



BOARD OF ZONING APPEALS REGULAR MEETING AGENDA

Town Council Chambers
765 Lynn Street, Herndon, VA 20170

Thursday, January 25, 2024 | 7:00 PM

- 1. Call to Order**
- 2. Organizational Meeting**
 - a. Election of Officers
- 3. Approval of Minutes**
- 4. Comments**
 - a. Comments from the Board Members
 - b. Comments from the Staff Members
 - c. Comments from Citizens
Members of the public may, for one 3-minute period, provide public comments, requests, consent or general item comments, and comments on matters not included on the agenda.
- 5. Public Hearings**
- 6. New Business**
 - a. Resolution to amend and restate the Bylaws of the Town of Herndon Board of Zoning Appeals
- 7. Adjournment**



Board of Zoning Appeals Regular Meeting **Agenda Item 2.a.**

Agenda Item: Election of Officers

Meeting Date: January 25, 2024

Category: Organizational Meeting

Prepared by: Lauri Sigler, Deputy Town Attorney

Description:

In accordance with the Board of Zoning Appeals Bylaws and Herndon Town Code Section 78-150.3, the BZA holds its election of officers annually at the first public hearing (regular meeting) of the Board in January. The Board will nominate and elect from its members a Chair and Vice Chair and designate a Secretary and Parliamentarian for one-year terms at the January 25, 2024, BZA regular meeting.

Background:

N/A

Budget Impact:

None

Recommendation:

Staff recommends the Board nominate and elect from its members a Chair and Vice Chair and designate a Secretary and Parliamentarian for one-year terms.

Attachments:

1. Resolution (Proposed)

**TOWN OF HERNDON, VIRGINIA
BOARD OF ZONING APPEALS**

RESOLUTION

JANUARY 25, 2024

**Resolution - to elect the Officers and designate the Parliamentarian and
Secretary of the Board of Zoning Appeals.**

BE IT RESOLVED by the Board of Zoning Appeals of the Town of Herndon, Virginia that:

1. _____ is elected Chair for a one-year term effective January 25, 2024.
2. _____ is elected Vice Chair for a one-year term effective January 25, 2024.
3. The Zoning Administrator or their designee is designated as Secretary for a one-year term effective January 25, 2024.
4. The Town Attorney or their designee is designated as Parliamentarian for a one-year term effective January 25, 2024.



Board of Zoning Appeals Regular Meeting Agenda Item 6.a.

Agenda Item: Resolution to amend and restate the Bylaws of the Town of Herndon Board of Zoning Appeals

Meeting Date: January 25, 2024

Category: New Business

Prepared by: Lauri Sigler, Deputy Town Attorney

Description:

The current Bylaws of the Board of Zoning Appeals (BZA) of the Town of Herndon, Virginia, were last amended and adopted on January 27, 2022. The Department of Community Development, in coordination with the Town Clerk's Office and the Town Attorney's Office, initiated a project to review and revise the Bylaws of all the Town's board and commissions (BZA, Historic District Review Board, Architectural Review Board, Board of Zoning Appeals and Planning Commission) to provide for more consistency among the boards and commissions when possible, update terminology to be consistent with language in the Herndon Town Code and the Code of Virginia, update meeting procedure to reflect current practices and propose a new meeting attendance obligation to be consistent with the Town Council's discussion to amend Town Code Sec. 2-5 - Code of ethics for the members of the town council and council appointed board and commission members. Attachment #2 is a redline version of the Bylaws that reflects all the proposed amendments.

The most substantive amendment to the Bylaws can be found in ARTICLE I, BOARD MEMBERS, subsection e., REMOVAL. In accordance with Town Code Sec. 78-150.3, the current Bylaws state that any BZA member may be removed by the Town Council for malfeasance, misfeasance or nonfeasance in office. A new provision is proposed to be added to this subsection as follows: "Notwithstanding the foregoing provision, a member of the BZA may be removed from office by the Town Council without limitation if the member is absent from any three consecutive meetings of the BZA or is absent from any four meetings of the BZA within any twelve-month period, beginning upon the date of the BZA member's assumption in office."

This same language about attendance already appears in the Bylaws for the Planning Commission, and the Town Council has requested that all members of council appointed Boards and Commissions be subject to this same standard to be consistent with each other. Note that this language is permissive and states that a member may be removed, not shall be removed. The expectation of the Town Council is that the Bylaws of the BZA, Historic District Review Board, and Architectural Review Board would be amended to reflect attendance requirements similar to those also being considered for

Town Council.

The Town Council discussed amending Sec. 2-5, the Town's Code of Ethics, at the January 2, 2024, and January 16, 2024, work session meetings to reflect the responsibility Town Council members have and members of council appointed Boards and Commissions have to faithfully and regularly attend meetings of their body. The proposed amendment to Sec. 2-5 specifies the ethical responsibility of Town Council members as public officials to regularly attend council meetings and states that Town Council members who fail to attend four (4) consecutive meetings or 25% of work sessions, regular meetings, and special meetings in a 12-month period without good cause are subject to censure by the Town Council for dereliction of their duties. This amendment further specifies that members of council appointed boards and commissions continue to be subject to the rules of attendance proscribed by the Code of Virginia, Herndon Town Code, and their applicable Bylaws. There has also been discussion about whether absences from meetings should be presumed to be for good cause when a member provides prior notification of their absence. If the Town Council takes any action on this matter at the January 23, 2024, regular meeting, I will provide the BZA with an update.

Another substantive amendment can be found in ARTICLE IV, MEETINGS, where subsections have been amended to be consistent with the language in Town Code Sec. 2-1, regarding the scheduling of Town Council meetings, including the rescheduling of meetings due to unforeseen circumstances.

Proposed amendments to ARTICLE VI, CONDUCT OF PERSONS APPEARING BEFORE THE BOARD OF ZONING APPEALS, include language about maintaining proper decorum which more closely mirrors directions given in opening remarks at regular Town Council meetings.

Proposed amendments to ARTICLE VII, VOTING AND TRANSACTION OF BUSINESS, slightly change the order of business for meetings, but these changes will be implemented across all Boards and the Commission.

Pursuant to Article IX. of the current Bylaws, amendment or modification of the Bylaws can only be approved if the BZA members had the proposed amendment to the Bylaws in hand thirty days prior to the meeting in which they were going to be voted on. This requirement has been met as the Clerk of Boards and Commissions emailed BZA members a draft version of the proposed Bylaws on December 22, 2023.

Since the December 22, 2024, version was distributed, staff has made the following housekeeping edits to the proposed Bylaws that are reflected in the attachments to this item as follows:

1. ARTICLE I, BOARD MEMBERS, the ordering of the subsections has been changes without any changes to the language.
2. ARTICLE IV, MEETINGS, subsection c. has been amended to include the following language: "c. PUBLIC HEARINGS. Public hearings are scheduled during

regular meetings, are open to the public and members of the public are encouraged to speak. The purpose of public hearings is to receive testimony from the public. Notice of public hearing shall be provided in accordance with the Code of Virginia and the Town Code and may be supplemented with additional notices as deemed appropriate by the BZA or staff."

3. ARTICLE VI, CONDUCT OF PERSONS APPEARING BEFORE THE BOARD OF ZONING APPEALS, subsection a. ~~has been~~ amended as follows: "a. PUBLIC COMMENT. During all meetings of the BZA, the public may be present, and a specific time shall be reserved for receipt of public comments ~~their testimony~~. At all other times, the public shall remain silent unless specifically invited by a member of the BZA and permitted by the Chair to provide comment."

Background:

N/A

Budget Impact:

None

Recommendation:

Recommend approval of the Resolution to amend and restate the Bylaws of the Town of Herndon Board of Zoning Appeals.

Attachments:

1. Resolution (Proposed)
2. BZA Proposed Redline Bylaws
3. BZA Proposed Bylaws

**TOWN OF HERNDON, VIRGINIA
BOARD OF ZONING APPEALS**

RESOLUTION

JANUARY 25, 2024

**Resolution- to amend and restate the Bylaws of the Town of Herndon Board of
Zoning Appeals.**

BE IT RESOLVED by the Board of Zoning Appeals of the Town of Herndon, Virginia
that:

1. The Board of Zoning Appeals Bylaws are amended and restated as outlined in the attached.

~~Town of Herndon, Virginia~~
~~Board of Zoning Appeals~~

Bylaws



Introduction

***BOARD OF ZONING APPEALS
BYLAWS
DRAFT AMENDMENTS***

INTRODUCTION

The Board of Zoning Appeals (***BZA***) is established pursuant to Section 7.4 of the Charter of the Town of Herndon, Chapter 78-, ***Section 78-150.3, Board of Zoning Appeals*** of the Code of the Town of Herndon (***Town Code***) and Section 15.2-2308 of the Code of Virginia, where applicable.

ARTICLE ~~1~~*I*****
BOARD MEMBERS

a. COMPOSITION/QUALIFICATIONS OF MEMBERS. ~~The Board of Zoning Appeals ("In accordance with Town Code Sec. 78-150.3, the~~ BZA") shall consist of ~~FIVE (5)~~***five*** members, appointed by the Town Council all of whom shall be qualified voters of the ***Town of Herndon and no member shall hold any other position, whether elected, appointed, or employed, with the town.***

b. TERM. ~~The~~***In accordance with Town Code Sec. 78-150.3, the*** term of ~~the~~ ***members*** ~~office~~ of the BZA ***members*** shall be for ~~FIVE (5)~~***five*** years, staggered so that one term begins each year. A member shall continue to serve until reappointed or replaced. Any member is eligible for reappointment.

c. RESIGNATION. ~~Any~~***In accordance with Town Code Sec. 78-150.3, any*** member who resigns from the BZA prior to the end of ~~their~~***the member's*** term shall do so in writing to the ~~chair~~***Chair***. The effective date of such resignation shall be the date of the letter to the ~~chair~~***Chair***, unless another date is stated within the letter of resignation.

d. VACANCIES. ~~Vacancies~~***In accordance with Town Code Sec. 78-150.3, vacancies*** occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term ~~by appointment by the Town Council for the unexpired term only.~~ ***in the same manner as the original appointment. If a member serving on the BZA becomes a***

member of the Town Council, is appointed to another town board or commission, or becomes employed by the town, they shall be deemed to have vacated, and shall vacate, their term of office on the BZA on the date of their taking office or starting employment with the town.

~~e. —REMOVAL. Any member may be removed by the Town Council for malfeasance, misfeasance or nonfeasance in office.~~

e. f.—REMOVAL. Notwithstanding the foregoing provision, A member of the BZA may be removed from office by the Town Council without limitation in the event that the member is absent from any three consecutive meetings of the BZA or is absent from any four meetings of the BZA within any twelve-month period, beginning upon the date of the BZA member's assumption of office. In such event, a successor shall be appointed by the Town Council for the unexpired portion of the term of the member who was removed.

f. COMPENSATION. ~~All~~In accordance with Town Code Sec. 78-150.3, BZA members' compensation, if any, shall be fixed by resolution of the Town Council.

e.g. TRAINING. In accordance with Town Code Sec. 78-150.3, newly appointed members of the BZA shall ~~receive compensation in an amount approved by the Town Council by Resolution.~~ be offered training and certification by the Virginia Commonwealth University Center for Urban and Regional Analysis Land Use Education Program or similar certification to be completed within two years of appointment.

ARTICLE II

ELECTIONS AND DUTIES OF OFFICERS

*a. ~~a.—ELECTION OF CHAIR/VICE CHAIR.~~OFFICERS. In accordance with Town Code Sec. 78-150.3, the BZA shall choose annually a Chair and Vice Chair. The BZA shall ~~annually at its first public hearing in January, elect from its appointed members,~~ through its usual voting process, ~~a~~*the* Chair and ~~a~~*Vice Chair* ~~whose terms~~*from its appointed members at its first meeting in January.**

~~a.b.~~ TERMS. In accordance with Town Code Sec. 78-150.3, the term of office of the Chair and Vice Chair of the BZA shall be ~~for one year or until a successor takes office.~~ If the office of Chair becomes vacant, the Vice Chair automatically becomes Chair, and the office of Vice Chair becomes vacant. The BZA shall then, after a new member has been appointed, elect from its appointed members a new Vice Chair. If the office of Chair becomes vacant at a time when there is no Vice Chair, the BZA shall elect from its current members both a Chair and a Vice Chair.

~~b. —~~ *c. DUTIES OF CHAIR. The* *In accordance with Town Code Sec. 78-150.3, the* Chair shall preside over all hearings and meetings of the BZA, with the same powers and duties as the other members, with vote but no veto power. He shall be the official head of the BZA and shall perform such other duties not inconsistent with his office including

- ~~Presiding~~ at all meetings
- ~~Deciding of the BZA, decide~~ points of order *on procedure* with the assistance of the Parliamentarian

~~Taking, and take such~~ action *as shall be necessary* to preserve the order and integrity of proceedings before the ~~BZA board. The Chair shall have the same powers and duties as other members, with vote but no veto power.~~

~~d. e. —~~ *DUTIES OF VICE- CHAIR. The Vice Chair, shall act In accordance with Town Code Sec. 78-150.3, in the absence or inability of the Chair to act and otherwise serve as aide to, the Vice Chair shall act as Chair and shall have the powers of the Chair. The Vice Chair shall represent the Chair upon request.*

~~d. —~~

~~e. CHAIR PRO TEM. In~~ *In accordance with Town Code Sec. 78-150.3, in the absence of both the Chairman Chair and Vice Chairman Chair, the most senior board member shall act as Chair and shall have powers of the chair. Chair.*

ARTICLE III DESIGNATION AND DUTIES OF *THE SECRETARY AND STAFF*

~~The~~ *a. DESIGNATION AND DUTIES OF STAFF. In accordance with Town Code Sec. 78-150.3, the* Zoning Administrator or *their* designee shall serve as the professional staff to the BZA and provide administrative staff. ~~The duties of such staff shall include~~ *support including the preparation and presentation of cases before the BZA, preparation. For the purposes of this section, “non-legal staff of draft minutes, preparation and compilation of a written record the town” means any staff who is not in the office of the attorney for the town, or for the board, or who is appointed by special law or pursuant to Code of the Virginia Sec. 15.2-1542.*

b. DESIGNATION AND DUTIES OF SECRETARY. The BZA shall designate the Zoning Administrator or their designee to serve in addition to any other appointed duties, as Secretary of the BZA. The Secretary shall attend all meetings of the BZA and in accordance with Town Code Sec. 78-150.3, keep records of the BZA’s official actions of the BZA, which shall immediately be filed in the office of the Zoning Administrator and. Other duties include the preparation of minutes of the BZA’s proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating such fact and the preparation of official correspondence to and from the BZA as directed by the Chair.

ARTICLE IV MEETINGS

a. ~~(a) REGULAR MEETINGS. The BZA shall~~ *MEETING SCHEDULE. In accordance with Town Code Sec. 78-150.3, meetings of the BZA may* meet in regular session on the fourth Thursday of each month at 7:00 p.m. at 765 Lynn Street, Herndon, Virginia. ~~In the event such date falls on a legal holiday, the meeting shall be held on the third Thursday of the month unless otherwise provided by resolution of the BZA. The BZA may also meet~~ *or* at such other ~~times or places~~ *time and place* within the boundaries of the Town of Herndon that the BZA designates *as may be fixed* by duly adopted resolution.

b. *POSTPONED OR CANCELED.* Should the conduct of a ~~regular~~ meeting be unnecessary due to a lack of applications *items* for consideration ~~or~~, impossible due to the inability to obtain a quorum, or due to weather or other ~~conditions~~ *condition* such that it is hazardous for members to attend the ~~regular~~ meeting, as declared in writing by the ~~chair~~ *Chair*, the ~~regular~~ meeting shall *may* be ~~continued to~~ *postponed or canceled and notice of such postponement or cancelation and the next regular meeting day at 7:00 p.m. in the Town Council Chambers. The press* *rescheduled date*, shall be notified as promptly as possible. ~~All~~ *published by staff. All public* hearings and other matters previously advertised shall be conducted at the ~~continued~~ *rescheduled* meeting, and no further advertisement is required, *unless required by law.*

~~(e)~~

c. PUBLIC HEARINGS. Public hearings are *scheduled during regular meetings, are* open to the public and ~~citizens~~ *members of the public* are encouraged to speak. *The purpose of public hearings is to receive testimony from the public. Notice of public hearing shall be provided in accordance with the Code of Virginia and the Town Code and may be supplemented with additional notices as deemed appropriate by the BZA or staff.*

Order of Public Hearing:

1. *Presentation by staff summarizing the item*
2. *Presentation by the applicant*
3. *Testimony from members of the public desiring to speak*
4. *Concluding comments by the applicant; questions by BZA members, if the Chair determines necessary*
5. *Concluding comments by staff; questions by BZA members, if the Chair determines necessary*

6. *Public hearing closed by the Chair*
7. *Motion*
8. *Discussion by BZA members*
9. *Vote by roll call (or other means, if deemed necessary by the Chair)*

d. CONTINUED DELIBERATION OF PUBLIC HEARING ITEMS. At the completion of the hearing on each item, the BZA shall proceed with its deliberation on that item and members shall have an additional opportunity for discussion, and then a vote shall be taken. Continuing an item to another meeting shall only occur upon motion, second, and vote of the BZA properly made and the motion shall specify the date when the item will again be considered.

e. ELECTRONIC PARTICIPATION IN MEETINGS. In accordance with Town Code Sec. 2-4, a member of the BZA may participate in a meeting that is not a public hearing from a remote location.

ARTICLE V CONDUCT OF MEMBERS OF THE BOARD OF ZONING APPEALS

a. CODE OF ETHICS. Town Code Sec. 2-5, "Code of Ethics for the Members of the Town Council and Council Appointed Board and Commission Members" is hereby incorporated by reference and members of the BZA shall so govern their actions.

b. ENCOURAGE PUBLIC PARTICIPATION. Members of the BZA shall limit their comments during the testimony of the members of the public portion of the agenda to ensure public participation without BZA interference.

~~a.c.~~*BZA RESPONSE. Members of the BZA are not expected to respond to general questions. Response to questions shall be made at the discretion of the Chair. At the completion of each staff and applicant presentation, members of the BZA shall have an opportunity to ask questions or clarify points made during the presentation.*

~~Notice of public hearing shall be provided in accordance with Code of Virginia and the Code of the Town of Herndon and may be supplemented with additional notices as deemed appropriate by the BZA or staff.~~

~~Sign-in forms, if deemed necessary by the Chair, shall be completed by persons desiring to speak, listing printed name, phone number, and address of the person desiring to speak, and application number of the issue to be addressed. All persons~~

~~testifying before the BZA shall be sworn in by the Chair or his designee prior to addressing the BZA.~~

~~Members of the public or their representatives desiring to address the BZA shall proceed to the appointed place, clearly state their names and addresses, and shall be subject to the following time limitations: 10 minutes total for the applicant and any of the applicant's representatives; 3 minutes per individual for all others. The Chair may, at personal discretion, allow additional time for speakers.~~

~~Members of the BZA shall limit their comments to ensure public participation without BZA interference. At the completion of each presentation, members of the BZA shall have an opportunity to ask questions or clarify points made during the speaker's presentation.~~

~~(d) — ORDER OF PUBLIC HEARING~~

- ~~• — Presentation by staff summarizing the item.~~
- ~~• — Presentation by the applicant.~~
- ~~• — Testimony of citizens desiring to speak.~~
- ~~• — Concluding comments by the applicant, if the Chair determines such are necessary; questions by BZA members.~~
- ~~• — Concluding comments by staff, if the Chair determines such are necessary; questions by BZA members.~~
- ~~• — Public hearing closed by the Chair.~~
- ~~• — Discussion by BZA members.~~
- ~~1. — • Motion~~
- ~~• — Vote (roll call vote if deemed necessary by the Chair)~~

~~(e) — ELECTRONIC PARTICIPATION IN MEETINGS. A member of the Board of Zoning Appeals may participate in a meeting that is not a public hearing from a remote location only pursuant to the requirements set forth in Sec. 2-4 of the Code of the Town of Herndon.~~

~~ARTICLE V~~
~~CONDUCT OF MEMBERS OF THE BOARD OF ZONING APPEALS~~

~~Section 2-5 of the Code of the Town of Herndon, "Code of Ethics for the Members of the~~

~~Town Council and Council Appointed Board and Commission Members" is hereby incorporated by reference and members of the BZA shall so govern their actions.~~

**ARTICLE VI
CONDUCT OF PERSONS
APPEARING BEFORE THE BOARD OF ZONING APPEALS**

a. ***PUBLIC COMMENT.*** During all ~~public hearings and other~~ meetings of the BZA, the public may be present, and a specific time shall be reserved for receipt of public comments. At *all* other times, the public shall remain silent unless specifically invited by a member of the BZA *and permitted by the Chair* to provide comment.

~~Comments should be addressed to the item before the BZA. If a comment is irrelevant, inflammatory, or prejudicial, the Chair may instruct the members to "disregard" the comment, which nevertheless remains in the public record.~~

b. ***PROPER DECORUM.*** During all BZA proceedings, members of the public have the obligation to maintain proper decorum. Individuals should be respectful, clear, and concise, and demonstrate integrity in comments and actions. The use of profane, vulgar, obscene, or threatening remarks is not permitted and may result in removal from the meeting. Individuals should refrain from participating unless recognized by the Chair; this includes booing, clapping, and cheering.

c. ***TIME AND PLACE.*** Members of the public, applicants, or their representatives intending to address the BZA shall proceed to the appointed place, clearly state their name and address, and shall be subject to the following time limitations: ten minutes total for the applicant and any of the applicant's representatives; three minutes per individual for all others. The chair may, at their discretion, allow additional time for speakers.

d. ***SIGN-IN.*** Sign-in forms, if deemed necessary by the Chair, shall be completed by persons intending to speak, listing printed name, phone number, address of the person intending to speak, and application of the issue to be addressed.

e. ***WRITTEN COMMENTS AND TESTIMONY.*** Written comments by members of the public should be submitted no later than twelve hours prior to the meeting to ensure distribution to the BZA members in time for review. Any written comment and testimony received shall become part of the public record.

f. OATHS. In accordance with Town Code Sec. 78-150.3, the Chair may administer oaths and compel the attendance of witnesses.

ARTICLE VII VOTING AND TRANSACTION OF BUSINESS/~~ORDER OF BUSINESS~~

a. ~~a.~~—**PARLIAMENTARY AUTHORITY.** Parliamentary procedure at *all* BZA meetings shall be governed by the most recent edition of Robert's Rules of Order, newly revised, as applicable to boards, except to the extent set out otherwise in these bylaws, *Town Code*, or the Code of Virginia. The Town Attorney, *or their designee*, is Parliamentarian of the BZA.

*b. ~~b.~~—QUORUM. A majority of the members shall constitute a quorum and***QUORUM.** *In accordance with Town Code Sec. 78-150.3, three members of the BZA shall constitute a quorum. No official business shall be conducted without a quorum present. A member who knows they will be absent from or will have to abstain from any matter shall notify the Chair and staff at least twenty-four hours prior to the meeting of such fact.*

~~b.c.~~ **NECESSARY VOTE.** *In accordance with Town Code Sec. 78-150.3, no action of the BZA shall be valid unless authorized by a majority vote of those present and voting. Unless otherwise specified by the Chair, actions shall be by oral vote with the vote of each member recorded in the minutes. A member who knows he will be absent from or will have to abstain from any matter at a meeting shall notify the chair twenty-four hours prior to the meeting of such fact* *except as otherwise provided in the next sentence. A favorable vote of at least three members of the BZA shall be necessary to reverse any determination of the Zoning Administrator on appeal.*

~~e.d.~~ **e.**—**LACK OF QUORUM.** If a quorum is not present at the time set for the meeting, the Chair ~~or Chair Pro tem~~ shall wait until there is a quorum. If no quorum is present after a reasonable time, *at* the discretion of the Chair ~~or Chair Pro tem~~, and there appears to be no prospect that a quorum will assemble *with additional reasonable time*, then the Chair ~~or Chair Pro tem~~ shall call the meeting to order, announce the absence of a quorum, and entertain a motion to adjourn.

e. ~~d.~~—VOTING. Unless otherwise specified by the Chair, actions shall be by roll call with the vote of each member recorded in the minutes.

~~d.f.~~ **AGENDA.** The activities at any ~~regular~~ meeting of the BZA shall be in accordance with a ~~formal~~ *an* agenda. Such *an* agenda shall be distributed to the BZA and made available to the public prior to each meeting.

~~e.g.~~ **e.**—**ORDER OF BUSINESS** ~~(Regular Meeting).~~ *At regular.* **At** meetings of the BZA, business shall be conducted in the following manner:

1. ~~•~~ ~~Call to order and roll call~~ *Order*
2. ~~•~~ *Election of Officers, when necessary*
3. Approval of ~~minutes of the last meeting(s)~~ *Minutes*
- ~~•~~ ~~Citizen comment period~~
 - ~~•~~ *4. Staff Comment*
 - 5. Board Comment*
 - 6. Public Comment*
 7. Public Hearings
- ~~•~~ ~~Special items deferred from previous meetings~~
 - ~~•~~ ~~Old~~ *8. Regular Business*
 - ~~•~~ ~~New Business~~
 - ~~•~~ ~~Staff Reports~~
 - ~~•~~ ~~Committee Reports~~
 - ~~•~~ ~~Commission reports and requests~~
 - ~~•~~ ~~Future Business~~
 - ~~•~~ *9. Adjournment*

~~f.~~ ~~ORDER OF BUSINESS (Special Meetings).~~ The order of business at special meetings shall be in accordance with the agenda set by the Secretary for such special meetings.

~~f.h.g.~~ ~~AMENDMENTS TO AGENDA.~~ Agendas may be amended and/or items added or deleted from the agenda by majority concurrence of the members.

ARTICLE VIII SEPARABILITY

Should any article of the BZA bylaws be found to be void, the remaining articles shall remain in effect.

ARTICLE IX MODIFICATION OF BYLAWS/AMENDMENTS

Amendment

In accordance with Town Code Sec. 78-150.3, the BZA may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable. Modification of these bylaws shall be approved

by the board at a regular meeting of the BZA after having had the proposed bylaws in hand for at least 30 days prior to such meeting. ~~An affirmative vote of two-thirds of the entire BZA shall be required to modify the bylaws.~~

INTRODUCTION

The Board of Zoning Appeals (BZA) is established pursuant to Section 7.4 of the Charter of the Town of Herndon, Chapter 78, Section 78-150.3, Board of Zoning Appeals of the Code of the Town of Herndon (Town Code) and Section 15.2-2308 of the Code of Virginia, where applicable.

ARTICLE I BOARD MEMBERS

a. **COMPOSITION/QUALIFICATIONS OF MEMBERS.** In accordance with Town Code Sec. 78-150.3, the BZA shall consist of five members, appointed by the Town Council all of whom shall be qualified voters of the Town of Herndon and no member shall hold any other position, whether elected, appointed, or employed, with the town.

b. **TERM.** In accordance with Town Code Sec. 78-150.3, the term of office of the BZA members shall be five years, staggered so that one term begins each year. A member shall continue to serve until reappointed or replaced. Any member is eligible for reappointment.

c. **RESIGNATION.** In accordance with Town Code Sec. 78-150.3, any member who resigns from the BZA prior to the end of the member's term shall do so in writing to the Chair. The effective date of such resignation shall be the date of the letter to the Chair, unless another date is stated within the letter of resignation.

d. **VACANCIES.** In accordance with Town Code Sec. 78-150.3, vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term in the same manner as the original appointment. If a member serving on the BZA becomes a member of the Town Council, is appointed to another town board or commission, or becomes employed by the town, they shall be deemed to have vacated, and shall vacate, their term of office on the BZA on the date of their taking office or starting employment with the town.

e. **REMOVAL.** Notwithstanding the foregoing provision, A member of the BZA may be removed from office by the Town Council without limitation in the event that the member is absent from any three consecutive meetings of the BZA or is absent from any four meetings of the BZA within any twelve-month period, beginning upon the date of the BZA member's assumption of office. In such event, a successor shall be appointed by the Town Council for the unexpired portion of the term of the member who was removed.

f. **COMPENSATION.** In accordance with Town Code Sec. 78-150.3, BZA members' compensation, if any, shall be fixed by resolution of the Town Council.

g. **TRAINING.** In accordance with Town Code Sec. 78-150.3, newly appointed members of the BZA shall be offered training and certification by the Virginia Commonwealth University Center for Urban and Regional Analysis Land Use Education Program or similar certification to be completed within two years of appointment.

ARTICLE II ELECTIONS AND DUTIES OF OFFICERS

a. **ELECTION OF OFFICERS.** In accordance with Town Code Sec. 78-150.3, the BZA shall choose annually a Chair and Vice Chair. The BZA shall elect, through its usual voting process, the Chair and Vice Chair from its appointed members at its first meeting in January.

b. **TERMS.** In accordance with Town Code Sec. 78-150.3, the term of office of the Chair and Vice Chair of the BZA shall be one year. If the office of Chair becomes vacant, the Vice Chair automatically becomes Chair, and the office of Vice Chair becomes vacant. The BZA shall then, after a new member has been appointed, elect from its appointed members a new Vice Chair. If the office of Chair becomes vacant at a time when there is no Vice Chair, the BZA shall elect from its current members both a Chair and a Vice Chair.

c. **DUTIES OF CHAIR.** In accordance with Town Code Sec. 78-150.3, the Chair shall preside at all meetings of the BZA, decide points of order on procedure with the assistance of the Parliamentarian, and take such action as shall be necessary to preserve the order and integrity of proceedings before the board. The Chair shall have the same powers and duties as other members, with vote but no veto power.

d. **DUTIES OF VICE CHAIR.** In accordance with Town Code Sec. 78-150.3, in the absence of the Chair, the Vice Chair shall act as Chair and shall have the powers of the Chair. The Vice Chair shall represent the Chair upon request.

e. **CHAIR PRO TEM.** In accordance with Town Code Sec. 78-150.3, in the absence of the Chair and Vice Chair, the most senior board member shall act as Chair and shall have powers of the Chair.

ARTICLE III DESIGNATION AND DUTIES OF THE SECRETARY AND STAFF

a. **DESIGNATION AND DUTIES OF STAFF.** In accordance with Town Code Sec. 78-150.3, the Zoning Administrator or their designee shall serve as the professional staff to

the BZA and provide administrative support including the preparation and presentation of cases before the BZA. For the purposes of this section, “non-legal staff of the town” means any staff who is not in the office of the attorney for the town, or for the board, or who is appointed by special law or pursuant to Code of Virginia Sec. 15.2-1542.

b. **DESIGNATION AND DUTIES OF SECRETARY.** The BZA shall designate the Zoning Administrator or their designee to serve in addition to any other appointed duties, as Secretary of the BZA. The Secretary shall attend all meetings of the BZA and in accordance with Town Code Sec. 78-150.3, keep records of the BZA’s official actions, which shall immediately be filed in the office of the Zoning Administrator. Other duties include the preparation of minutes of the BZA’s proceedings, showing the vote of each member upon each question or, if absent or abstaining from a vote, indicating such fact and the preparation of official correspondence to and from the BZA as directed by the Chair.

ARTICLE IV MEETINGS

a. **MEETING SCHEDULE.** In accordance with Town Code Sec. 78-150.3, meetings of the BZA may meet in regular session on the fourth Thursday of each month at 7:00 p.m. at 765 Lynn Street, or at such other time and place within the boundaries of the Town of Herndon as may be fixed by resolution.

b. **POSTPONED OR CANCELED.** Should the conduct of a meeting be unnecessary due to a lack of items for consideration, impossible due to the inability to obtain a quorum, or due to weather or other condition such that it is hazardous for members to attend the meeting, as declared in writing by the Chair, the meeting may be postponed or canceled and notice of such postponement or cancelation and the rescheduled date, shall be published by staff. All public hearings and other matters previously advertised shall be conducted at the rescheduled meeting, and no further advertisement is required, unless required by law.

c. **PUBLIC HEARINGS.** Public hearings are scheduled during regular meetings, are open to the public and members of the public are encouraged to speak. The purpose of public hearings is to receive testimony from the public. Notice of public hearing shall be provided in accordance with the Code of Virginia and the Town Code and may be supplemented with additional notices as deemed appropriate by the BZA or staff.

Order of Public Hearing:

1. Presentation by staff summarizing the item
2. Presentation by the applicant

3. Testimony from members of the public desiring to speak
4. Concluding comments by the applicant; questions by BZA members, if the Chair determines necessary
5. Concluding comments by staff; questions by BZA members, if the Chair determines necessary
6. Public hearing closed by the Chair
7. Motion
8. Discussion by BZA members
9. Vote by roll call (or other means, if deemed necessary by the Chair)

d. CONTINUED DELIBERATION OF PUBLIC HEARING ITEMS. At the completion of the hearing on each item, the BZA shall proceed with its deliberation on that item and members shall have an additional opportunity for discussion, and then a vote shall be taken. Continuing an item to another meeting shall only occur upon motion, second, and vote of the BZA properly made and the motion shall specify the date when the item will again be considered.

e. ELECTRONIC PARTICIPATION IN MEETINGS. In accordance with Town Code Sec. 2-4, a member of the BZA may participate in a meeting that is not a public hearing from a remote location.

ARTICLE V CONDUCT OF MEMBERS OF THE BOARD OF ZONING APPEALS

a. CODE OF ETHICS. Town Code Sec. 2-5, “Code of Ethics for the Members of the Town Council and Council Appointed Board and Commission Members” is hereby incorporated by reference and members of the BZA shall so govern their actions.

b. ENCOURAGE PUBLIC PARTICIPATION. Members of the BZA shall limit their comments during the testimony of the members of the public portion of the agenda to ensure public participation without BZA interference.

c. BZA RESPONSE. Members of the BZA are not expected to respond to general questions. Response to questions shall be made at the discretion of the Chair. At the completion of each staff and applicant presentation, members of the BZA shall have an opportunity to ask questions or clarify points made during the presentation.

ARTICLE VI

**CONDUCT OF PERSONS
APPEARING BEFORE THE BOARD OF ZONING APPEALS**

- a. **PUBLIC COMMENT.** During all meetings of the BZA, the public may be present, and a specific time shall be reserved for receipt of public comments. At all other times, the public shall remain silent unless specifically invited by a member of the BZA and permitted by the Chair to provide comment.
- b. **PROPER DECORUM.** During all BZA proceedings, members of the public have the obligation to maintain proper decorum. Individuals should be respectful, clear, and concise, and demonstrate integrity in comments and actions. The use of profane, vulgar, obscene, or threatening remarks is not permitted and may result in removal from the meeting. Individuals should refrain from participating unless recognized by the Chair; this includes booing, clapping, and cheering.
- c. **TIME AND PLACE.** Members of the public, applicants, or their representatives intending to address the BZA shall proceed to the appointed place, clearly state their name and address, and shall be subject to the following time limitations: ten minutes total for the applicant and any of the applicant's representatives; three minutes per individual for all others. The chair may, at their discretion, allow additional time for speakers.
- d. **SIGN-IN.** Sign-in forms, if deemed necessary by the Chair, shall be completed by persons intending to speak, listing printed name, phone number, address of the person intending to speak, and application of the issue to be addressed.
- e. **WRITTEN COMMENTS AND TESTIMONY.** Written comments by members of the public should be submitted no later than twelve hours prior to the meeting to ensure distribution to the BZA members in time for review. Any written comment and testimony received shall become part of the public record.
- f. **OATHS.** In accordance with Town Code Sec. 78-150.3, the Chair may administer oaths and compel the attendance of witnesses.

**ARTICLE VII
VOTING AND TRANSACTION OF BUSINESS**

- a. **PARLIAMENTARY AUTHORITY.** Parliamentary procedure at all BZA meetings shall be governed by the most recent edition of Robert's Rules of Order, newly revised, as applicable to boards, except to the extent set out otherwise in these bylaws, Town Code, or the Code of Virginia. The Town Attorney, or their designee, is Parliamentarian of the BZA.
- b. **QUORUM.** In accordance with Town Code Sec. 78-150.3, three members of the BZA

shall constitute a quorum. No official business shall be conducted without a quorum present. A member who knows they will be absent from or will have to abstain from any matter shall notify the Chair and staff at least twenty-four hours prior to the meeting of such fact.

c. **NECESSARY VOTE.** In accordance with Town Code Sec. 78-150.3, no action of the BZA shall be valid unless authorized by a majority vote of those present and voting except as otherwise provided in the next sentence. A favorable vote of at least three members of the BZA shall be necessary to reverse any determination of the Zoning Administrator on appeal.

d. **LACK OF QUORUM.** If a quorum is not present at the time set for the meeting, the Chair shall wait until there is a quorum. If no quorum is present after a reasonable time, at the discretion of the Chair, and there appears to be no prospect that a quorum will assemble with additional reasonable time, then the Chair shall call the meeting to order, announce the absence of a quorum, and entertain a motion to adjourn.

e. **VOTING.** Unless otherwise specified by the Chair, actions shall be by roll call with the vote of each member recorded in the minutes.

f. **AGENDA.** The activities at any meeting of the BZA shall be in accordance with an agenda. Such an agenda shall be distributed to the BZA and made available to the public prior to each meeting.

g. **ORDER OF BUSINESS.** At meetings of the BZA, business shall be conducted in the following manner:

1. Call to Order
2. Election of Officers, when necessary
3. Approval of Minutes
4. Staff Comment
5. Board Comment
6. Public Comment
7. Public Hearings
8. Regular Business
9. Adjournment

h. **AMENDMENTS TO AGENDA.** Agendas may be amended by majority concurrence of the members.

ARTICLE VIII SEPARABILITY

Should any article of the BZA bylaws be found to be void, the remaining articles shall remain in effect.

ARTICLE IX MODIFICATION OF BYLAWS

In accordance with Town Code Sec. 78-150.3, the BZA may, by a majority vote of the entire membership, draft and approve such additional bylaws governing its procedure as it may deem necessary or advisable. Modification of these bylaws shall be approved by the BZA after having had the proposed bylaws in hand for at least 30 days prior to such meeting.