

The Town Of Leesburg, Virginia

BY-LAWS

LEESBURG BOARD OF ZONING APPEALS

ARTICLE 1 – OBJECTIVES

- 1-1 This Board of Zoning Appeals, established pursuant to an order of the Circuit Court for Loudoun County, Virginia, on July 22, 1952, adopts the following articles in order to carry out its duties in accordance with Title 15.2 Chapter 22, Article 7, of the 1950 Code of Virginia, as amended, and the Town of Leesburg Zoning Ordinance, as amended.
- 1-2 The official title of this Board shall be the “Leesburg Board of Zoning Appeals”.

ARTICLE 2 – MEMBERS

- 2-1 The Board of Zoning Appeals, consisting of five members, all of whom shall be residents of the Town of Leesburg, Virginia, are appointed by the Circuit Court for Loudoun County, Virginia, and may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Circuit Court for Loudoun County, Virginia, after a hearing held after at least fifteen (15) days’ notice.
- 2-2 The term of office for each member shall be five (5) years.
- 2-3 Appointments for vacancies occurring otherwise than by expiration of a term shall be for the unexpired term. Members may be reappointed to succeed themselves. A Member whose term expires shall continue to serve until his or her successor is appointed and qualifies.
- 2-4 Members of the Board shall hold no other public office in the Town of Leesburg except that one member of the Board may be a member of the local Planning Commission.

ARTICLE 3 – OFFICERS

- 3-1 The officers of the Board shall consist of a chairman and a vice-chairman.
- 3-2 Nominations of officers shall be made by the members at a publicly announced annual meeting to be held at the beginning of each year at a regularly scheduled meeting. Election of officers shall follow immediately.

- 3-3 The candidate receiving a majority of the votes of the entire membership of the Board of Zoning Appeals shall be declared elected and shall take office immediately and serve for one (1) year or until a successor shall take office. Officers elected may succeed themselves.
- 3-4 Vacancies in office shall be filled immediately by regular election procedures.
- 3-5 The Leesburg Town Council shall provide a qualified Town staff member who shall act as Secretary to the Board.
- 3-6 With prior approval and within the limits of funds appropriated by the Leesburg Town Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.

ARTICLE 4 – DUTIES OF OFFICER AND STAFF

- 4-1 The chairman shall:
 - A. Preside at all meetings;
 - B. Rule on all procedural questions pursuant to Roberts Rules of Order when not in conflict with the Code of Virginia, as amended;
 - C. Be informed immediately of any official communication and report the same to the other members at the next regular meeting;
 - D. Sign all orders issued by the Board; and
 - E. Appoint such committees as deemed necessary.
- 4-2 The Vice-Chairman shall:
 - A. Act in the absence of the chairman or during the chairman’s inability to act; and
 - B. Have, in such case all the powers of the chairman.
- 4-3 The Secretary shall:
 - A. Notify the Town Clerk, the BZA Member and the Loudoun County Circuit Court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Town Clerk and the Loudoun County Circuit Court promptly if any vacancy occurs.
 - B. The Secretary, as he or she is not a member of the Board, shall not be entitled to vote on matters before the Board.

C. Keep a written record of all business transacted by the Board;

D. Notify all members of all meetings;

E. Keep a file of all official record and reports of the Board;

F. Certify all records and reports of the Board;

G. Attend to correspondence of the Board;

H. Prepare and publish advertisements relating to public hearings.

4-4 The Board shall submit a report of its activities to the Leesburg Town Council at least once each year.

ARTICLE 5 – MEETINGS

5-1 When cases are pending, regular meetings of the Board of Zoning Appeals shall be held on the Second Thursday of each month. When a meeting date falls on a legal holiday, the meeting shall be held on the following Thursday unless otherwise designated by the chairman. When no case is pending, a meeting shall not be held, except for mandatory biannual business meetings in the months of April and October. The hour of meeting shall be 7:30 p.m. unless otherwise designated by the chairman.

5-2 Special meetings shall be called at the request of the chairman or at the request of a quorum of the membership. Written notice of meetings shall be given to each member at least five (5) days prior to such meetings and shall state the purpose and time of the meeting.

5-3 The Board may by resolution fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman; if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

5-4 Three members of the Board shall constitute a quorum for the conduct of any hearing. The number of votes necessary to take any action shall be a majority of the entire membership. In the case of an appeal of a determination by the Zoning Administrator or in order to grant a variance or special use permit, the concurring vote of the majority of the membership is necessary to reverse the Zoning Administrator's determination, i.e., if all 5 members are present, 3 members must

vote for reversal. If 3 members are present, all 3 must vote for reversal. The Zoning Administrator's determination will be affirmed and can be modified on a 2-1 vote. A tie vote shall defeat the motion voted upon except that in any appeal taken pursuant to § 15.2-2311, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal. The method of voting shall be by roll-call vote.

- 5-6 Motions shall be restated by the chairman before a vote is taken. The names of the persons making and seconding a motion shall be recorded.
- 5-7 The Secretary shall prepare a set of minutes for all regular and special meetings. These minutes, once approved by the Board, shall constitute the official record of the meeting.
- 5-8 Procedure in Board meetings shall be governed by Robert Rules of Order, current edition.
- 5-9 All meetings shall be public meetings in accordance with the requirements and exceptions of the Virginia Freedom of information Act sections 2.2-3700 thru 2.2-3714 of the 1950 Code of Virginia, as amended.
- 5-10 A regular meeting may be recessed if all applications or appeals cannot be disposed of on the meeting date set and reconvened at a later date without further published notice.

ARTICLE 6 – ORDER OF BUSINESS

- 6-1 The typical order of business for a regular meeting shall be:
 - A. Call to order by chairman;
 - B. Roll call;
 - C. Determination of quorum;
 - D. Disclosure of meetings with or communications by appellants;
 - E. Hearing of cases;
 - 1. Continued Cases
 - 2. New Cases
 - F. Unfinished business;

G. Adoption of Minutes;

H. New business;

I. Adjournment;

6-2 Time Limits for Applicants, Appellants and Other Speakers: The Board may impose reasonable time limitations on applicants, appellants and other speakers, including staff, however, an equal amount of time in a hearing on the case shall be offered to the applicant, appellant or other person aggrieved under § 15.2-2314 and staff of the local governing body. The Secretary shall act as timekeeper.

6-3 Deferrals: The Board may defer any matter at the request of a member of the Board, the Town, 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 therefore. 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 Board should consider the reasons for the deferral if the request is submitted by the appellant or applicant, the recommendation of staff, and the comments of any member of the public. In making its decision to grant or deny a request, the Board should 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; and (4) whether the deferral would allow the appellant or applicant to resolve the underlying issues so that Board action might not be necessary.

ARTICLE 7 – HEARING PROCEDURE

7-1 Appeals and applications to the Board shall be made in accordance with the provisions of the Leesburg Zoning Ordinance.

7-2 When an appeal or application has been received, the Secretary shall schedule a meeting in accordance with Article 5 of these by-laws and publish a public notice according to the requirements of Title 15.2, Chapter 22, Article 1, Section 2204 of the 1950 Code of Virginia as amended and Section 3.1.9 of the Town of Leesburg Zoning Ordinance. The Secretary shall notify all members and the party or parties in interest by mail or in person that a public hearing has been scheduled and give the date, time and place of such public hearing.

7-3 The appellant or applicant may appear on their own behalf or by their agent or by counsel at the public hearing and shall be afforded the privilege of making a statement immediately following the staff presentation.

- 7-4 The Chairman of the Board, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.
- 7-5 All parties may present evidence and arguments with respect thereto. Depositions may be taken and read as in actions at law.
- 7-6 The decision of the Board shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.
- 7-7 The Board may reverse or affirm, wholly or partly, or may modify, the decision of the Zoning Administrator.
- 7-8 The concurring vote of the majority of the full Board is necessary to reverse the determination of the Zoning Administrator or to grant a variance. A tie vote shall defeat the motion voted upon except that in any appeal taken pursuant to § 15.2-2311, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.
- 7-9 If disqualifications under the State and Local Government Conflict of Interests Act (Virginia Code § 2.2-3100 et seq.) leaves less than a quorum, the remaining member or members of the Board shall have the authority to act for the Board by a unanimous vote.
- 7-10 The Board is required to make its decision within ninety (90) days of the application or appeal.
- 7-11 In order to facilitate judicial review, the Board is required to make findings of fact, either orally or in writing, that reasonably articulate the basis for its decision.
- 7-12 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 Board, the date of the Board's final decision shall be the date on which the Board took its final vote on the merits of the matter.

ARTICLE 8 – AMENDMENTS

- 8-1 These by-laws may be amended by a majority vote of the membership of the Board.

Revised October 8, 2015

The Town of Leesburg, Virginia

LEESBURG BOARD OF ZONING APPEALS

BY-LAWS

ADDENDUM

**§ 15.2-2308.1 1950 Code of Virginia, as amended—
BOARD 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 F 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.

Issued October 8, 2015