

This meeting may be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com for a limited time.

The Board of Zoning Appeals regular meeting of the Town of Front Royal, Virginia was held on February 21, 2023, at 7:00 pm.

CALL TO ORDER:

Chairman McCarthy called the Board of Zoning Appeals, February 21, 2023, meeting to order at 7:00 pm. She asked Ms. Potter for a roll call.

ROLL CALL – DETERMINATION OF QUORUM

Present: Amanda McCarthy, Chairman
Cody Taylor
Lewis Moten

Absent: Christine Erin

Staff: John Ware, Deputy Zoning Administrator
George Sonnett, Town Attorney
Connie L Potter, Executive Assistant / Clerk for the Board of Zoning Appeals

ELECTION OF OFFICERS

Mr. Taylor moved, seconded by Mr. Moten to nominate Amanda McCarthy as Chairman.

VOTE: Yes – McCarthy, Taylor, Moten
No – N/A
Absent – Erin
Abstain – N/A

VOICE VOTE

Chairman McCarthy moved, seconded by Mr. Moten to nominate Cody Taylor as Vice Chairman.

VOTE: Yes – Moten, McCarthy, Taylor
No – N/A
Absent – Erin
Abstain – N/A

VOICE VOTE

APPROVAL OF MINUTES

- December 20, 2022 Regular Meeting

Vice Chairman Taylor moved, seconded by Mr. Moten to approve the minutes.

VOTE: Yes – McCarthy, Taylor
 No – N/A
 Absent – Erin
 Abstain – Moten

VOICE VOTE

PARLIAMENTARY PROCEDURE

The Town Attorney, Gerge Sonnett reviewed the rules of procedure for the Board of Zoning Appeals.

The Board of Zoning Appeals (BZA) is a public body as opposed to a governing body. As a public body the BZA is subject to the Freedom of Information Act as to public records and the open meeting laws.

The following information is a paraphrase from a document created by Walter Erwin. Parliamentary procedure is designed to promote the efficient and orderly conduct of business. One of the parliamentary procedure goals is to balance individual and majority rights. Properly used parliamentary procedure provides all members of a public body an opportunity to be heard but also ensures that a minority cannot prevent a majority from transacting business. Parliamentary procedures are the rules of the game for democracy.

Rules of procedure for this body start with state law which trumps the BZA bylaws and Roberts Rules of Order. Looking at state law in particular 15.2 2308, 15.2 2309 and 15.2 2312.

15.2 2308 – A quorum shall not be less than a majority of all the members of the board. With a membership of five (5) on the BZA three (3) are required to establish a quorum. Under paragraph C. The Board may make, alter, and resend rules and forms for its procedures consistent with ordinances of the locality and general laws of the commonwealth.

15.2 2309 – The board may by resolution fix a scheduled regular meeting and fix the day or days to which any meeting shall be continued if unable to act.

15.2 2312 – A concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to affect any variance from the ordinance.

Especially in light of the fact that no alternates have been appointed to the BZA its very important that everyone attend the meetings.

BZA Bylaws

The current BZA Bylaws were last revised in 2014. With regard to matters of procedure, the Chairperson is the presiding officer. In the absence of the Chairperson the Vice Chairman is the presiding officer.

Article 3, number 6 – A quorum of three (3) members concurring to take action. The norm is a majority of members present and voting is what is needed to take all other actions. With an abstention the BZA needs a majority of those present and voting. Significant issues coming before the board require three (3) votes of the membership.

Article 7 – public hearings. Numbers 1-14 of this article lay out the procedure for public hearings.

Number 11 is where you get into the meat of parliamentary procedure. Decisions and other actions or orders of the BZA should be taken in the form of a motion or resolution. It requires a second which is not stated in the current bylaws. Under Roberts Rules of Order motions must be seconded.

Number 14 is where it incorporates Roberts Rules of Order into the BZA procedure.

Article 8 – Reconsideration. Looking at 2.D, a motion must be made by at least one member who voted in favor of the decision. The intent is to say one member who voted on the prevailing side is the one to bring the motion for reconsideration as opposed to the non-prevailing side.

2.C. – It will be considered at the next regular meeting whereas Roberts Rules of Order for reconsideration requires reconsideration at the same meeting. The bylaws are operative. What is in the bylaws will trump Roberts Rules of Order.

Roberts Rules of Order

The current Bylaws say Roberts Rules. He would interpret that to say the latest edition of Roberts Rules of Order. It is over 700 pages which the BZA will not use all 700 pages. Especially since the BZA is not a governing body.

The Basics

There is an understanding between an error in rules of procedure vs. an error in substance and some jurisdictions put in their ordinance the following:

Rules and procedures were designed and adopted for the benefit and convenience of the public body. Their purpose is to help the public body conduct its affairs in a timely and efficient manner. They incorporate the general principles of parliamentary procedure found in Roberts Rules and the applicable Virginia laws. The rules of procedure do not create substantive rights for third parties or participants in proceedings before the public body. Further, the public body reserves the right to suspend or amend the rules of procedure whenever a majority of the body decides to do so. The failure of a public body to strictly comply with Roberts Rules shall not

invalidate the action. The point being you should follow the rules of procedure but if there is a “hiccup” as long as its clear on the record what the decision of the body was, you’re ok.

Paraphrasing from Roberts Rules – No one should speak without being recognized by the Chair.

The Main Motion

After going through the public hearing procedure and you get to number 11 it is time for the Chair to entertain a motion. Sometimes referred to as the question. The making of the main motion is the starting point for parliamentary procedure. The maker of a motion is not required to vote for the motion. You are getting the motion on the floor by making a motion. While a maker of a motion can vote against his motion, the maker of the motion may not speak against the motion.

Seconding the motion – The motion needs to be seconded. Requiring a second to a motion prevents a public body from having to consider a motion that only one member wishes to discuss. It helps determine that the motion is worthy of discussion.

Once you have a second you move onto debate. Under Roberts Rules each member of a body has a right to speak twice on the same question or motion. The second opportunity should await everyone having a first opportunity. The maker of a motion has a right to speak first if he or she wishes. During discussion you should always refrain from personal attacks. “The measure not the man is the subject of debate.” The measure being the topic and not the individual.

A motion, a second and debate has occurred, and someone would like to amend the motion on the floor. At this point you would move to amend. Although this body has not been authorized by the governing body to take up Special Use Permits and Special Exceptions with regard to Variances you have the authority to impose conditions. In that context an amended motion may come into play. This would be a motion to amend. You then vote on the motion to amend before you go back to the main motion. If the motion to amend passes it becomes the main motion and that is voted on. If it fails you go back to the main motion.

There could be situations where you have a presentation of all the evidence and there is a motion on the floor to approve with or without conditions and the bodies may not be ready to vote. Possibly new information came in. There could be a motion to postpone at that point. A motion to postpone is a secondary motion to a main motion on the floor. This would entail postponing to a date certain. A motion to postpone is debatable so that you can discuss the merits of postponing. A motion to end debate and vote is called “calling the question”.

The making of a main motion is the starting point for parliamentary procedure.

The Vote

For most matters it’s a majority of the entire membership. If you have a tie vote this would be in situations where you have only four (4) members present, or one member abstains. It would have to be a 2 to 2 situation because it takes three (3) to act on a matter. If this happens then the motion has been rejected.

The question was asked if the Chairman breaks a tie. Mr. Sonnett stated he was not aware of the Chair having a tie breaking function. If that is what the BZA wants it would need to be placed in the Bylaws.

Regarding a motion to reconsider, that motion must be heard during the same meeting. The current BZA Bylaws clearly state that it's not going to happen that way but will happen at the next meeting.

OTHER

- By-Laws

Mr. Ware suggested waiting until the full board is present to review the bylaws. Board members agreed they would like to wait until a full board was present.

- 2022 Board of Zoning Appeals Annual Report

The 2022 Board of Zoning Appeals was included in their meeting packets.

ADJOURNMENT

Being no further business, the following motion was made:

Mr. Moten moved, seconded by Vice Chairman Taylor to adjourn the meeting.

VOTE: Yes – McCarthy, Taylor, Moten
 No – N/A
 Absent – Erin
 Abstain – N/A

VOICE VOTE

The meeting was adjourned at 7:35 p.m.

Approved by the Board of Zoning Appeals
Date: 12/19/23