



**TOWN OF MIDDLEBURG  
BOARD OF ZONING APPEALS  
MEETING MINUTES**



**Monday, October 17, 2022  
PENDING APPROVAL**

A meeting of the Middleburg Board of Zoning Appeals was held on Monday, October 17, 2022, in the Town Hall Council Chambers. Deputy Town Manager Moore called the meeting to order at 6:00 p.m. Town Clerk North called the roll.

**PRESENT:** Eric Combs  
Jonathan Gifford  
Trow Littleton  
Catherine “Bundles” Murdock  
H.H. “Dev” Roszel

**STAFF:** William Moore, Deputy Town Manager/Town Planner  
Rhonda S. North, MMC, Town Clerk  
Estee LaClare, Planning & Project Associate

**Nomination & Election of Officers**

*Committee Member Murdock moved to nominate Eric Combs as Chair. Committee Member Murdock further moved to nominate Dev Roszel as Vice Chair. Eric Combs seconded the nomination of Mr. Roszel. Dev Roszel seconded the nomination of Mr. Combs.*

No other nominations were offered.

Vote: Yes – Board Members Combs, Gifford, Littleton, Murdock and Roszel  
No – N/A  
Abstain – N/A  
Absent – N/A

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**Review of Bylaws**

Deputy Town Manager Moore advised the Board that their bylaws were simple ones that essentially identified the procedures to hear a case. He noted that he also provided the members with an excerpt from the zoning ordinance related to the Board. Mr. Moore explained that the most important thing to note was that three members constituted a quorum for meeting purposes and that the vote of the majority of the membership was required for a motion to be approved. He noted that the BZA had not heard a case since 2008. Mr. Moore advised that the Board needed to meet at least once annually and advised that they would hold their organizational meeting at that time.

In response to an inquiry from the Board, Deputy Town Manager Moore advised that in order to participate in a meeting remotely, the Board must first adopt a policy. He noted that the Town Clerk would talk about this as a part of her FOIA training. Mr. Moore advised that if the Board wished to do so, an amendment to the bylaws to add an electronic participation policy could be included on the next agenda.

**Discussion:** Types of Cases Heard by BZA

Deputy Town Manager Moore reminded the members that the BZA was a quasi-judicial board that was appointed by the Circuit Court Judge and did not answer to the Town Council. He explained that they did not have a legislative role, and that it was not their role to determine whether the zoning ordinance should be written a certain way. Mr. Moore advised that if their decision was appealed to the Circuit Court, they would not be a litigant, nor would they have any liability individually. He noted that the members could, however, be required to participate or testify in the court proceedings regarding their decision.

Deputy Town Manager Moore suggested that members not hold ex-parte communications, discuss the facts of an application, or hold any communication with the applicant or staff related to an application outside of a formal meeting. He noted that the members would receive a written staff report in their agenda packet; however, they could not ask the staff questions related to the report outside of the public hearing. In response to an inquiry from the Board, he suggested that even just two members should not discuss an application outside of a formal meeting.

In response to an inquiry from the Board regarding whether the Town would provide the BZA with legal counsel in the event a decision was appealed to the Circuit Court, Deputy Town Manager Moore advised that the Town Attorney would likely represent the Board; however, he would notify the Town if outside legal counsel needed to be hired.

In response to an inquiry from the Board, Deputy Town Manager Moore advised that they could ask questions during the public hearing on application; however, they could not do so outside of it. He noted that if the Town Attorney was present, the Board could also ask questions of him.

Deputy Town Manager Moore advised that under the State Code, there were four types of cases that a board of zoning appeals could hear. He noted that in the first case – that being a special use permit – this only applied if the local governing body was not the reviewing authority. Mr. Moore advised that in Middleburg, the Town Council heard such cases; therefore, they would not come before the BZA. He advised that the next type of case that could be heard was an appeal of the Zoning Administrator's determination. Mr. Moore noted that in that case, the applicant and staff would be in an adversarial position, as the applicant would be in disagreement with the staff's interpretation of the zoning ordinance. He explained that it was his job as the Zoning Administrator to make the interpretation, with the applicant having the ability to appeal to the BZA. Mr. Moore further explained that in such a case, the BZA would decide whether his interpretation of what was written in the zoning ordinance was correct, not whether the rules were what they felt they should be. He advised that under the State Code, the Zoning Administrator's determination was presumed to be correct and that it was the applicant's responsibility to rebut the presumption of correctness. Mr. Moore advised that he had no issue if the BZA determined that he was not right in his interpretation of the ordinance.

In response to an inquiry from the BZA as to whether their decision could create a precedent and whether the BZA would review past precedents when considering an application, Deputy Town Manager Moore advised that if they received an application, he would do his best to research and cite any past precedents in his staff memorandum. He confirmed the BZA's decision could set a precedent on how something should be interpreted locally.

In response to an inquiry from the BZA as to why the Board had not met since 2008, Deputy Town Manager Moore advised that this was based on the strength of the Town's zoning ordinance, which was very clear. He further advised that it was because the town was so small and the types of applications that were received were not very complex. Mr. Moore noted that the zoning ordinance also contained other avenues of relief, such as the ability to submit a special use permit application.

In response to an inquiry from the Board, Deputy Town Manager Moore confirmed it was very infrequent that he issued a formal zoning determination or a notice of violation, which also constituted a determination. He advised that a case was filed in 2016; however, the applicant withdrew it before the BZA meeting. Mr. Moore noted that a verbal response to an inquiry could also be considered to be an interpretation.

Deputy Town Manager Moore advised that the next type of case that could be heard by the BZA was a variance. He noted that in that case, it was not an adversarial position between the staff and the applicant. Mr. Moore explained that in the case of a variance, the applicant was asking for a departure from the zoning ordinance requirements. He advised that this almost always involved something that was measured, such as a setback or height. Mr. Moore noted that use variances were not legal in the Commonwealth of Virginia. He advised that in the case of a variance, there were certain findings the Board must make before granting the variance. Mr. Moore explained that the applicant must demonstrate that a hardship existed that was beyond simply not being allowed to do what he/she wanted to do. He further explained that if the rules were applied, it would have to amount to almost a taking of the property. Mr. Moore noted that this was a high bar for an applicant to meet. He advised that the applicant must also demonstrate the hardship was not shared by any surrounding property. He advised that topography was the reason most often cited for a variance; however, if the neighbors shared the same topographical issue, the applicant would not be eligible for a variance. Mr. Moore noted that there were other items that must also be found in order for the Board to grant the variance. He advised that when an application was received, the staff would provide the Board with a report on what they must find in order to grant the variance. Mr. Moore noted that under the State Code, variances must always go to the BZA. He advised that while the State Code contained provisions allowing for administrative approval of minor deviations if a certain process was followed, Middleburg had not adopted those provisions.

Deputy Town Manager Moore advised that the last type of case that could be heard by the BZA was an interpretation of the zoning map. He opined that the Board would never see one and explained that this usually occurred in larger jurisdictions where there were large unbuilt areas of land where there were no delineating features to identify zoning boundaries. Mr. Moore advised that in Middleburg, the streets were usually used to define a boundary. He further advised that Middleburg's zoning map was pretty clear.

Deputy Town Manager Moore encouraged the members to review the zoning ordinance and zoning map, which could be found on the Town's website, to familiarize themselves with the documents.

In response to an inquiry from the Board, Deputy Town Manager Moore confirmed that in Middleburg, a special use permit and a special exception permit were synonymous. He noted that in the case of a special use permit, the Town Council could impose conditions.

Deputy Town Manager Moore advised that he would schedule another meeting of the BZA early in the coming calendar year. He suggested they hold their annual election of officers at that time and participate in a practice case to familiarize themselves with the process.

In response to an inquiry from the Board, Deputy Town Manager Moore confirmed the members could not email their votes on an item. He noted that the Town Clerk would go over remote participation in a meeting during the FOIA training. Mr. Moore advised that the BZA could amend their bylaws to include a policy on remote participation in a meeting; however, a quorum of the Board would have to be physically seated in the meeting room for remote participation to occur.

### **FOIA Training**

Town Clerk North provided FOIA (Virginia Freedom of Information Act) and COIA (Conflicts of Interest Act) training to the members.

The Committee asked that an amendment to the bylaws be presented during their next meeting to allow for electronic participation in meetings as allowed under the State Code.

There being no further business, the meeting was adjourned at 6:53 p.m.

RESPECTFULLY SUBMITTED:

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Rhonda S. North, MMC, Town Clerk

## **BZA Meeting Transcript – October 17, 2022**

(Note: This is a transcript prepared by a Town contractor based on the video of the meeting. It may not be entirely accurate. For greater accuracy, we encourage you to review the video of the meeting that is on the Town's website – [www.middleburgva.gov](http://www.middleburgva.gov))

**Bundles Murdock:** But who gets to call it to order?

**Rhonda North:** It's 6:00.

**Will Moore:** Ok In absence of duly elected chairperson. At this time, we will just call the meeting to order. And if Rhonda you could call the roll, please.

**Rhonda North:** Sure. Trow Littleton.

**Trow Littleton:** Present.

**Rhonda North:** Dev Roszel.

**Dev Roszel:** Present.

**Rhonda North:** Eric Combs.

**Eric Combs:** Here.

**Rhonda North:** Jonathan Gifford.

**Jonathan Gifford:** Here.

**Rhonda North:** Bundles Murdock.

**Bundles Murdock:** Here.

**Will Moore:** Thank you. Rhonda. The first order of business is the nomination and election of officers. So we do per your bylaws need to have a duly elected chair and vice chair.

**Bundles Murdock:** I nominate Eric as chair because I think he's done it before, and I know he'd love to do it again. And because Dev was the first one to laugh, I nominate him as vice chair. [laughter]

**Eric Combs:** Can I second the nomination of Dev as vice chair?

**Will Moore:** Certainly.

**Dev Roszel:** And I'll second the nomination of Eric being chair

**Will Moore:** We have nominations for chair and vice chair. Any further nominations for those positions? Hearing none all in favor of that slate of Mr. Combs as chair and Mr. Roszel as vice chair. Please signify by saying aye.

**Everyone:** Aye.

**Will Moore:** Thank you. And now, Mr. Chair, meeting is yours.

**Eric Combs:** Thank you Will. Looks like next on our agenda is review of bylaws, and we have a copy of currently enforced bylaws in our materials.

**Will Moore:** So just a brief overview. This is a very simple set of bylaws, I think, as you will notice, half of which or more is actually laying out procedures for the hearing of a case. There is reference within the bylaws to sections of the zoning ordinance, and I have excerpted those as well. Rather than repeating those excerpts within the bylaws, they're conduct contained by reference. The one thing I think that is most important to note, So three members constitute a quorum, but unlike some other bodies where a majority of those present and voting can approve an action for the Board of Zoning Appeals in order for an action to be approved, it requires a vote of the majority of the membership. So what does that mean? That means if only three members were to show up for a meeting, that would constitute a quorum, but for an action to be voted upon and adopted, it would require a vote of 3 to 0 as opposed to a vote of 2 to 1. So hopefully that won't ever become an issue of this board, just in terms of history, has not actually heard a case since 2008. We tried to convene annually for an organizational meeting, which is what we're supposed to do. We did not the last two calendar years because of the COVID situation and again, lack of cases, but we're going to try to get into the habit of doing the at least once annual organizational meeting just in case we have a case that is later. Filed for here. So that's all that I really have in terms of review of the bylaws unless there are any questions.

**Eric Combs:** Thanks, Will any thoughts, comments, discussion on the bylaws as enacted or adopted? Will, I had just a quick question on whether and whether the entire dais wants to consider it remote participation. Of course not for quorum purposes. Does the statute allow that?

**Will Moore:** I think it. I think it allows. I don't think BZA is accepted from those. We would have to amend our bylaws to adopt those provisions that are in the code of Virginia. But we could certainly look at that. And if it's something.

**Eric Combs:** I don't know if it's worth it, given how infrequently we meet, but perhaps something to consider moving forward.

**Will Moore:** We can certainly make note and we could even have that. The next time this group needs, we could include those as a proposed revision of the bylaws and they're there if we ever would need to use them.

**Eric Combs:** Okay. Great. Thank you, Will. Next up on our agenda, a few discussion items, types of cases heard by BZA appeals, variances, interpretations of zoning map. I take it this is background on BZA.

**Will Moore:** It is. So just. Again, in terms of background information, the Board of Zoning Appeals is what is referred to as a quasi-judicial body. That is, you are not like a typical council appointed board or a committee. You were actually appointed individually by a judge of the circuit court, and you're not necessarily answerable to the town council. So you have a certain degree of independence, and that is intentional. You are not legislative, however. So and that's an important thing to consider as we start talking about the types of cases. It's not really this board's role to determine what the rules or what the law should be. It's simply determining in the case of a variance, if there's as the statute applies, if there's a reasonable hardship that calls for some sort of variance to be given to the rule. But it's not your place to say, well, the rule really should be this. So so it's just kind of it's and again, that's why it's called a quasi-judicial distinguished from legislative. But also, you're not a full judicial body. So we operate in that area in between. A couple other things to keep in mind that you would not be a litigant if there were an appeal of a decision to the court. So you don't individually or as a whole have any liability in terms of you may be required if there is an appeal of a decision which goes to the circuit court, you may be required to participate or testify as to the decision that was made, but you would not actually be a litigant in that case.

And just finally, and there's some background information that we won't go into specifically, but I will just say no ex parte communication. If you read the statute, there's well, you can have ex parte communication with an applicant or with staff, but you can't discuss the facts or applicable law. What else are you going to discuss when it comes to those kind of things? So if a case is filed, it's best for you to have no communication with the applicant, no communication with staff other than confirming when you're going to meet and that you receive materials. But you wouldn't want to ask questions of staff in terms of a report that I might prepare to accompany a case. I would give that to you, but you wouldn't, in advance of a public meeting, ask me any questions regarding to that report that I would prepare.

**Eric Combs:** Oh, interesting. So very different from the legislative process in that regard.

**Will Moore:** Very different. Yes. So in case of like a planning commission, we would encourage you to ask questions in advance of a meeting if there's something that we could clarify for you.

**Dev Roszel:** So can we discuss it amongst ourselves with between two or three or is there, as with the commission and probably the council.

**Will Moore:** I would suggest that you didn't. You had no discussions even between even between yourselves outside of the public meeting.

**Jonathan Gifford:** You said these are appealed to the circuit court and would the town provide counsel under those circumstances, or would we need to retain counsel of our own?

**Will Moore:** The town, the town attorney would likely represent the BZA in that case, but he would advise us if there were if a outside firm were required in terms as opposed to himself. So.

**Bundles Murdock:** So if there was a question that we didn't understand, we can't ask for clarification for anybody. I couldn't even go to my chair.

**Will Moore:** Not outside the public meeting, so. As part of the public hearing that has to accompany any request, whether it be an interpretation or a variance during that time, you can ask questions.

**Bundles Murdock:** So with the applicants here, I can.

**Will Moore:** You can ask questions of the applicant. You can ask questions of staff.

**Bundles Murdock:** During the hearing.

**Will Moore:** During the hearing, if we have town attorney present, you could ask questions of counsel.

**Bundles Murdock:** Yes. Okay.

**Will Moore:** So again, that's just kind of background as far as the types of cases I'm going to again, just give you kind of a high-level overview here. There are actually four types of cases or four types of things that the Code of Virginia allows the BZA to decide. One of those is special use permits, and that's only if the local governing body decides they don't want to be the approving authority, they can designate the BZA. That's not the case here, so we don't worry with that part. So really, it's the three types here and I'm actually going to kind of lump the interpretation of zoning map in with appeals of determination.

**Bundles Murdock:** Where are you Will, three types where. Sorry.

**Will Moore:** I'm on item number four on the agenda. There's nothing within the packet necessarily. Well, actually, there is some information about variances in the packet. So we'll start with an appeal of a

determination. So in this case. The applicant and staff, if you will, are in. We'll call it an adversarial position. So the applicant has requested, or I have issued some sort of order or determination, and the applicant disagrees with staff's position. So any locality in Virginia that has zoning is required to have a zoning administrator and is required to have a board of zoning appeals. Zoning ordinances can be very lengthy, very wordy, full of legalese. But despite that, you can't cover. Black and white decisions in every imaginable case. And because of that, a zoning administrator is always appointed, and it's the zoning administrator's job and his job alone on behalf of the locality to make interpretations. So if there's a gray area or even if there's not a gray area, but the applicant disagrees with the determination, there's that relief built in where that decision can be appealed to the BZA. A few things to note there and let me. So in attachment number two, which is the powers and duties of the Board of Zoning Appeals under number one is kind of covering this that one of your powers and duties are to hear and decide appeals from any order requirement, decision, etc. made by administrative officer. And the decision on such appeal shall be based on your judgment of whether or not the administrative officer was correct. So again, this goes back to what I said earlier. You're not deciding whether or not the rule upon which I base my decision is what it should be in your mind. Yours is whether or not you believe I made the right interpretation based on what is written in the ordinance. There are some other language in here that zoning administrators love, and that is that, let's see, the determination of the administrative officer shall be presumed to be correct. So. If there's any question in your mind if you're sitting there weighing it and you're kind of in that 5050 area, is he right or not? Well, he's right because by code, I'm presumed to be correct. But it's the applicant's responsibility to kind of. Have that burden of proof to rebut that presumption of correctness. So they really have to say he's way off because of this. So, again, zoning administrators love that because it's built in that it should be correct. But that being said, there are some gray areas and sometimes determinations they have to be made because a request is before you. And there may be a time where something like this becomes comes before you. Other than the fact that I would love to be determined to be correct. I take no issue if a board of five duly appointed officials decide otherwise and say, hey, maybe, maybe you weren't right in interpreting it this way. So that's one type of case. Again, that's kind of high level. But any questions on that specifically? Yes. Mr. Gifford

**Jonathan Gifford:** Yeah. So is there a body of cases or something like is your are your decisions precedent setting? And are would we be in a position of reviewing precedents? Is that precedents and and are there precedent setting decisions by the BZA that would grant rights to. You know, somebody in an appeal to say, well, last year the BZA approved this and now he's saying that, and I want to bring the same.

**Will Moore:** Yeah.

**Jonathan Gifford:** Are these publicly recorded and.

**Will Moore:** Yes, so that could exist. Again, this particular body has not heard a case since 2008 and even before then. From what I can tell, it did not hear cases frequently. There are boards of zoning appeals that meet on a monthly basis out of necessity in larger counties and such. But. Research and a report that I would provide to you in advance in an agenda packet would site would there would be research done and I would attempt the best that I could to cite any precedent that might be applicable. And it could very well be that a decision made by this board could set a precedent to as well as how something should be interpreted locally. So.

**Dev Roszel:** Will, I have a question. So the board this this body hasn't met since 2008. Is that because you're always right or nothing's actually come that you had to make decisions on?

**Will Moore:** So. I won't say it's because I'm always right. I will say it speaks to somewhat to the strength of our ordinance in that in many cases it is very clear. It also speaks to the size of this town as well. We were less than 1000 residents. We don't have that many that large of a load of applications flowing through. And the types of applications that we have flowing through are not. They're not always the most



complex. Occasionally we'll get something a subdivision application like the Residences at Salamander, which is currently under construction. There were many opportunities within that process where something could have arisen. But the typical the typical applications that we see in terms of. When an interpretation or a determination might be made. I think that somewhat speaks to why we haven't met that often. Another part which we'll talk a little bit more about in variances is that our ordinance builds in other avenues of relief for things and that in other localities might oftentimes be subject to variance requests. So fence heights for one, that's a very common in my experience at a previous locality where I was for 13 years, it was a very common type of application that would come before the Board of Zoning Appeals because somebody wanted to build a fence higher than what the ordinance would allow for. We have provisions built into our ordinance that allows a special use permit application to be filed if you want to build a fence higher than what's allowed by ordinance. So because that relief is already built into the ordinance, it's not going to be something that would be subject to a variance request.

**Bundles Murdock:** I think maybe that's why because I was just saying before you all got here that I was on BZA 20 some years ago and we met I think I met twice in one year and maybe because we didn't have those special use, maybe we met more often and then there was a then we never met again. So maybe we've worked hard to so that. You've put those special uses or something. Something's changed.

**Will Moore:** Any other questions? Just generally about the appeals from determinations?

**Eric Combs:** Just a background question. How frequently are you giving zoning interpretations?

**Will Moore:** So that's a good question as well. So formal determinations, I issue very infrequently, very infrequently notices of violation, which can also be subject to these kind of appeal requests are issued very infrequently. We try to deal with violations on a cooperative basis first, and it rarely results in us having to escalate to issuing a notice of violation.

**Eric Combs:** Which would then be considered a determination.

**Will Moore:** Correct. Correct. We did have a case filed in 2016 for an appeal of determination, and it was subsequently withdrawn prior to the case coming before the board. But yeah, so that can happen. But again, they're fairly infrequent. Now that's for formal issues. There are people who would argue that oftentimes when I just answer the phone and tell somebody a zoning requirement, just answer a simple request that you could consider that a determination. So. Yeah. The second type of case that could be heard by this board would be a variance. So in the case of a variance, unlike the appeal of a determination, where I kind of start off by saying that's more of an adversarial position between staff and the applicant of variance is not that adversarial position. It's simply somebody who's requesting a departure from a requirement that's built into the ordinance. You do have some background information on variances. I won't read them specifically to you in your packet. Almost always a variance is going to be a request for. Something that is dimensional, measured generally horizontally, like a setback from a property line, could be vertically in terms of like the height. We've already covered fences, so you're not going to hear those. But a building height requirement or maximum building height restriction use variances are not legal in Virginia. So if somebody says, well, I want to do this type of use in this zoning district and it's not allowable. And it's clear that it's not allowable. So it's not. I determine that the use doesn't fit. They agree that the use doesn't fit that category. They can't apply for a variance based on use. Your relief at that point would be for requesting rezoning or requesting that the ordinance be amended to allow for the use. But a use variance is not legal in Virginia, and that's specific in the code. So. Again, it's almost always going to relate to a dimension. There are specific findings that you must make. I was discussing with Ms. Murdoch before the meeting that there was a point in time many years ago in Virginia specifically where. The Board of Zoning Appeals. The code was not necessarily as strict in its wording as it is now. And the Board of Zoning Appeals was kind of a relief valve where you looked at a rule and you said, Well, I want to build this, and it doesn't allow for me. I'll just go to the BZA and tell them, well, it doesn't allow me to build what I want to build and. Variances, depending on what locality

you were in, and the constitution of the board were handing out variances just pretty much freely. You paid the fee. We'll give you a variance. That's not the case. So there are specific findings that must be made. You have to demonstrate a hardship and strict application of the ordinance that goes beyond the fact that it simply doesn't allow for you to do what you want to do. Basically, that hardship almost has to be to a level where it could be deemed a taking of your land. In other words, the because of the specific qualities of the piece of property you have. If you were to apply the the ordinance strictly, then you could have almost no use of of your land. So it's a very high bar. You have to demonstrate that it's not the the hardship that is specific to your property is not generally shared by other surrounding properties. So if it has to do with topography of your land and topography can oftentimes be a qualifying reason to get a variance. I can't meet a setback requirement because if I push my building back five more feet, it's going down a hill. So I need to build it a little closer to this side line or front line than the ordinance would otherwise allow for. But if your neighbors all up and down the street share that same topography issue. Then it's not applicable for a variance because it has to be something that's not generally shared by all the properties in your area. So those are kind of the big ones that it has to be this demonstrable hardship and it's not something that's shared with others in your area. There are other things that have to be found, and they're enumerated both in our ordinance as well in the code of Virginia. And if we ever got to the point where we were hearing this one, I would give you a pretty detailed staff report outlining those findings that you had to make, giving you my interpretation of whether those findings are met, but always deferring to you to make that actual finding. So.

**Jonathan Gifford:** So can you grant variances or do variances have to come to us?

**Will Moore:** They have to come to you. There is a provision that's built into the code of Virginia that has not been adopted locally, that allows for minor deviations to be approved administratively if they follow a certain process. I think the way it's worded is it's up to like a 10% deviation. So, you know, if you were requesting if a requirement was for a ten-foot setback and this person minimum and this person wanted to only build with a nine-foot setback, that would be within that 10% range. So that could be something that I could consider. But if it was more than that, I couldn't consider it. But regardless, we have not locally adopted that minor exception here. So any any variance request, it would have to come before this board. Any other questions relating to variances at this point? Okay. And then finally, the interpretations of zoning map. This is something you would probably never see here. If you were to see it, it would almost be more of an appeal of a determination than an interpretation of a zoning map. And why do I mean that? So this provision in the code was built in generally for larger jurisdictions that have large unbuilt or rural areas, counties in particular, where there may not be clear delineating features where zoning boundaries are. Here in town, we pretty much stick to streets or property lines that are pretty much fixed. There are a couple areas where we have split zoning of parcels where they're part of a parcel is zoned residential. A back part of it might be zoned agriculturally, and the actual mapping of where that line is is not precise. So that could be an interpretation of a zoning map. But but generally here in town, we're not going to have that because our zoning map is pretty clear. And there's generally no question as to whether or not you are in one particular district or another. And again, so you're likely not to see that here. But again, that's built in. And in those rare cases of the split zone parcels, there could be that opportunity where that would present itself. But you're likely not going to see that. I will tell you that I didn't include a copy in here. If you were to navigate to our website under planning and zoning, the full zoning ordinance is there. I would encourage you at some point in time between now and whenever we might meet again, to just visit it, open a couple of chapters, and familiarize yourself with the layout of the ordinance, not necessarily the the specific provisions within it. You'll you'll see a separate section on just definitions. You'll see separate chapters on our agricultural district or residential districts with a subchapter for each of those for residential districts, for a separate chapter for commercial districts. And we have three separate commercial districts. The general structure is that each of those is going to start with a statement of intent for the district. It's going to have. A list of what we call permitted uses. They're often referred to as by right. Which means you can do that use in that district as long as you meet all other applicable ordinance requirements, and you develop it with the applicable regulations. Also, in each district you'll find the list of special uses, and those are uses that may be allowable in the district but are not guaranteed.

And you have to file a special use permit application. And they're looked at property by property as to whether or not that use would be allowed. Again, you don't act on special use permits. But just again, as far as the structure of the ordinance, that's how it's laid out.

**Eric Combs:** Question on that, Will. The powers and duties provision of the Virginia Code references in subsection six special exceptions, which in the county we interpret to mean something not quite permitted but sounds a lot like the special use permit you're talking about. Is that the same thing that they're referring to here in six?

**Will Moore:** It is special exceptions. There are some localities that differentiate the two and the manner in which they differentiate them. Is a little bit questionable to me as to how they structure that. But essentially special exception, special use, conditional use, those three terms are pretty much synonymous and interchangeable.

**Eric Combs:** Because then the council could impose conditions on the use.

**Will Moore:** Right. Also on that same page on our website where you see there'll be an opportunity to open the full zoning ordinance if you wanted or you can open it article by article. And that same page includes our zoning map, and it will have the most up to date version of our zoning map at all times on there. Any questions. Just generally on those types of cases that you might be called upon to. Okay. What we will probably do the next time this board meets; we'll probably do it a little earlier in the calendar year. Next year. Our bylaws say we should meet and elect officers in January. We might not do it quite that soon. We'll try to do it a little bit earlier in the calendar year. And what I would plan to do is have a kind of just a practice case for you. So we'll set up a fictional case. Whether it's an appeal of a determination or variance, we can figure that out and we'll just go through it pretty quickly and and see how you might.

**Bundles Murdock:** Testing us.

**Will Moore:** Yeah, well, I'll be testing myself as well. So it's been a long time since I've had to write an actual staff report to accompany a request.

**Dev Roszel:** I think we should have some sort of experience listening to one and actually just kind of [inaudible] and really understand what our role is.

**Will Moore:** Absolutely. Absolutely. Yeah. So we'll plan on that again. We'll do it sometime, maybe in the first quarter next year, but based on everyone's availability, of course.

**Jonathan Gifford:** One question. Do we have the power or the option to to act virtually by unanimous consent by email?

**Will Moore:** Right. So that question was, did we talk about that before?

**Rhonda North:** We'll go through that under FOIA.

**Will Moore:** We'll cover that. The quick answer is it's enabled in the code of Virginia, but we would have to adopt that into our bylaws. [off mic]

**Jonathan Gifford:** So so it goes along with meeting virtually, but consent by email.

**Will Moore:** We do not have power to do that. Yeah, but a remote participation and there are specific criteria that have to be met and Rhonda can cover that as part of her presentation that's coming up. But we could, we could amend our bylaws so that that was optional. Again, she'll cover it. But in all cases, you still have to have a physical quorum present. But additional members could then also.

**Dev Roszel:** So virtually is not you can't virtually have a physical quorum virtually.

**Will Moore:** Correct. So we would in all cases have to have a physical quorum now that was suspended by during COVID. So greater allowance was made to allow for all virtual meetings, but that has since been rescinded. So now there are the provisions in place and Rhonda will cover those about what we can do. Virtually. But with that, Rhonda has a brief presentation on a FOIA that's required to be held annually. So pretty much every time we meet, we'll we'll go through this. And she changes it up a little bit each time. So it's as fresh as it can be.

**Rhonda North:** So actually, this presentation is one that I give to appointed officials with with the town. You all, as Will mentioned earlier, are a little different in that you are quasi-judicial. You're not appointed actually by the council; you're appointed by the by the courts. So some of the the rules that the council has imposed on other boards and commissions don't apply to you folks. So I'll be skipping some of this. Mostly going concentrate on FOIA, which is the Virginia Freedom of Information Act, and also touch base real quickly on COIA, which is the Conflicts of Interest Act. And if you have a question, you know, please feel free to stop. I'm just going to give you sort of like Will did with the types of applications you receive, sort of a high-level training. And if you have any specific instance that comes up, please feel free. Feel free to contact me and we can talk about specific details of that particular case. So in Virginia, we have the Freedom of Information Act and the purpose to these is to ensure that people in the Commonwealth of Virginia have access to public meetings and also have access to public records unless an exemption applies. All meetings have to be open to the public and all documents must be available for inspection and copying by the public. Should they, should they request. Oops. Wrong direction. Hello. Now where did we go?

**Jonathan Gifford:** We finished already?

**Bundles Murdock:** Yeah. How do we get to the end?

**Rhonda North:** All right, Let me try to start this all over again. Okay, let's try this again. So when what is a public meeting under FOIA? So in your case, it's a gathering of three members. It doesn't matter where the location is, you just have to be conducting public business. Under the state code, we're required to give public notice of meetings. I have to give them at least three business days in advance. So, I mean, Will has already cautioned you if you're somewhere you really shouldn't be talking about BZA business just because of BZA regulations. But even if it were not, if you were not BZA, this rule would still apply because you would be having a notice, a meeting that has not been officially noticed and you would be violating the Freedom of Information Act. So outside of this room, you should not be talking about BZA business. So one is not a public meeting under FOIA. Again, this doesn't apply to you all, so I'm just going to go over this quickly. If you were on another committee, a gathering of two people would not be considered a public meeting. If you're at a social function or other function and you're not discussing town business, BZA business, it would not be considered a public meeting. Or if you're at a public candidate's forum, it's not considered a public meeting. So other FOIA provisions minutes are required to be taken. That's what I do. You must conduct your voting in open session to your question. You cannot have secret votes. You cannot have written votes. In this particular case, in the case of the BZA, you can't even poll members because that would be having a communication outside of a of a meeting. Closed meetings are allowed under the Freedom of Information Act, but only for certain things. Probably in the case of this committee, the only time that you would have the ability to go into a closed session would be if you were seeking legal advice of legal counsel. Yeah. Again, legal counsel. So in order to go into a closed session, you have to make a motion to go into the closed session. It has to, to state the state code section that allows you to go into the closed session. The reason and the purpose for the closed session. Then when you get to the end of the closed session, you have to certify that you only discuss the matters that you went into closed session for, that you didn't deviate from that in any way. This is very important because now there are some pretty stiff fines if if you certify a closed session and then later on it is revealed that,

oh, no, we actually discussed something else that we weren't supposed to discuss. So the staff are usually in the closed sessions, and if anyone looks like they're heading off in the wrong path, Will or I will usually stop you and say, No, you can't go there, you have to wait and do have that discussion in open session. So participating in meetings electronically.

**Bundles Murdock:** Wait a minute. Then when you go out, you don't have to.

**Rhonda North:** When you come out and you do the certification. Yeah. Yes. And again, if if something was discussed that shouldn't be, you have to you have to say it as a part.

**Bundles Murdock:** Don't you have to say or.

**Rhonda North:** You have to say it as a part of the certification if there was a deviation and.

**Bundles Murdock:** But don't you have to say, what the business was concluded and what what the conclusion was or not?

**Rhonda North:** No, not necessarily.

**Bundles Murdock:** Not the way you do in council.

**Will Moore:** You don't necessarily need to do that in council either.

**Bundles Murdock:** Okay. You can come out of you can come out of your session and just go back to your meeting. Yes.

**Rhonda North:** So nothing that's discussed in closed session is actually official until you act and vote on it. Okay.

**Bundles Murdock:** Thank you.

**Rhonda North:** Yes. So if it's something like and this wouldn't be applicable to this committee, but like when the council discusses in closed session appointments of members to a committee until they actually come out into open session and vote, it's not official. Thank you. But like I say, the only time you are going to be going into closed session, if ever, would be to get legal legal advice of of the council of the town council. Right. So participating in meetings electronically, The state does have a procedure that allows committees to participate in meetings electronically. There must be a procedure adopted and in place before that can happen. And that procedure has to conform to the state code requirements. As Will mentioned, there must be a quorum of the committee physically present in the room for someone to participate electronically, and they must have the chairman's approval in advance of the meeting to participate electronically. You can participate electronically for personal reasons. A maximum of two meetings per year, or if it's for a medical reason, it's now an unlimited number of times for medical reasons. We have to assure that that member can be heard by anyone in the audience. So we would put that person on speakerphone. So you have to hear us. The audience has to hear you. And when we do the roll call, you have to announce where you're exactly you're participating from. And the reason that you are participating electronically in the meeting. Because of what happened during the pandemic, I think folks have gotten more comfortable with electronic meetings. And the Virginia FOIA Council is studying a changes to the state code that would more broadly allow electronic participation in meetings. So I think in the future this could change even maybe change substantially. But for right now, these are these are the regulations that we have to operate under.

**Bundles Murdock:** So if I was traveling and available by phone. And there were three members here. And I was I got permission from the chair that I could participate by cell phone.

**Rhonda North:** Yes, ma'am.

**Will Moore:** If we are.

**Rhonda North:** Yes. If we adopt the policy. Yes.

**Jonathan Gifford:** We haven't adopted it yet.

**Rhonda North:** We haven't adopted a policy yet.

**Bundles Murdock:** If we do that.

**Rhonda North:** If you adopt the policy under the circumstances that you just described.

**Bundles Murdock:** Yes. And I could just be traveling or sick. So travel sick or whatever. But we need to adopt that.

**Eric Combs:** Yeah, I think we just need to put it into our bylaws to allow that.

**Bundles Murdock:** Okay. Yes. [off mic]

**Rhonda North:** Yes. So emails and meetings. So the Supreme Court has held that emails could constitute a meeting if they're simultaneous and they're between three members. Now, they've not yet defined what simultaneous is. So for with the exception of you guys, because again, as Will has stressed, you should not be discussing these matters outside of the public meetings. But for other committee members we recommend that when sending emails you use blind carbon copies to send out everyone and just send them to the staff. That way people don't accidentally hit reply all and accidentally create a public meeting that's not been officially noticed. So Public Records Act. That's another thing that is applicable to this board. A public record is all writings. It doesn't matter whether it's handwritten, typed, printed photography, electronic recordings. It doesn't matter how it's stored. It just has to be in the possession of a public body, public officer, an employee, and it has to deal with the transaction of public business. So your agendas are public records. Those are maintained by the staff. If you were to send an email, we recommend that you copy the town staff on it and let us serve as the archive for those records. Again, you shouldn't be communicating with each other outside of the meeting. So you all are in a slightly different situation. But should someone make a FOIA request for your records emails, you would have to present them to the town so that we could review them, determine whether they're releasable, and if so, release them to the public. We recently had a quite a rash of FOIA requests and have had to go through lots of emails. So it can happen. You may not think that it could apply to you, but somebody could ask for something as simple as all communications that mentioned the term affordable housing. And if you've had an email that that's in there or the attachment has mentioned affordable housing, even if it is not what that person is fishing for, then you have to be able to produce that record for us and we have to share it unless there's an exemption. So what I recommend, you know, again, if it's an email that you copy the staff on it, let us serve as the archive. If you're taking notes during meetings, I recommend you have a notebook or something like that for your notes that you keep in. And then if somebody says, I want to see your notes and you have the notebook that you can just hand to us and easily say, here it is, and we can review it and determine whether it's releasable or not. There is a time limit for how long records have to be kept. Generally, for boards and commissions, they're usually somewhere around three years. But because you all are deciding cases and there could be lawsuits involved that could vary with you. So if you ever get to a point, you want to destroy your records, please come, and see me. We'll look at the State Library retention schedule and determine whether they're eligible for destruction and then go through the process of doing that. There's a form that has to be filled out and submitted in order to do the electronic submissions. We've kind of gone over that. And the retention. While it's probably not going to apply to

this committee, I'll also mention that social media posts related to your appointment on the BZA can also be also official records. We recommend that you do not use your social media accounts for the conduct of town business. And then the only other thing really that I need to go over with you is the Conflict of interest Act. So if if an applicant appears before you and you have some type of relationship with that applicant, it's somebody in your household or part of your business, you're going to benefit financially from it. More than likely you're going to have a conflict of interest and we'll need to recuse yourself. So if if that should occur, if an application should come before you and you think you've got a conflict, please contact me. We'll review it with the town attorney and determine whether you do or not. If you do, then you will have to recuse yourself from from voting on that that matter. Hopefully, that'll that'll never happen here. And then the last thing is attendance. If you're if you're not going to make a meeting, please let Will. Or I know because we need to know to make sure that a quorum will be present. And we understand that people can say yes. And then some emergency comes up at the last minute and you find you can't can't attend. But, you know, please let one of us know so that we don't have applicants sitting here waiting and then we find out we don't have a quorum. So that's kind of it in a nutshell for things that apply to the BZA.

**Eric Combs:** Rhonda, Thank you.

**Rhonda North:** Thank you.

**Eric Combs:** Really hit all the highlights of FOIA and COIA in I would say record time. So thank you. Will any other administrative and administrative items for us to to tackle before we call the meeting?

**Will Moore:** Not at this point.

**Bundles Murdock:** For the next meeting to put that.

**Eric Combs:** Bylaw amendment. Yeah. For for remote participation. Yeah. Yeah. Everyone's in agreement. That'd be a nice addition to the bylaws just to have it there in case something comes up. [off mic]

**Rhonda North:** Well, I mean, there is one provision that if we have another pandemic, then the whole body would be able to to meet remotely. But let's hope we don't we don't have to do that ever again.

**Eric Combs:** Any other discussion items anyone else wants to raise? Wonderful. Meeting adjourned. Thank you all.

**Will Moore:** Thank you.