Thursday at the same place and time. In the event a meeting is postponed, the members and the press shall be notified, and all hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required. (Section 15.2-2309.8, Code of Virginia, 1950, as amended.)
- 5.5 **Training Meeting.** Where possible, the BZA may convene each year for a planned training event. The preferred training month is October but may occur at any time at the discretion of the Chair. The training meeting shall be used to update the BZA on Zoning Ordinance amendments, laws and topics related to planning and zoning and/or related changes to the Code of Virginia that may affect the BZA.
- 5.6 **Continued Meetings.** If the BZA determines that a meeting shall be continued to either allow for additional time or research for a particular matter under consideration or for any other reason, the BZA may adjourn and continue a meeting or lay an item on the table for continued discussion at a future meeting. No further public notice shall be necessary for such a continuation or reconvened meeting.
- 5.7 **Special Meetings.** Special meetings of the BZA may be held at the call of the Chair and at such other times as a quorum of the BZA may determine, provided that notice of such meeting is given to each member, and to the public, pursuant to the Virginia Freedom of Information Act (FOIA), § 2.2-3707 et seq. Code of Virginia.
- 5.8 **Public Hearings.** Public hearings shall be held after public notice has been given. (Section 15.2-2204 and 15.2-2312, Code of Virginia, 1950, as amended.) The Town of Wytheville Public Hearing Policy shall be used to facilitate public hearings before the BZA.
- 5.9 **Meeting Agenda.** The meeting agenda shall be determined by the Chair in consultation with the Clerk to the BZA. The meeting agenda shall consist of the consent agenda and other business that needs to be heard. The general order in

the hearing of any application shall be Staff Report, Applicant or Appellant Report Opening of the Public Hearing for public comment, Public Comments, Closing of the Public Hearing and Time for discussion among the Board. Any person can be called back up to the podium by the Chair to answer questions or give additional testimony when called and recognized by the Chair. The Chair reserves the right to allow or disallow further comment or testimony after the Public Hearing has ended.

- 5.10 **Applications.** The application deadline for an item to be considered by the BZA shall be the 15th day of the month for the item to be heard at the next month's regular meeting date. The applicant shall utilize the Town of Wytheville application portal at <https://www.wytheville.org/index> to submit the application. At such time that a complete application is received by Town Staff, the staff will include the item on the next BZA agenda that meets the Public Hearing Policy. The application will be included in the BZA packet for consideration.
- 5.11 **BZA Meeting Packet.** The Clerk to the BZA shall prepare the BZA meeting packet. The packet shall consist of the agenda, the previous meeting minutes and supporting information for items under consideration. The packet shall be delivered to the BZA members at least five (5) days prior to the meeting date.
- 5.12 **Records.** Records associated with the activities of the Board of Zoning Appeals shall be kept in the Office of Planning and Zoning, and/or the assigned file storage location for Town records. The Town Clerk shall be notified of any Freedom of Information Act requests and/or other requests for meeting minutes and applications heard by the Board of Zoning Appeals. Requests for information shall be processed in accordance with the Town Freedom of Information Act Policy.
- 5.13 **Abstaining.** Any member has the right to abstain from participating in a meeting agenda item and/or voting on an application before the Board, when they have determined that they have a Conflict of Interest in accordance with the State and Local Government Conflict of Interest Act. When abstaining, and prior to the Board taking up the agenda with respect to which the member has a conflict, the member shall state that they are abstaining from the discussion and/or the vote, and the basis for the decision to abstain. The terms actual conflict of interest or perceived conflict of interest shall be used when announcing the right to abstain.
- 5.14 **Certiorari to Review Decision of Board.** Any person or persons jointly or severally aggrieved by any decision of the Board may file a petition with the Wythe County Clerk of Court within 30 days of the final decision of the Board. Code of Virginia § 15.2-2314 shall be used to process this request.

ARTICLE VI - COMMUNICATIONS

- 6.1 **From Code of Virginia § 15.2-2308.1. Boards of Zoning Appeals, ex parte communications, proceedings.**

- A. The non-legal staff of the governing body may have ex parte communications with a member of the Board 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 Board 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 Board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the Board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to subsection G of § 2.2-3707.

- 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 Board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the Board 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

ARTICLE VII - QUORUM AND ACTIONS

- 7.1 **Quorum.** Attendance by at least three (3) members shall constitute a quorum. In the event that a quorum cannot be reached, the Chair reserves the right to reschedule a meeting to the next month or to another date in the same month that shall accommodate convening a quorum and the meeting of any public hearing requirements.

- 7.2 **Required Absence.** No action shall be taken by the Board unless there shall be present at least a quorum, provided, however, that the temporary absence from the meeting room of members sufficient to constitute a quorum shall not be deemed to prevent the hearing of presentations or the discussion of matters submitted. The Clerk shall suggest the absence of a quorum prior to the taking of any action by the Board. Failure of the Clerk, or any member of the Board, to suggest the absence of a quorum shall not be deemed to alter the effect of this rule requiring a quorum as a prerequisite to any action.

7.3 **Remote Participation in BZA Meetings.** Board members may participate in meetings of the Committee/Board by electronic means as permitted by Virginia Code §2.2-3708.2 and in compliance with the Town of Wytheville Electronic Participation Policy. This applies 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.

Whenever an individual member wishes to participate from a remote location, the law requires a quorum to be physically assembled at the primary or central meeting location, and there must be arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

When such individual participation is due to an emergency or personal matter, such participation is limited by law to two meetings or 25 percent of the meetings of the public body per member each calendar year, whichever is fewer.

A Board member wishing to participate from a remote location in a meeting of the Board shall notify the Chair on or before the date of the meeting that the member is unable to attend, identify with specificity the nature of the personal matter. The Clerk shall record in the minutes the specific nature of the personal matter and the remote location from which the absent member participated.

During a disaster and/or declared state of emergency from the Governor, and it is impracticable or unsafe for a quorum of the BZA to assemble in one location then the Board may conduct its meetings electronically to assure the continuity of its government. (See Code of Virginia §2.2-3708.2(A)(3), §44-146.17, §15.2-1413, and §44-146.21.)

7.4 **Voting.** Votes shall be taken on all motions made and seconded. Roll call votes are required for applications and/or appeals heard by the Board of Zoning Appeals. After the vote, the Chair shall state the results of the vote.

7.5 **Restating the Question.** The Chair shall restate the question prior to the taking of a vote, however, the Chair may request that another member restate the question if in the Chair's opinion that will expedite the decision thereof.

7.6 **Unanimous Consent.** Where no formal action is required, and no objection is heard, a request of a member shall be deemed a request of the Board without further action, when such request is made at a meeting with a quorum present.

7.7 **Tie vote.** A tie vote fails. No tiebreaker is appointed. Failed votes resulting from the lack of a quorum due to Virginia Conflict of Interest Act actual abstentions may, in rare circumstances, be permitted to move forward pursuant to Virginia Code Sec. 2.2-3112(D).

- 7.8 **Second, discussion, vote.** A second to a primary or substitute motion is required to formally discuss and/or vote upon the motion.
- 7.9 **Motion to rescind.** A motion to rescind may be made for the intent to change an action voted upon at an earlier meeting. The motion to rescind may be made by any member of the Board. If advance written notice is provided in the agenda of the intent to make a motion to rescind, then a simple majority in favor is required for it to be successful. If no advance written notice is provided, then it shall succeed only if two-thirds (2/3) of the Board members present vote in favor of the motion to rescind.
- 7.10 **Abstention from Casting Vote:** All members of the Board present shall vote upon all questions that a vote must be taken, unless excused by the Board (unless the member has an immediate personal or financial interest in the matter). Requests by a member to abstain from voting or to announce the intention not to vote because of personal or other financial interest shall be made to the presiding officer prior to the placing of the matter before the Board for a vote. The BZA need take no further action to allow the abstention in the case of a member's personal or other financial interest in the matter, consistent with the requirements of the Virginia State and Local Government Conflict of Interests Act.

A member may also abstain from a vote without further action if the member believes that voting upon a matter may create the appearance of a conflict of interest. The member shall state the specific reason that the member believes the appearance of a conflict of interest exists.

Additionally, a member may abstain from a vote to approve meeting minutes without further action if the member did not attend the meeting for which minutes approval is being considered.

The Board shall consider a request to abstain from a vote for other reasons and may grant the request if a majority of the members present (excluding the member requesting the abstention) votes in favor of granting the request.

ARTICLE VIII - ORDER IN THE CONDUCT OF BUSINESS

- 8.1 **Persons Addressing the Board.** The time for addressing the Board will be monitored, and the Board shall limit the speaking time at its discretion. Insofar as is practicable, people addressing the Board shall furnish the Clerk and members of the Board with a written copy of their remarks.
- 8.2 **Applicant Testimony.** In the hearing of any application or appeal, the Board of Zoning Appeals shall offer an equal amount of time in the hearing on the case to both the applicant/ appellant or other person aggrieved, and Town staff presenting the application or basis for decision. The applicant may appear in his own behalf

at the public hearing or be represented by counsel or an agent.

- 8.2 **Public Hearings.** In those instances where persons are addressing the Board, without having first been placed on the agenda, these persons shall limit their remarks as follows:
 - 1. Person speaking for himself or his immediate neighborhood - Five (5) minutes.
 - 2. Person speaking for an organization whose membership is representative of an entire group – Seven (7) minutes.
 - 3. Person speaking for an organization whose membership is representative of the entire town – Ten (10) minutes.

- 8.3 **Recognition.** Shall be given by the Chair, or the Vice-Chair in the Chair’s absence. No person shall address the Board without having first been recognized and coming forth stating their name and address. When all public testimony has concluded, and the Board is considering and discussing the matter, no person shall thereafter be recognized to address the Board unless requested to do so by the Chair.

- 8.4 **Cumulative or Repetitive Testimony.** Shall not be permitted on any matter, and persons of the same position as a previous speaker shall state their name and the position with which they agree.

- 8.5 **Questions.** By Board members, shall be reserved insofar as possible for the end of a presentation to avoid interrupting the speaker, disrupting the time-keeping process and duplicating ground the speaker may cover.

- 8.6 **Discussion and Debate by the Board.** Shall be conducted following the presentation of testimony on the item of business pending. Members shall not speak to the item until recognized by the Board, members shall not speak more than ten minutes at one time, nor more than twice upon the same question, without the permission of the Board. A member who has spoken to the item shall not again be recognized until each other member desiring to speak shall have an opportunity to speak. After the Board shall have acted, any member shall have the right to state a protest against the action, and his/her reasons therefore, for a time not to exceed tow (2) minutes. Members of the audience shall not be allowed to address the BZA unless clarification is requested by the Chair.

ARTICLE IX - DECORUM

- 9.1 **Decorum of Board Members.** Shall be maintained in order to expedite the disposition of the business before the Board. Questions and remarks shall be limited to those relevant to the pending business. Members shall not converse with other members or with other persons in any manner having a disturbing effect on

the conduct of business. Consultation with staff about the meeting is permitted, as necessary. Members shall address all remarks to the Chair as the presiding officer.

- 9.2 **Decorum of Other Person(s).** Shall be maintained by the Chair, who may request such assistance as appears necessary. Persons addressing the Board shall limit their remarks to those relevant to the pending items and to answering questions. They shall address the Board as a whole, unless answering an individual member's questions. The Chair, or Vice-Chair in the Chair's absence, shall call the speaker to order, if out-of-order remarks or other indecorous conduct persists, and may order the speaker from the lectern. The order with gavel, if not heeded, will then cause a Wytheville Police Officer to carry out the order. Persons whose allotted time to speak has expired shall be warned by the Chair, or the Vice-Chair in the Chair's absence, to conclude in one minute, after which such person shall leave the lectern, unless he is asked to remain to answer questions from the Board. No persons in attendance shall be allowed to voice remarks except as recognized by the Chair. Groups in the audience creating an atmosphere detrimental or disturbing to the conduct of the meeting will be asked to leave by the Chair. Taping of the meeting shall be permitted from the rear of the Council Chambers.

ARTICLE X – FREEDOM OF INFORMATION ACT REQUESTS

For the purposes of complying with Freedom of Information Act (FOIA) requests for Board of Zoning Appeals public records, the Town shall be considered the custodian for Board member public record transmissions including those sent and received through the Town's email network.

- A. Upon the expiration of their term in office, a Board member shall provide electronically copies of all their public records other than those sent and received through the Town network and related to the transaction of public business on a thumb drive provided by the Town Information Technology Department. This thumb drive will be provided to the Town's FOIA Officer. The Town's FOIA Officer will use the copies to fulfill all further FOIA requests for BZA member emails, and will maintain the copies in accordance with the Virginia Public Records Act. For purposes of this Memorandum, "public business" encompasses those matters over which the Board has supervision, control, jurisdiction or advisory power.
- B. Board members shall comply with the Library of Virginia's Records Retention Schedule pursuant to the Virginia Public Records Act.

Typed Name, Chair
Wytheville Board of Zoning Appeals

Adopted: xxxx

4-B

Appeal Applications

Town of Wytheville BZA

October 2023

- Appeal = An appeal of the Zoning Administrator’s decision. Specifically, an appeal as it relates to the administration/interpretation of zoning or zoning map (Code of Virginia §15.2-2311 (A)) BZA is enabled to hear the appeal under this Code of Virginia statute.
- The person filing the appeal must be “aggrieved” or have a direct interest or claim burden from the decision. (Per Code of Virginia §15.2-2311).
- Appeal must be filed within thirty (30) days of the administrator’s decision. This is often the date of a written order or date a communication was issued.
- Notice of Appeal must be filed with both the Administrator and the BZA. In our case the appellant will complete the application online and the administrator or other town staff will prepare the packet for the BZA. The Administrator will present a staff report indicating why their decision was correct.
- The burden of proof is on the appellant to present their case and show that the zoning administrator’s decision was incorrect.
- When an appeal is filed the UDO Administrator shall provide to the BZA all papers constituting the record upon which the action appealed was taken. (§15.2-2311(A)) The BZA shall decide if the administrator’s decision was correct, based on the interpretation of the UDO.
- Requires a public hearing. Advertised in accordance with Code of Virginia 15.2-2204 and the Town Public Hearing Policy.
- In situations outside of the actual meeting where the appeal is to be heard and prior to the meeting, BZA members should not discuss the application with staff, other members of the BZA, the applicant, or the public. BZA members can discuss the application with the town attorney outside of the meeting.
- The BZA decision is to either “affirm the decision of the administrator”, “reverse the decision of the administrator” or “modify the decision of the administrator”. BZA cannot make other types of zoning decision, just whether the administrator interpreted the ordinance or zoning map correctly.
- A concurring vote of a majority of the BZA is needed to reverse the determination of the UDO Administrator. If five (5) members are on the BZA, a three (3) member vote is a majority. This rule applies despite the number of members present at the meeting. For example, if only three (3) members are at the meeting, all three (3) would need to vote for the motion for it to pass.

- During the deliberation and to support a motion, the BZA shall discuss and make findings and reasonably articulate the basis for the decision.
- Once the appeal is decided by the BZA, the BZA decision can be challenged. The aggrieved can submit to the Circuit Court a “writ of certiorari” within thirty (30) days of the BZA decision, to challenge the BZA decision on the matter.

§ 15.2-2309. Powers and duties of boards of zoning appeals.

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For the purposes of this section, determination means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
2. Variances. (See variance quick sheet)
3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § [15.2-2204](#). However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.
4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § [15.2-2204](#), the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

Variance Applications

Town of Wytheville BZA

October 2023

- "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.
(Code of Virginia §15.2-2201)
- Usually initiated by the landowner, although can be initiated by “a tenant, government official, department, board or bureau.” Application will be submitted using the online portal at the Town Website. The Zoning Administrator will prepare the application for the Board of Zoning Appeals. (Per Code of Virginia §15.2-2310).
- Requires a Public Hearing. Advertised in the newspaper in accordance with Code of Virginia §15.2-2204 and the Town Public Hearing Policy. Adjacent landowners and the subject landowner will receive certified notice of the meeting.
- The meeting will be scheduled for the next available meeting of the BZA, the meeting date will need to accommodate the time required for the public hearing notices.
- Variance cannot address a “use of property” or allow a use which is not normally allowed in that zone district.
- Variances will run with the land (tax map parcel number). Not landowner.
- Each variance should be considered on its’ own merits. Should not be based on other variance applications. BZA should ensure that the “consideration process” is consistent.
- The concurring vote of a majority of the BZA is needed to approve a variance. If five (5) members are on the BZA, a three (3) member vote is a majority. This rule applies despite the number of members present at the meeting. For example, if only three (3) members are at the meeting, all three (3) would need to vote for the motion for it to pass.
- Variances should be granted to achieve parity with other properties in the same zone district. Should not allow any person to do something which is allowed above and beyond the same use, for which a variance is requested.
- Outside of the BZA meeting where the variance is to be heard and prior to the meeting, BZA members should not discuss the variance application with staff, other members of the BZA, t

applicant, or the public. BZA members can discuss the application with “legal staff” county attorney outside of the meeting. No ex-parte communication.

- The burden of proof to establish the need for a variance is on the applicant. The application will ask the applicant to provide this proof in enough detail for the BZA to decide on the matter. Staff will prepare a staff report to either recommend or not recommend the variance. BZA can choose to either take staff recommendation or to make their own decision on the matter.
- Conditions can be attached to the approval, but they need to be related to “impact” of the development or the physical construction that relates to the request.
- Variances should only be granted for the reasons listed in §15.2-2309 (attached). Discuss and mention the reasons you grant or deny the application for the meeting minutes.
- A person aggrieved by a decision of the BZA can appeal the decision of the BZA to the Circuit Court by filing a “writ of certiorari” within thirty (30) days of the decision.

Factors to Consider in Variance Applications -From Code of VA §15.2-2309

“Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.”