



BOARD OF ZONING APPEALS

Business Meeting: Tuesday, April 20, 2021, 7:00pm
Council Chamber, Town Hall, 25 West Market Street,
Leesburg, VA 20176

Board of Zoning Appeals meetings are broadcast for public viewing as follows:

- a. Webcast: <https://www.leesburgva.gov/government/webcasts>
- b. Comcast Government Access Channel 67 and Verizon Channel 35

Public participation in the meetings is also available through WebEx at:

<https://leesburg.webex.com/leesburg/onstage/g.php?MTID=ed512aa449cc816b2b12422fd04b4a51a>

Or call Teleconference number: 1-844-621-3956 and enter Event Number: 133 095 4594

Please note that all Town Council, Board, and Commission Meetings are recorded and can be found on the Town's website at www.leesburgva.gov.

Board Members

Peter Vanderloo, Chair
Susan Moffett, Vice Chair
Joseph Carter
Gregory Gutierrez
Martha Mason Semmes

Support Staff

Michael Watkins, Zoning Administrator
Mike Ruddy, Assistant Zoning Administrator
Deborah Parry, Planning & Zoning Analyst
Carmen Babonneau, Zoning Inspector
Shelby Miller, Zoning Analyst

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- I. Call to Order and Roll Call
 - II. Determination of Quorum
 - III. Approval of Meeting Minutes:
 - a. January 21, 2020 Meeting Minutes
 - IV. Public Hearings
 - V. Unfinished Business
 - VI. New Business
 - a. Adoption of the 2020 Board of Zoning Appeals Annual Report
 - b. Adoption of 2021 Meeting Schedule
 - i. Potential Adjustment of Annual Business Meeting Schedule
 - c. Current Zoning Ordinance Amendments Briefing
 - VII. Adjournment

NEXT SCHEDULED BUSINESS MEETING: October 19, 2021

Assisted Listening System devices are available at this meeting. If you require any type of reasonable accommodation to attend and/or participate in this meeting, please contact Debi Parry at dparry@leesburgva.gov or 703-737-7023. Three days advance notice is requested.



MINUTES OF THE BOARD OF ZONING APPEALS
Tuesday, June 21, 2020
25 West Market Street
Council Chamber

MEMBERS PRESENT: Chairman Peter Vanderloo, Joseph Carter, Susan Moffett, and Martha Mason Semmes

MEMBERS ABSENT: None

STAFF: Zoning Administrator Michael Watkins, Director of Plan Review Bill Ackman, and Executive Associate Karen Cicalese

Call to Order and Roll Call

Chairman Vanderloo called the meeting to order at 7:00pm. Attendance was noted and a quorum was deemed present.

Approval of Meeting Minutes

a. October 15, 2019

On a motion by Ms. Moffett, seconded by Ms. Mason Semmes, the minutes of October 15, 2019 were approved by a 4-0 vote.

BZA Disclosures

None

Public Hearings

Prior to opening the public hearing, Chairman Vanderloo issued the oath to the appellant, public speakers, and staff for this hearing. The public hearing was opened at 7:05pm.

a. TLZV-2019-0003 – Zoning Determination Appeal, 602 Valley View Avenue SW

Mr. Watkins stated the Virginia State Code outlines the responsibilities of the Zoning Administrator and sets forth the procedure for any aggrieved persons effected by a decision of the Zoning Administrator to appeal such a decision. He stated the Virginia State Code also states that it is the responsibility of Board of Zoning Appeals, in such cases, to determine whether the decision was correct.

He provided an overview of the existing site conditions and noted that the property is a corner lot with frontage along Valley View Avenue SW and Crestwood Street SW. He stated the similar in size to other corner lots in the neighborhood, none of which have more than one combined or separate entrance and exit. He stated the subject property has an existing combined entrance and exit onto Valley View Avenue on the west side and that there has never been an entrance for this lot onto Crestwood Street. Further, he stated the two-car driveway on the property was reduced in size at some point to accommodate a single vehicle.

Mr. Watkins stated in 2019, the appellant submitted a Zoning Permit application to construct a driveway and parking space leading into the property from Crestwood Street. He stated the Zoning Permit application was denied on the basis that the appellant did not meet the approval criteria in Zoning Ordinance Section 11.6.1.B for the new entrance. He noted this section of the Ordinance states, "Driveway entrances shall be designed to accommodate all vehicle types having the occasion to enter the site, including delivery vehicles. There should not be more than one entrance and exit or one combined entrance and exit along any street frontage unless

deemed necessary by the Land Development Official in order to alleviate (1) traffic congestion and (2) interference along such street.” He stated the Ordinance does include the ability to look at the circumstances of the subject property and make an educated decision; however, the appellant did not include or cite the approval criteria from the Zoning Ordinance. Further, he stated it is common for staff to consult with various other departments for their comments or concerns with proposed improvements, noting in this case similar language is found in the Town’s Design and Construction Standards Manual (DCSM).

Mr. Watkins stated the appellant was made aware of the approval criteria and requested denial of the application to allow for an appeal to the Board of Zoning Appeals. He stated the application was determined to be unapprovable because the appellant did not justify an alleviation of the traffic congestion or a resolution of any interference along the street. He noted the basis of the appellant’s appeal is that the administrative denial was based on an erroneous interpretation of the Zoning Ordinance section. Further, he stated the appellant claims that staff engaged in inappropriate, unprofessional, and prejudicial conduct and that staff’s actions created an insurmountable bias against the application.

Mr. Watkins stated the appellant has not overcome the burden of proof necessary to overturn the administrative decision. He stated the appeal application does not specifically cite how the Zoning Administrator erred in his interpretation nor does it provide any information as to how the Zoning Permit application meets the approval criteria in Section 11.6.1.B of the Zoning Ordinance. Therefore, staff recommends that the Board uphold and affirm the Zoning Administrator’s denial of Zoning Permit 2019-0767.

Chairman Vanderloo called for questions of staff from the Board.

There was discussion regarding the Board’s purview in deciding this case as well as the other background information provided in the staff report regarding decisions made by other Town Departments with regard to this project.

Mr. Watkins stated the applicant brought two proposals forward to the Department of Plan Review, outside of the Zoning Permit process and provided details of each. He stated in both occasions the appellant was notified that the proposals did not meet DCSM criteria for approval.

There was additional discussion regarding the standard of review for evaluating the determination of the Zoning Administrator. Further, there was also discussion regarding how street frontage is determined.

Mr. Ackman provided information regarding the precedent the Town has used with regard to the determination that a single lot can have a single driveway. He stated the only properties with two entrances on a single lot in Town have approvals that are over 30 years old. Further, he stated in the last 30 years the Town has consistently denied requests for two driveways or circular driveways on single lots in the Town and discussed the underlying cost to the Town that would be necessitated by allowing two entrances on corner lots.

There was further discussion regarding additional options that the appellant can pursue within the Ordinance to provide additional parking on site without the second driveway.

Chairman Vanderloo called for testimony from the appellant.

Ronald Brooks and his representative Daniel Brooks were present.

Mr. Ronald Brooks stated he and his wife are the owners of this property. He stated he believes that the plan he submitted in 2019 is not in conflict with Zoning Ordinance Section 11.6.1.B and further he believes that the Board’s decision is a simple matter, which hinges on a few common words used in one sentence of the Zoning Ordinance section.

Mr. Daniel Brooks stated the phrase in the Zoning Ordinance that is at the heart of the appeal is as follows, “There should be not more than one entrance and exit or one combined entrance and exit along any street frontage”. He stated Section 1.8 of the Zoning Ordinance specifies the rules for interpreting the Zoning Ordinance. He stated Section 1.8.7 states, “Words and phrases shall be construed according to the common and approved usage of the language”. He stated the language in the Zoning Ordinance Section 11.6.1.B can therefore be interpreted as stating that there can be one separated entrance and exit or one combined entrance and exit opening onto each individual street frontage that a lot may have. He went on to state that such entrances and exits may be allowed to open on a particular street if the Land Development Official deems them necessary to alleviate traffic congestion and interference along such street. Further, he stated the Zoning Administrator would have you believe that the phrase has a very different meaning.

Mr. Daniel Brooks stated the Zoning Administrator erred in his statement that this lot has “frontage (singular) along two streets” in that Mr. Watkins is considering the general feature type of frontage rather than the specific feature type for this property. He stated the ordinance includes the word “any” to indicate that they knew a property might have two or more street frontages and to include their intention that each be identified and regarded separately. Further, he discussed the various ways in which the word “frontage” is included in the Zoning Ordinance and specifically language involving multiple street frontages for corner lots.

Mr. Daniel Brooks summarized his findings stating that the Zoning Ordinance has been misinterpreted by the Town over the last 30 years and that this corner lot with multiple street frontages does allow for the approval of a second driveway off of Crestwood Street. Further, he asked that the Board overturn the Zoning Administrator’s determination.

Chairman Vanderloo called for questions of the appellant.

There was discussion regarding the intent of the use of the driveway by the applicant.

Chairman Vanderloo asked that Mr. Brooks or his representative present any final thoughts on this matter before the Board moves to testimony from the public.

Mr. Daniel Brooks noted that Mr. Watkins indicated there were other alternatives presented; however, his father was not under any obligation to accept any of those. He stated when Mr. Watkins states that the driveway may be widened, the Town is then incurring the same responsibility for maintaining the same width of curb cut that may need maintenance in the future. He stated when staff notes that the property owner is permitted an entrance on one street and an exit on the second street, or the possibility of removing the driveway on Valley View Avenue to be replaced by a driveway on Crestwood Street, that is an indication that the addition of a curb cut on Crestwood Street would not present a traffic congestion issue. Further, he added that the only difference between what was proposed by the appellant and what was offered as an option by staff is that in staff’s option both of the curb cuts would connect, which is not sufficient grounds to deny the original application.

Mr. Ronald Brooks stated his concern with staff’s argument is that he cannot understand why a wider driveway would be allowed on the Valley View Avenue frontage but not allowed on the Crestwood Street frontage.

Mr. Daniel Brooks added that Mr. Watkins identified that he did not know of any recent occurrences where this issue had been a problem and noted a similar issue at 40 Catocin Circle, First Citizen’s Bank and Trust. He stated in this instance there is a separate property on the corner; however, this business sought the opportunity to have a second driveway off of Market Street in addition to the access on Catocin Circle and their application was denied. He stated in that case the issue was addressed by subdividing the lot; however, that option is not available in this case as the lot is too small to subdivide.

Chairman Vanderloo closed the appellant's presentation portion of the hearing and called for public comment.

Dan Gordon, Capital Property Management, stated he is the property manager for the Crestwood Hamlet HOA and will be representing their views. He stated the HOA Board opposes the approval of a second driveway on Crestwood Street. He stated there are 162 townhomes in Crestwood Hamlet and approximately 125 of those units are accessed from Crestwood Street, presenting ingress and egress concerns for the residents. He also noted that thru access is restricted on Valley View Avenue and therefore there are less vehicles using that roadway. He stated the HOA residents are also concerned with the intended use of the driveway, noting they were originally told it would be used to park a boat; however, the size of the boat is not known and it is not clear as to whether that would be permissible. Further, he noted the close proximity of the intended driveway to the corner of the street and expressed traffic and safety concerns that might be presented by backing a car with a boat trailer out of this space.

There was discussion regarding the previous proposal by Mr. Brooks to construct a driveway through property owned by the HOA.

Mr. Gordon stated Mr. Brooks had previously approached the Crestwood Hamlet HOA Board regarding the possibility of constructing a driveway in his rear yard which would've necessitated a curb cut on the HOA's property; however, that request was denied.

There were no further public speakers for this hearing and this portion of the hearing was closed.

Ms. Moffett proposed a motion to allow both staff and the appellant the opportunity to provide a rebuttal and to answer additional questions of the Board

Chairman Vanderloo proposed an amendment to limit staff and the applicant to 5 minutes each.

Mr. Carter proposed a friendly amendment to indicate that questions should be narrowly focused.

The friendly amendments were accepted.

The amended motion was seconded by Ms. Mason Semmes and approved by a 4-0 vote.

Mr. Watkins directed the Board to the language in his denial letter, noting his case is not based on how the term "frontage" is being used. Rather, staff's case is based on the two criteria in the Zoning Ordinance Section 11.6.1.B. He stated the Ordinance is constructed to allow an applicant to bring forward a request for a second driveway and to provide evidence to justify the request to the Land Development Official based on the language in the Ordinance. He stated the request specifically should demonstrate that it resolves traffic congestion or interference along the street; however, the applicant did not include those two criteria in their application despite being asked to provide the information on multiple occasions. Further, he stated that he has not heard any testimony this evening that would demonstrate how either of those two criteria would be met by the proposal.

Mr. Ackman stated there is a difference in the amount of frontage that would be required for a wider entrance versus a second entrance. He also addressed the commercial example presented, noting that traffic studies can be provided to show the number of entrances a site should have, which can be used to meet the justification criteria outlined by Mr. Watkins.

There was discussion regarding the commercial example presented by the applicant and additional clarification regarding staff's interpretation of the Zoning Ordinance language. There was also discussion regarding the potential need for additional clarity in the Zoning Ordinance to address the possibility of this issue coming up again in the future.

Mr. Vanderloo closed the staff rebuttal portion of the hearing and offered Mr. Brooks and his representative the opportunity to provide a rebuttal.

Mr. Daniel Brooks stated he believes that Mr. Watkins has erroneously interpreted the Ordinance and thus created an inappropriate set of criteria with which to judge the property. He stated Mr. Gordon was not a part of the discussions between the Crestwood Hamlet HOA and Mr. Ronald Brooks. Further, he stated a permitted use is not discretionary and subject to denial, rather it is something that you can do if you want to.

Mr. Ronald Brooks stated Mr. Gordon did not mention that the Crestwood Hamlet HOA has a sign on his property. He explained that a good faith effort was made to allow the HOA to keep their sign on his property in return for an easement to allow driveway access from the HOA's property into his property. Further, he stated he never indicated that he would park a boat in the driveway.

Chairman Vanderloo closed the public hearing at 8:25pm.

There was Board discussion regarding the merits of the testimony, the Zoning Ordinance language, standards of review, and the precedent set by the Town.

It was the consensus of the Board that the Zoning Administrator did not err in his decision based on the language in the Zoning Ordinance, the precedent set by the Town in reviewing such matters, and the review criteria of the Board.

Ms. Mason Semmes proposed a motion that the Board of Zoning Appeals affirm the Zoning Administrator's October 17, 2019 administrative decision denying Zoning Permit TLZP-2019-0767, on the basis that the appellant has not sufficiently addressed the approval criteria of Zoning Ordinance Section 11.6.1.B, Entrances and Exits; that the addition of a second combined entrance off of Crestwood Street SW, is not alleviating traffic congestion and interference along such street.

The motion was seconded by Ms. Moffett and the motion was approved by 4-0.

There was a recess of the meeting at 8:36pm.

The meeting resumed at 8:42pm.

Unfinished Business

None

New Business

a. Election of Officers for 2020

Mr. Carter proposed a motion to nominate Peter Vanderloo to serve as Chairman of the Board of Zoning Appeals for 2020.

The nomination was accepted Chairman Vanderloo and the motion was seconded by Ms. Mason Semmes.

There were no further nominations and the nomination period was closed.

The motion to appoint Peter Vanderloo as Chairman of the Board of Zoning Appeals for 2020 was approved by a 3-0-1 vote (Vanderloo abstained).

Ms. Mason Semmes proposed a motion to nominate Susan Moffett as Vice Chairman of the Board of Zoning Appeals for 2020.

The nomination was accepted by Ms. Moffett and the motion was seconded by Chairman Vanderloo.

There were no further nominations and the nomination period was closed.

The motion to appoint Susan Moffett as Vice Chairman of the Board of Zoning Appeals for 2020 was approved by a 3-0-1 vote (Moffett abstained).

New Business

There was discussion regarding the need for staff to provide an annual update at a scheduled meeting regarding changes to the Zoning Ordinance. Staff was also asked to consider areas where additional clarification may be needed within the Zoning Ordinance as determined by the review of cases before the Board. There was further discussion regarding the Zoning Ordinance batch amendment process and it was the consensus of the Board that an update be provided at their October business meeting.

There was additional discussion regarding the possibility of Zoning Ordinance amendments that may arise as a result of the Comprehensive Plan amendment.

It was noted that the appellant for the hearing provided additional hard copy information during the hearing this evening which should be accepted into the record.

Ms. Mason Semmes proposed a motion that the Board accept the additional information provided by the applicant for TLZV-2019-0003 with regard to the property at 40 Catocin Circle SE into the record for the hearing.

The motion was seconded by Mr. Carter and approved by a 4-0 vote.

Adjournment

Vice Chairman Moffett proposed a motion to adjourn the meeting.

The motion was seconded by Mr. Carter and approved by a 4-0 vote.

The meeting was adjourned at 8:50pm.

Peter Vanderloo, Chairman

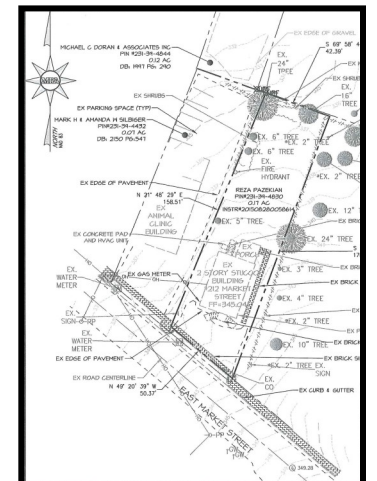
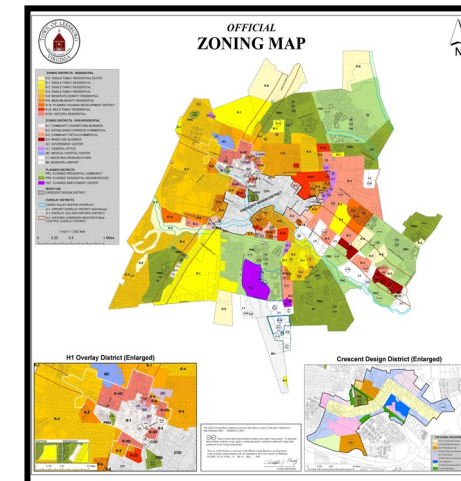
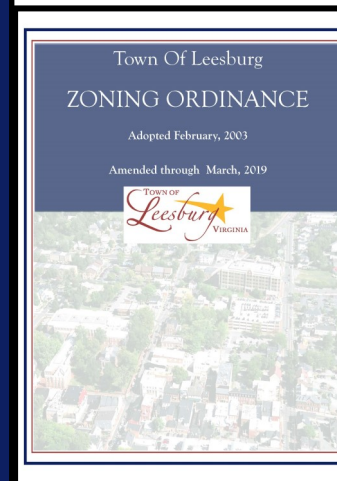
Deborah Parry, Planning & Zoning Analyst

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|-----------------------------|----------------------------|
| Tuesday, January 19, 2021 | Tuesday, February 16, 2021 |
| Tuesday, March 16, 2021 | Tuesday, April 20, 2021* |
| Tuesday, May 18, 2021 | Tuesday, June 15, 2021 |
| Tuesday, July 20, 2021 | Tuesday, August 17, 2021 |
| Tuesday, September 21, 2021 | Tuesday, October 19, 2021* |
| Tuesday, November 16, 2021 | Tuesday, December 21, 2021 |

* denotes regularly scheduled business meetings.

Town of Leesburg Department of Planning & Zoning
 25 W. Market Street, Leesburg, VA 20176
www.leesburgva.gov/planning

Town of Leesburg, VA Board of Zoning Appeals 2020 Annual Report



The Leesburg Board of Zoning Appeals (BZA) is pleased to present its annual report for the 2020 calendar year. The information contained within this report is a summary of work produced by the Board during the previous year.

2020 BZA Members

| Board Members | |
|---|---|
| Peter Vanderloo, Chairman | Susan Moffett, Vice Chairman |
| Joseph Carter | Gregory Gutierrez (appointed 2/14/2020) |
| Martha Mason Semmes | |
| Staff Liaisons | |
| Michael Watkins Zoning Administrator | Debi Parry, Planning & Zoning Analyst |

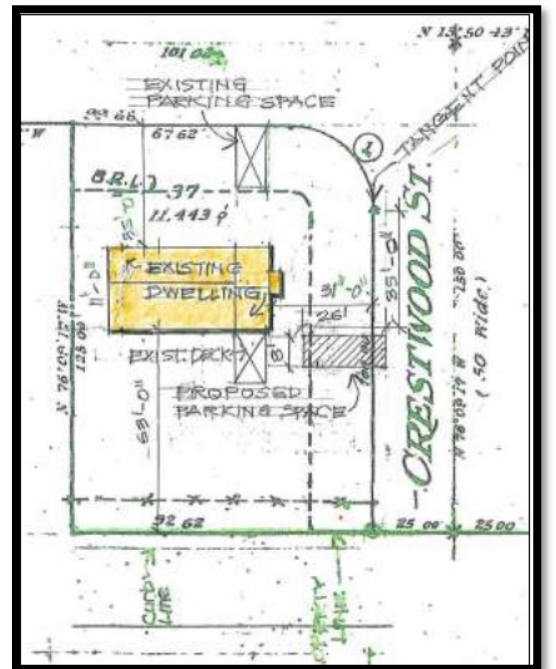


BZA 2020 Overview

The BZA, a quazi-judicial body appointed by the Loudoun County Circuit Court, meets on an as needed basis. There was one case heard in 2020. Both business meetings of the BZA were cancelled due to the COVID pandemic and staffing concerns.

TLZV-2019-0003 – 602 Valley View Avenue SW

On January 21, 2020, the Board of Zoning Appeals met to hear case TLZV-2019-0003, 602 Valley View Avenue SW, which was filed as an appeal of an administrative decision given by the Zoning Administrator. This application was filed by the appellant who alleged that the Zoning Administrator erred in the denial of a Zoning Permit requesting a second vehicle entrance onto the subject property located at 602 Valley View Avenue SW.



The basis of the appeal was a challenge to the administrative decision that a second vehicle access from a public street is not permitted for the single-family detached lot per Town of Leesburg Zoning Section 11.6.1.B Entrances and Exits. The subject property is a “corner lot” meaning it has frontage on two streets. The property is similar in size and shape to other corner lots in the surrounding neighborhood, none of which have more than one combined or separate entrance and exit. The subject property had an existing combined entrance and exit driveway on Valley View Avenue SW and sought a second entrance and exit driveway onto the lot from Crestwood Street SW. Further, the applicant failed to justify the need for the second driveway in their Zoning Permit application, as required in Section 11.6.1.B.

Upon reviewing the application, the Zoning Administrator reached out to the applicant to inform them that their application was not in compliance and provided options for the applicant to (1) provide the necessary justification as outlined in the Zoning Ordinance or (2) amend their application to bring it into compliance with the Zoning Ordinance. The applicant requested that their application be denied so that their case might be heard before the Board of Zoning Appeals.

After hearing testimony from staff, the appellants and a representative of the Crestwood Hamlet HOA, the Board of Zoning Appeals upheld the Zoning Administrator’s denial of the Zoning Permit application.

2021 BOARD OF ZONING APPEALS MEETING SCHEDULE

| Application Deadline | Meeting Dates | Notice Dates Placard & Written | Newspaper Notice Publication Date |
|----------------------|--------------------------|-----------------------------------|--------------------------------------|
| December 15, 2020 | Tues, January 19 | January 4, 2021 | January 7, 2021 |
| | | January 8, 2021 | January 14, 2021 |
| January 12, 2021 | Tues, February 16 | February 1, 2021 | February 4, 2021 |
| | | February 5, 2021 | February 11, 2021 |
| February 9, 2021 | Tues, March 16 | March 1, 2021 | March 4, 2021 |
| | | March 5, 2021 | March 11, 2021 |
| March 16, 2021 | *Tues, April 20 | April 5, 2021 | April 8, 2021 |
| | | April 9, 2021 | April 15, 2021 |
| April 13, 2021 | Tues, May 18 | May 3, 2021 | May 6, 2021 |
| | | May 7, 2021 | May 13, 2021 |
| May 11, 2021 | Tues, June 15 | June 7, 2021 | June 10, 2021 |
| | | June 11, 2021 | June 17, 2021 |
| June 15, 2021 | Tues, July 20 | July 2, 2021** | July 8, 2021 |
| | | July 9, 2021 | July 15, 2021 |
| July 13, 2021 | Tues, August 17 | August 2, 2021 | August 5, 2021 |
| | | August 6, 2021 | August 12, 2021 |
| August 17, 2021 | Tues, September 21 | September 3, 2021** | September 9, 2021 |
| | | September 10, 2021 | September 16, 2021 |
| September 14, 2021 | *Tues, October 19 | October 4, 2021 | October 7, 2021 |
| | | October 8, 2021 | October 14, 2021 |
| October 12, 2021 | Tues, November 16 | November 1, 2021 | November 4, 2021 |
| | | November 5, 2021 | November 11, 2021 |
| November 16, 2021 | Tues, December 21 | December 6, 2021 | December 9, 2021 |
| | | December 10, 2021 | December 16, 2021 |

BZA Meetings begin at 7pm on the 3rd Tuesday of the month in the Council Chamber, 2nd Floor of Leesburg Town Hall, 25 West Market Street. All applicants or representatives are requested to attend the meeting for which they have been scheduled. * Indicates regular business meetings. ** Indicates dates moved for holidays.

2021

JANUARY

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MARCH

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AUGUST

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DECEMBER

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Applications must be filed by 4pm, 5 weeks prior to the scheduled meeting date.

BZA minutes and agenda materials can be viewed by visiting www.leesburgva.gov/bza