



City of Harrisonburg

409 S Main Street
Harrisonburg, VA 22801

Meeting Agenda - Final Board of Zoning Appeals

Monday, June 1, 2026

4:00 PM

City Council Chambers

1. Call To Order

2. Roll Call / Determination of a Quorum

3. Consent of Agenda

4. Election of Officers

5. Approval of Minutes

5.a. Minutes from the May 6, 2024, Board of Zoning Appeals Meeting

Attachments: [2024 May BZA Minutes](#)

6. New Business

6.a. Board of Zoning Appeals Annual Report 2024 & 2025

Attachments: [2024 and 2025 BZA Annual Summary](#)

6.b. Consider adoption of proposed updates to the existing Rules of Procedure

Attachments: [Memo](#)
 [Rules of Procedure \(Current\)](#)
 [Rules of Procedure \(2026 Update\)](#)

6.c. Presentation on Freedom of Information Act & Ex Parte Communications by Deputy City Attorney

6.d. Presentation on Sample Staff Reports by Zoning Administrator

7. Old Business

8. Public Comment

9. Adjournment

Notice to Public

Residents/Media will be able to attend the meeting.

The Public can also view the meeting live on:

- The City's website, <https://harrisonburg-va.legistar.com/Calendar.aspx>
- Public Education Government Channel 1072

A phone line will also be live where residents will be allowed to call in and speak with _____ during the Public Hearings and the Public Comments portion of the night's meeting. We ask those that wish to speak during the public comment period to not call in until after all the public hearings and public comment on those have been heard. This will avoid anyone calling on any other item from holding up the queue and then being asked to call back at a later time.

The telephone number to call in is: (540) 437-2687

Residents also may provide comment prior to the meeting by visiting this page: www.harrisonburgva.gov/agenda-comments



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Legislation Text

File #: ID 26-190, **Version:** 1

Subject:

Minutes from the May 6, 2024, Board of Zoning Appeals Meeting

Presented By: Tyler Blanks, Zoning Administrator

Approval of the minutes of the previous meeting.

HARRISONBURG BOARD OF ZONING APPEALS

The Harrisonburg Board of Zoning Appeals met in regular session in the City Council Chambers on Monday, May 6, 2024, in order to consider the following request which was duly posted. Members present were Chair Matthew Phillippi, Adriel Byrd, Jeffrey Holsinger, William Holland, and Emmy Maskell. Also present were Tyler Blanks, Zoning Specialist, Christopher Perez-Leon, Zoning Specialist and Thanh Dang, Deputy Director of Community Development/Interim Zoning Administrator, and Wesley Russ, Deputy City Attorney.

Chair Phillippi called the meeting to order at 4:00 PM.

Chair Phillippi: The first order of business we have the approval of the minutes from the August 7, 2023, meeting, the last time we met. Did everyone get a chance to look through that and have any comments, suggestion or motions?

Mr. Holsinger: I move.

Mr. Byrd: Second.

The Board unanimously approved the August 7, 2023, Board of Zoning Appeals minutes.

NEW BUSINESS:

The first item of new business is the appeal of an administrative decision regarding a property on 813 Chicago Ave (39-F-6).

Mr. Blanks read the following request:

A request by Lock-Minn Holdings LLC for an appeal of an administrative decision regarding a violation of proffers associated with the 2013 rezoning of the subject property. The property is addressed as 813 Chicago Avenue, is identified as tax map parcel 39-F-6, and is zoned B-2C, General Business District Conditional. The appeal is specific to the use of the property as a parking lot and vehicle access for businesses located on an adjacent parcel at 841 Chicago Avenue. (Note: There is an adjacent parcel that shares the same address of 813 Chicago Avenue and that is identified as tax map parcel 39-F-1.)

Relevant Sections of the Zoning Ordinance and Definitions

Article F. - Definitions

Parking lot: A defined area for the storage of operable motor-driven vehicles and operable accessory vehicles. A parking lot includes all areas used for parking, maneuvering, loading, driveways, travelways, and drive-throughs, except public street ingress and egress.

Article Q. – B-2 General Business District Regulations, a copy of which is attached with this report.

Background

The property (originally identified as tax map parcel 39-F-1 and today is identified as tax map parcels 39-F-1 and 6) was annexed into the City of Harrisonburg in 1962. The 1963 Zoning Ordinance designated this property as M-1, General Industrial District. Prior to the 2013 rezoning, the parcel contained several

buildings where a truck and tire service center for over the road tractor trailers operated. It was noted during the 2013 rezoning there were multiple City Code violations on the parcel including storage of inoperable vehicles, tall grass and weeds, junk and discarded materials, and unscreened storage and repair of vehicle. The graveled area currently being used for parking and vehicle access existed as a part of the larger operation described above.

In 2013, Jeffrey D. and Michael S. Sites, represented by Hammond Real Estate Services, petitioned to rezone the property from the M-1, General Industrial District to the B-2C, General Business District Conditional. This request was specific for the development of a Family Dollar retail store. The applicant submitted four proffers during the rezoning which included the following as summarized below along with staff's interpretation:

The conceptual Site Plan (Exhibit A). Exhibit A controls how the site is developed.

A list of uses permitted on the property. Only the uses listed are allowed on the property and anything not included on the list is considered prohibited. Repair of vehicles was not included in the proffered list. Public and privately owned parking lots and parking garages are included in the proffered list.

Additional landscaping for the Family Dollar development.

Restrictions on square footage and height of signage.

The full proffer letter and "Exhibit A" are attached to this report.

Harrisonburg City Council approved the rezoning with the submitted proffers on September 10, 2013. An engineered comprehensive site plan was approved on April 22, 2014. Building permits were issued for the Family Dollar Building on August 28, 2014. On October 23, 2014, the Family Dollar property was subdivided to separate a +/-6,181 square foot area from the developed portion of the parent tract and created the subject property of this appeal, tax map parcel 39-F-6.

Almost two years after the property was subdivided, on August 24, 2016, Melvin E. Higgins Sr. purchased the subject parcel (39-F-6). At that time, Mr. Higgins also owned the two adjacent properties to the north (tax map parcels 39-F-2 and 3). Prior to the purchase, Mr. Higgins contacted Raini Ott (former zoning staff in Community Development) about setting up a meeting to discuss the parcel. In an email to other staff dated August 8, 2016, Ms. Ott noted that Mr. Higgins wanted to use the parcel for parking to support the uses on his adjoining along Rockingham Drive and Mr. Higgins understood that it could not be used for parking unless the parcel was rezoned. Staff today are not sure if the requested meeting took place but are confident that Mr. Higgins was informed before he purchased the property that, unless the property was reserved for open space as shown in the rezoning's Concept Plan (Exhibit A), any use would require a rezoning to amend the proffers. Based on the aerial images, it appears that the property was used as parking and vehicle access after being purchased by Mr. Higgins. Aerial images are attached herein.

Mr. Russell Lockey purchased parcel 39-F-6 on November 5, 2020, from Mr. Higgins along with tax map parcels 39-F-2 and 3. Since Mr. Lockey's purchase of the property, it has continued to be used for parking vehicles associated with and access for the businesses operating on the adjacent properties which principally included vehicle repair. These parcels have periodically been in violation of City Codes for junk and trash, inoperable vehicles, prohibited signage, and a food truck (parked on tax map parcel 39-F-6).

In May 2023 Mr. Lockey submitted a rezoning application and petitioned to amend the proffers of parcel 39-F-6. The request would have removed all the existing proffers and replaced them with a list of prohibited uses. City staff recommended denial of the request due to concerns that the proposed allowed uses - specifically vehicle, recreation equipment, and trailer sales; repair of vehicles, recreation equipment and trailers; and warehousing and other storage facilities with floor area limited to 20,000 square feet, which are contiguous to permitted uses in the district, - are not in line with the surrounding area or aligned with

the Comprehensive Plan's Land Use Designation of Mixed Use. City Council denied the rezoning request on July 11, 2023. Mr. Lockey was told during the process that if the rezoning was denied he would have to remove the parking lot and all vehicles from the parcel as the current uses were not permitted. A copy of the staff report, extract from the minutes of the June 14, 2023, Planning Commission Meeting, and extract from the July 11, 2023, City Council meeting are attached herein. A notice of violation to enforce the proffers of the 2013 B-2C rezoning, dated January 5, 2023, was received by Mr. Lockey on February 2, 2024.

Staff Determination

Staff maintains the proffered conceptual site plan included with the 2013 rezoning of the property controls the uses permitted on parcel 39-F-6, even though the land was subdivided 2014. Proffers are voluntarily offered by an applicant during a rezoning process and accepted by City Council in conjunction with a rezoning approval. In this case, the then owner of the property offered to voluntarily restrict development on the parcel by proffering the conceptual site plan, types of uses, and signage. The zoning district and proffers do not change when a parcel was subdivided and do not change when a property is sold to a new owner. Amending or removing proffers on the property would require another rezoning. The 2013 proffered conceptual site plan shows the area known now as parcel 39-F-6 to contain no development. While it is true a graveled area existed on the parcel before 2013, the rezoning to B-2C changed the allowed uses on the property. Uses on this parcel should have ceased and the area turned into open space in accordance with the proffered conceptual site plan.

It is not known if staff initiated any enforcement to convert the area into open space or if anything was discussed with the then property owner before the Family Dollar received its certificate of occupancy, the project was closed out, or when the property was subdivided. Ultimately, this does not change the fact that the property was and still is being used illegally.

Furthermore, the inclusion of an improved entrance for this parcel, as a part of the City's Waterman Elementary School Safe Routes to School (STRS) Project, which was completed in December 2013, should not be taken as an indication that the City wants any particular type of use on the parcel. With that said, construction of the STRS project began in March 2013 and the agreement between the City and *the* then property owner (Michael S. and Jefferey D. Sites) for the dedication of land for public right-of-way and entrance construction was completed in May 2012 before the 2013 rezoning.

The applicant points out in their letter that there was no reference to proffer restrictions on the deed or within the subdivision documents recorded with the Rockingham County Circuit Court. There is no legal requirement that the zoning district or proffers be recorded within deeds or subdivision plats. Nor is there any requirement for the City to proactively inform all purchasers of property of restrictions. It is the responsibility of the property owner or their representative to contact the City and inquire about this information.

Chair Phillipi: Thank you very much. Does anyone on the board have any questions for staff?

Mr. Byrd: Did staff ever receive a zoning verification letter or application for this particular parcel?

Mr. Blanks: Not to my knowledge, we have not received one no.

Chair Phillipi: When was the first time Mr. Lockey was contacted by the staff regarding the property bring in violation of the proffered conditions?

Mr. Blanks: The proffered conditions or just violations in general?

Chair Phillippi: Violations in general.

Mr. Blanks: Give me a second, I might have to look that up. I have this particular case regarding the proffers at the very least going back to November 21, 2023. I have a note regarding the food truck that was originally there which conflicted with the proffers. Back at least that far, but I think there is something further back than that.

Chair Phillippi: I know it was mentioned that with a denial of the rezoning request he was informed that he would have to make changes to the use and you covered that in the staff report so I just wanted to have an idea for when staff reached out to him specifically.

Mr. Blanks: Well, the notice of violation that he received would have been the actual notice that was given in the staff report would have been the formal notice that things had to change at that point but there had been discussions prior to that there were proffers on the property that were going to create issues.

Chair Phillippi: It was discussions with staff that would have initiated the process for him seeking the rezoning?

Mr. Blanks: The rezoning I believe began as a result of the food truck being located on the property.

Ms. Dang: I do not know that it was just the food truck or if it was all of the matters associated with that. It gets a little more complicated that simultaneously when the rezoning was requested there was also a special use permit for the next door parcel as well.

Mr. Byrd: Were you curious about around what time that was occurring?

Chair Phillippi: Really what I was trying to figure out is the timeline of Mr. Lockey being notified of the proffers being in existence and it being not compliant with those proffers and then the rezoning request, trying to just figure out that timeline.

Mr. Blanks: As Christopher reminded me in the staff report that the rezoning application occurred in May of 2023 asked to remove the proffers. Sounds like there would have been discussion prior to that of there having been issues that would have been beneficial to the rezoning to have occurred.

Chair Phillippi: You are unaware of what those necessarily were.

Mr. Blanks: At the moment yes and some of that is because I do not have access to our typical LAMA system that would allow me to look at that. Mr. Lockey might be able to shed a little bit more light on that when he has the ability to come up and discuss here.

Chair Phillippi: When we get to that part, I will make sure to ask him.

Ms. Dang: I have a little bit. This is where I am like I do not know the exact details but it looks like at least a matter related to the food truck was first discussed with Mr. Lockey

or at least a case was open in 2021 in our system. I see some emails from our prior Zoning Administrator two iterations ago in 2020 that had some questions about the food truck but I do not know when they had reached out.

Mr. Holsinger: What time frame in 2020? Because he did not buy it until November.

Ms. Dang: It looks like there was some discussion amongst staff in May of 2020 about 841 Chicago Avenue next door.

Chair Phillippi: Sorry to make you all go hunting for stuff.

Mr. Blanks: She has access probably to the thing that I do not have access to at the moment.

Chair Phillippi: The timeline is helpful for me to kind of understand the process here. I do not have any more questions for staff.

Chair Phillippi opened the public hearing portion of the meeting.

Russell Lockey, applicant and resident of 79 Laurel Street came forward to speak to the request.

Chair Phillippi: As this proceeding is a function of the Circuit Court, please raise your right hand and swear that anything you are about to say is the truth under penalty of law.

Mr. Lockey: To clarify what you were discussing, none of the restrictions were relayed to me when I purchased the property in 2020. I found out the restrictions on the parking lot in early 2023 before I put the appeal in. After it went through the process it went to the Board of Appeals and then we went to the City Council. Got absolutely nothing in writing for their decision. Although I was at the meeting I was waiting for something in writing to know might...until I got the letter in January. The letter in January is the first formal writing from the City I have received saying it was in violation. Since I put my appeal in, I have gone back and looked at some other legal issues with the property. That is what I do for a living is title work on properties. Looking back at this particular property all the way through 1941 to present. No easements were ever granted to cross this property but if we look at aerial photographs from the City's website, we can clearly see back in 2000 there is vehicles parked on the property and a driveway across the property. If you go into 1994, it is fuzzy but I would argue that you can see a roadway and cars parked on the property. In 1989 you can see a roadway across from the property. In 1974, it is extremely fuzzy but I would argue that you can see the road across from the property. Under Virginia law, if someone uses your property continuously open and notorious way actual claim that is hostile to the then owner of the property, they have adversely possessed it, 15 years, period. You do not have to go to court, you do not have to do anything, by statute and by common law, you own it after 15 years. I would argue pictures going back to the 1970s and 1980s clearly show it has been used as a parking lot and there is no record anywhere from 1941 to present of anyone ever granting an easement or giving permission to be used on that property. Therefore, when Micky purchased it in 1988, I believe. From 1988 to 2003, he adversely possessed it and he could also have tacked that on to his predecessors back how ever many years. He actually owned the property when he acquired the actual title from the dollar store property next door and because he owned that property, the proffers made by the dollar store people had absolutely no effect on

the property at that point in time because they did not own it. In the alternative, if we look at prescriptive easement, which is an easement granted by continuous use over a piece of property. That requires 20 years. For Micky, 1988 to 2008, he acquired an easement by prescription across the property to use it as his parking lot for his building. At that point in time the easement passes through the property has been continuously in use until today and that easement cannot be taken away unless it is sold by the owner. Which is now me because I purchased it from Micky. That is the quick and dirty of it, but I would argue that it has been used as a parking lot for 50 years. I do not see why we need to change it. I will do my best to get it cleaned up and try to make it conform to some issue but it still needs to be a parking lot for that business or it will put that small business out of the City.

Mr. Holland: You say clean it up, what do you mean?

Mr. Lockey: I mean I will work with them to make it look neater. I have been working with them to get rid of the junk cars.

Mr. Holland: There are 25 cars in there and if you walk, I live there, when you walk down the backside, even down at that building in the back there are five more cars.

Mr. Lockey: I am in the process of having those removed.

Mr. Holland: 30 cars in that place is tight.

Mr. Lockey: I am in the process of having that tenant remove those vehicles. That is an issue with the City. Rockingham Drive, which I need to get the City to actually improve because I got too many potholes back there.

Mr. Holland: There are also cars behind that field.

Mr. Lockey: That is not my property.

Mr. Holland: Still, 30 cars in there is tight.

Mr. Lockey: It is and I have been trying to work with the current tenants to get the number down. Get rid of most of them and get it down to a reasonable number that is not 25. 15 at the most. I would argue that it could comfortably have 15 on that property and if you include the 841 property probably 20 on the front side of that property.

Mr. Byrd: Concerning the lot you are referring to, roughly you are thinking of 15 because that is how it would be a defined parking lot with that particular number?

Mr. Lockey: Yes. If you could put the last picture back up, the aerial photograph shows the parking. Before along the building is actually if I parked close to the building that is the other property. Really, we are talking about 10 or so spots on this side and 10 or so spots on the other side. Those four, with the exception of the very tips of them, are not on the property in question.

Chair Phillippi: Can I actually see the images you were discussing at first?

Mr. Lockey: That is from the City's GIS website. As you get past 2000, they get a little fuzzy.

Mr. Byrd: You were making the calculations and you were going back some years but you skipped past the owners of 39 F 1 who owned six at that time and created a lot.

Mr. Lockey: I went back and looked at who owned that lot since 1941 and no one ever granted an easement across that property. Back to property law school 101, property is a bundle of sticks and you own the bundle of sticks but you can give one of those sticks an easement for a powerline or an easement for a waterline or an easement for a driveway across your property, you can do that. Now if somebody comes along and if your fence is right here but I mow 20 feet on the other side of it and keep doing that for 20 years you do not give me permission after 15 years, I own that. That is statute in Virginia and common law as well. I would argue that if we go by that logic then Micky and his predecessors for the previous 20 years before him plus the 20 year he had it had adversely possessed that lot anyway and they already owned it. You do not have to go to court, you get a quiet title action, you can you do not have to.

Mr. Byrd: You are saying that would mean that they would have access to drive to that property?

Mr. Lockey: That would grant him ownership of the lot.

Chair Phillippi: The entire lot or the spot that was being used.

Mr. Lockey: That spot that he was using as a parking lot.

Chair Phillippi: That is only a third or a quarter of that lot.

Mr. Lockey: To me it does not matter. I would argue that he adversely possessed that parking lot by continually using it.

Mr. Holsinger: The portion that he was using?

Mr. Lockey: The portion that he was using only. When the dollar store people sold him that lot they were correcting a problem that existed for many years in giving him title to the property. The alternative is a prescriptive easement. If you can show that others had the right to use that as well and you probably can with those photographs that show the road going around what used to be there before the dollar store. You can still clam a prescriptive easement, which is an easement for using it as you have been using it even though other people have right to use it that gives you an easement, does not give you the ownership of the property but that gives an easement to use the property for that purpose. Once that is established, it cannot be destroyed.

Chair Phillippi: Again, we are only talking about a portion of that property.

Mr. Lockey: I am only talking about the 6,000 square foot portion of the bigger property that was... The parking lot is 6,000 feet, the other one was one point something acres, I have to look it back up to define what that originally was before...

Mr. Holsinger: Just under an acre and a half I believe.

Mr. Lockey: It was before those 6,000 square feet were carved off of it. I would argue that the selling of the 6,000 square feet was correcting the legal problem of...

Chair Phillippi: In those images, they are only taking up a portion of that 6,000 square feet, that is what I am referring to.

Mr. Lockey: I think you have covered pretty much all of it.

Chair Phillippi: If you look, in those images I am only seeing cars really parked along that upper line there and along that diagonal. That is mostly what you are seeing.

Mr. Lockey: Some of those pictures had them going all the way back. Then it becomes the argument on whether it was used as a driveway or parking and I would argue that it has been set up as parking and as a minimum a driveway to access the property.

Chair Phillippi: Maybe when the one image after that he was told to move them and that is why they moved. I think the problem we are running into here is we are not here to determine legal ownership of it. Based upon the records we have to go with, that property belonged to Family Dollar it was done and then the proffers existed with it. We can only make the decision based upon the Zoning Ordinance and what the Zoning Administrator has decided. We cannot make determinations on the property laws and things like that.

Mr. Holland: I would like to hear from the City Attorney about what he just explained to us.

Mr. Russ: An adverse possession claim or a prescriptive easement claim requires that something be done without permission but we do not have the person who allegedly did something without permission here to say no, I never asked for permission. We do not have the owner of the property here to say no I did not grant him permission. I do not know how we could ever establish, based on what we have here, a second hand adverse possession claim. To the extent that it is even relevant to the question before the board.

Mr. Byrd: Whether that is the case or not, Rockingham Drive exists, correct?

Mr. Lockey: Yes, it does.

Mr. Byrd: Access to the building is not restricted by that piece of property.

Mr. Lockey: It is restricted to park vehicles to be worked on.

Mr. Byrd: That is a particular use. You are referring to easements and I was going oh access to a thing and it has Rockingham Drive.

Mr. Lockey: It does which is a terrible shame. It needs to be fixed. It is Rockingham Drive, it is not my driveway, it is Rockingham Drive. Rockingham Drive goes to three feet by the buildings. All of the cars back there are technically parking in the street. I have been trying to get the tenant to stop doing that.

Mr. Byrd: When trying to correct this with the Planning Commission and City Council, did you bring up this ownership concern?

Mr. Lockey: I did not. Like I said, that was some recent research that I have done looking at the property but I would argue that the City approved a 45-foot curb cut right there to access the property.

Mr. Byrd: I would like to point out that parcels exist...

Mr. Lockey: It is on the plat the City keeps saying it restricts my access to that property.

Mr. Byrd: If the City makes access at the curb for potential use of a tax parcel, that is not a judgement created by the City. I would not accept that type of argument to say that accepting that parcel is going to be used for a certain thing. There are other parts of the City where streets have been provided access to empty fields. I have seen one provide access to a forest. It is just the City thinking forward that if that parcel exist, it might have a use.

Mr. Lockey: My point is, they keep pointing to the plat that says there can be nothing in there. If there was nothing to be in there, why did they build a curb cut to access it? That is my point.

Mr. Byrd: That is my concern about this whole thing. The area was zoned and they marked that area as grass and put their parking somewhere else. There was nothing there until that was done. Then they proceeded to do nothing with that area is what you were arguing beforehand.

Mr. Lockey: Okay I am arguing that if the City knowing what proffers had been made reviewing the site plan that they keep pointing to saying these proffers are based on this site plan, why would you approve a 45-foot-wide curb cut if you want it to be unused open greenspace? That is question number one. Second question would be why was the Certificate of Occupancy granted over a property with a 45-foot curb cut and a parking lot there when it was supposed to be vacant space, why did the City enforce it at this point in time and why did they not put something on the plat when they agreed to the subdivision of the property two years later?

Ms. Dang: I just want to clarify the timeline here. Mr. Blanks, you had a slide that showed when various things happened. This property was rezoned, I am looking for the month the rezoning occurred. I believe the rezoning occurred after the City had completed construction...

Mr. Blanks: This is in the staff report, it just may not have been reflected as well on the slides that...just a second I will find it...

Mr. Holsinger: It was completed in December 2013 it was approved in 2012 to do the safe school route project.

Ms. Dang: Correct. The agreements between the then owner, Michael and Jeffery Sites, they entered into agreements with the City prior to May 2012. The rezoning occurred later in 2013. At that time, the Family Dollar was working with the property owners. Let me clarify also that it is not the subdivision plat that staff is referring to that regulates how the land is used. It is this concept plan that was included with the rezoning.

Mr. Holsinger: That concept plan was actually approved after the safe school routes were completed.

Ms. Dang: Correct. This was approved in September 2013.

Mr. Holsinger: In the staff report, Exhibit A was approved in 2014.

Ms. Dang: No, the subdivision...

Chair Phillippi: The subdivision was 2014. This is the one that Family Dollar applied for the rezoning with, leaving this open. Then a year later that is when that was subdivided out. That is the subdivision plat.

Mr. Lockey: My point is that on that approved plat of the dollar store is where it clearly shows the curb cut being approved by the City. It is the same as the curb cuts for the dollar store to give access to both sides. Then you have the separate curb cut for that parking lot.

Ms. Dang: I think you are mixing up the plats.

Mr. Lockey: No, put the plat up.

Mr. Holsinger: I would like to call attention to something in the staff report. Unless it is a misprint, there is a paragraph that says Harrisonburg City Council approved the rezoning with the submitted proffers on September 10, 2013. An engineered comprehensive site plan was approved on April 22, 2014, which would have been the same year the parcel in question was sold. Building permits were not issued until August of 2014. The site plan got approved after the rezoning in April, building permits were in August of 2014. It does give us a date on the parcel in question being sold in October of 2014, it does not give us a date on the certificate of occupancy. In my mind should have enforced this open space, that is, I think, the biggest problem that we have with this whole thing. City staff at that time did not enforce it.

Mr. Lockey: On this plat that the City sent me, it says approved by City Council 9/23/13. The curb cut is clearly viable on that plat.

Ms. Dang: Right, it already existed at that time. It was already constructed at that time.

Mr. Byrd: I just want to highlight that making arguments about what the City does with its street and curb gutter says nothing about our persons property past that point. As I have tried to point out to you, there are places where there is access to land that is a forest and one is just a field.

Mr. Lockey: I understand what you are saying but I would argue that if you do not want someone to do something you should not build a curb cut there. Plus, that is when I went back and looked at the adverse possession and prescriptive easements and I would argue that there definitely the minimum prescriptive easement across this property to use it as a parking lot.

Mr. Byrd: I have one more question because I was reading the applications to try to change the zoning. It sounds like everyone got distracted by all the surrounding properties and all this other stuff. I noticed you made comments about you wanting a parking lot.

Mr. Lockey: When I first came into the City, I asked could I have a special use permit to have the parking lot there when I first heard that there it was not supposed to be there. The staff at the planning office said no you need to request a rezoning. So, I put in a request for rezoning and then they said you should put proffers on it to do this and they gave me a list of recommended proffers and then they said we disagree with that. I was doing what I was told by the planning staff what I needed to do to make the change and then all of a sudden they said we do not agree with the change. That was frustrating to me when I went through the process because I was trying to do it the right way. I still want to do it the right way, but if I lose the parking lot, we lose a small business in the City. He has to have a place to park cars that are not actually in the shop being worked on at the time, but they can be brought in to be worked on and brought back out.

Mr. Holsinger: To be fair, he is already parking in the street on the other side.

Mr. Lockey: That is a subtenant and that is [unintelligible] that is being argued.

Mr. Holland: They cannot use that side of the building is all I am saying.

Mr. Lockey: I understand. There is no way to use it because those are illegally parked cars to begin with and I keep dealing with the police to get rid of them.

Mr. Holland: Every garage you see has extra cars around it but it is 25 of them.

Mr. Lockey: I agree with that. That fluctuates from time to time and I think they are going through a...

Chair Phillippi: The main thing though is that the board is [unintelligible] determination of whether the Zoning Administrators have made the correct decision. Public interest is not something that we are really suppose to take into account. Whether or not it is an eyesore that there is a bunch of cars out there or that there could be a potential loss of a small business, those are not considerations that this board is allowed to use in our determination.

Mr. Blanks: Jeff, did you get your answer to the dates? I was trying to look up to see if I could figure it out but I kind of got lost.

Mr. Holsinger: Matt was trying to explain it to me. The comprehensive site plan question that I referred to that was approved on April 22, 2014 had to do with the building inspection office.

Chair Phillippi: Like the building itself, it was not through City Council.

Mr. Holsinger: That points again to my complaint that the City staff at that time did not enforce what the City Council legislated. That is a problem. I am just saying as a City citizen, that is a problem.

Mr. Blanks: As we mentioned in the staff report, there is no record and we do not know why that did not happen.

Mr. Holland: Did you ask about this before you bought the property?

Mr. Lockey: No, I did not. Like I said I do title examinations for a living and I have never in 20 years of doing this come across a property with proffers on it. Nowhere in my normal public record, which is everything at the courthouse and the tax records for the City does it say that there are limitations on the property. It just says zoning B-2C and I did not know what that meant. I now know that I have to come over here and figure out whose file drawer it sits in because public information should be out there in the public and it should be made known. That is my fault but once again 20 years of doing this, I have never come across that.

Mr. Byrd: When you say 20 years, you are referring to the state of Virginia.

Mr. Lockey: I am a title examiner by profession. I have been working in the state of Virginia since 2001 examining titles for a living as an attorney. I have never seen that restriction on a property before.

Mr. Byrd: When you say that restriction...

Mr. Lockey: A conditional zoning that has proffers on it. I would not know where to look for that.

Chair Phillippi: That was not included on the deed?

Mr. Lockey: It is not referenced in the deed, yes. I have seen it referenced in deed restrictions on properties but never just a zoning B-2C and known what that meant.

Mr. Byrd: The state of Virginia's code says what about that?

Chair Phillippi: Different localities are going to do different zonings.

Mr. Lockey: I do not know that the code says anything about it but my point is as a title examiner I look at a specific set of records to determine the use of property and the ownership of property and what it can and cannot be used for. It is not in the usual places, it is over here in a file drawer somewhere not in the public records I am normally looking at.

Mr. Byrd: You said not in the public records you normally look at implying that the City cannot hold public records.

Mr. Lockey: It does but it is not clearly marked anywhere on the tax ticket or tax receipts that this property has restrictions on it. I did not know to look for it.

Mr. Byrd: We are talking about the zoning.

Mr. Lockey: The proffers on the property, I had no way to know where or what the proffers were. I did not even know that they existed because I did not know what that meant.

Chair Phillippi: He was not aware of what the zoning B-2C meant.

Mr. Byrd: You saw B-2C and then you did not verify.

Mr. Lockey: I just moved on with the rest of my search I did not know what that meant. I had never seen it before and it did not register with me that was a problem. Now I know and I am more thorough in my examinations but I did not know it at that time.

Mr. Byrd: You did not apply for a zoning verification letter from the City.

Mr. Lockey: I have never done that and never had to do that on a property.

Mr. Byrd: What you never had to do is not what we are discussing, Sir.

Mr. Lockey: No, I did not because I did not know I needed to.

Mr. Byrd: You also stated that you did not know what B-2C meant.

Mr. Lockey: That is right.

Mr. Byrd: You are appealing this because you are concerned that the City evaluated this parcel as what.

Mr. Lockey: I am appealing it because I believe that the continued use for 50 years needs to be honored and if the City wanted it closed in 2013 or whatever they should have ordered the thing closed.

Mr. Byrd: You are arguing that it is a nonconforming use of a parking lot of this particular parcel.

Mr. Lockey: It was a conforming use prior to the proffers being offered. It was prior to that and it has continued to be used.

Mr. Byrd: The City keeps citing a particular rezoning. What you are discussing is saying that it is nonconforming to that zoning.

Mr. Lockey: It had been used for that purpose for 40-50 years before that. If the City wanted it to be vacated, why did they not vacate it? Why did they not come in and say get the cars off, put the grass in, and close the curb cut. When I purchased it I had no clue that was an issue.

Mr. Byrd: The City is not making a lot of comments on that, they are just discussing what the zoning is at the time that they are addressing it. There might be other reasons of no malice or benefit to anyone of why the City was not actively enforcing certain codes. I can think of them and they are unrelated to anything.

Chair Phillippi: I mean the main point there is that the lack of enforcement does not automatically...

Mr. Byrd: Well, the City does not have staff to make that decision.

Chair Phillippi: The lack of enforcement does not automatically mean approval.

Mr. Byrd: Is there anything else that you want to present to us to explain why we should continue to allow this non-conforming use of the current zoning because that is what we are discussing?

Mr. Lockey: I think I have said everything that I can say. I just do not want to lose my business. I do not want to lose that income from that property, which I would lose. I know that is not what you are concerned with but that is why I am here.

Mr. Holland: How was he supposed to know this was an issue before he bought the property?

Mr. Byrd: You go to the City and you ask them what does B-2C mean.

Mr. Holland: The average citizen is going to do that?

Mr. Byrd: The average citizen if they are concerned about the zoning of the property can do like I did a couple of days ago, I typed in Harrisonburg on a search engine. I clicked on the City's website in the search site I clicked zoning.

Mr. Holland: You work for them.

Mr. Byrd: I just told you what I did. Harrisonburg was the first thing I searched for, found the City's website, clicked on that. Went on the City site and it says search this site, I typed zoning, and the third thing that came up was the zoning verification letter. I did not know what that meant to be honest with you and then I clicked on it and it told me what it meant. The point is, if you go to the jurisdiction in which you live in.

Mr. Holand: The average citizen is supposed to do that before they buy something?

Mr. Byrd: Yes.

Mr. Holand: What do they have realtors for?

Mr. Lockey: As a professional title examiner and real estate attorney I can say I have never done that. The other question I have is are the proffers listed on that or does it tell me where to go or tell me that it is conditional? The only things I have ever seen the City say is that there are conditions on it but it does not tell me where to look for those or how to find them.

Chair Phillippi: That would be something that you would contact City staff about.

Mr. Blanks: If I may just provide a little clarification on the process. Typically, if somebody requests a zoning verification letter or even just calls us, if somebody calls us and says "I have an address, what is the zoning on this property" and we look it up and

it comes back B-2C or whatever it happens coming back with. We would usually say “this property is zoned B-2C we are going to have to go pull the file”. Usually, it is a file in the filing cabinet upstairs. It looks something kind of like this [referring to a file in his hand] and there will be a letter in it that outlines all of the conditions that were placed on the property if it was zoned conditionally and then we can provide them with a copy of that particular condition. It is easier if it is more recent because staff is much better at providing concise copies of conditions. Some of the older ones we have to go into minutes and it might require some research.

Ms. Dang: They are usually letters. It has to be a proffered letter that might not be as clear as what we document up front today but there always is a letter signed by the property owner at that time that lists the proffers.

Mr. Blanks: If somebody were to request that information we would be able to provide to them either over the phone or through email maybe brief little research is required but upon request we can provide that to them.

Mr. Holland: My frustration with this is I get he cannot stand the way it is, I have no problem with that. I feel like this a professional who does this for a living and he made a mistake but it was not ill intent. He is not trying to do this, he is trying to fix it. He did not even know he made this mistake and all we are saying is rules say this but it does not feel right.

Chair Phillippi: Well unfortunately that is the way the Board of Zoning Appeals is set up by the Commonwealth of Virginia.

Mr. Holland: I have spent three and a half weeks being tortured beyond imagination and I get that but is it right? If you all were standing right there would you all be happy with what is being said?

Chair Phillippi: Absolutely not.

Mr. Byrd: I feel that the thing that is fueling a lot of this frustration is that during...it is not you personally I am speaking in general because you might not know I am a little frustrated.

Mr. Holland: I am not saying that I am going to walk by there everyday and wave to him.

Mr. Byrd: During the rezoning process, the desire for a parking lot seems to have gotten lost in a bunch of other things. As I was reading the minutes of the City Council and the Planning Commission again, everyone was talking about the past violations and other things.

Ms. Dang: May I ask what date? There are two rezonings that are apart of this use, just to clarify.

Mr. Byrd: The one that was denied.

Ms. Dang: The recent one.

- Mr. Byrd: I am operating under the position that the rezoning that currently exists in law, the one from 2013. The owners of that property sold someone land that exists with a zoning of being nothing. So the City is operating on that parcel being nothing as the plans shows and the proffers submitted. It then has someone using a nonconforming use on that piece of parcel and then when you try to get a rezoning, everyone concerned about the past violations and the neighboring properties. They are discussing all of these things, there was no discussion of a parking lot. Are we against a parking lot, I did not see the City Council members say they were against a parking lot being there. I did not see the Planning Commission say they were against the parking lot being there, they were against a salvage repair parking lot. They were against that, I remember people saying something like that. I did not see what you are discussing which are working vehicles parked to go to a business.
- Mr. Lockey: They are vehicles to be repaired by the business and some of them are supposed to all be drivable but occasionally he gets one in that he has to strip a part off of and tries to get rid of it immediately. I am trying to make that happen.
- Mr. Byrd: I think that is where the problem comes. It seems like the governing body is against that being there.
- Mr. Lockey: I think one person on City Council made a comment that granting me the parking lot would undo the prior zoning and that is the only comment about it at the time.
- Mr. Byrd: Sir, storage of vehicles for repair is different for the parking lot. Parking lots are for... If the governing body was against that, it makes it harder for me to consider your appeal.
- Mr. Lockey: It was always referred to as a parking lot, I do not know whether they are looking at it as junk storage or a parking lot.
- Chair Phillippi: I think that is one of the problems here is because in the proffer it says that parking lots are allowed but the storage of vehicles for sale or service is not. That is what we are seeing there. If it was a parking lot where customers came and parked while they ran to the store, that would be one thing, but because it is being used for storage of vehicles that are being serviced on, that is against the proffers.
- Mr. Holland: The Family Dollar parking lot would not be a big deal.
- Mr. Russ: Just to be clear, the conceptual site plan does not indicate that the parking will be there anyway and so it could not be parking in that spot.
- Mr. Byrd: I do not want us to fall into that same thing again. Where we are going the current zoning, nothing is supposed to be there we are all aware of this. What you are discussing is not a parking lot no matter how the City of Harrisonburg's zoning ordinances are written. Yours falls under a different number in the list of uses and that is the storage of vehicles in repair or salvage and the governing body was against that. If that is your desire, I do not know if this body...I know I would not be in favor of that because that is a decision that is left to the governing body to make.

- Ms. Dang: Mr. Byrd just for clarity, you are explaining that was the reason why City Council last year denied the rezoning request that would have allowed the ability to store parked vehicles and do vehicle repair on this property.
- Mr. Byrd: Yes, because when I was reading those minutes I was noticing no one was talking about a parking lot which is number seven. Everyone was referring to number eight general service and repair shops permitted by right and there was another one that also refers to...
- Ms. Dang: If I may help, the BZA is asked to consider staff's determination on compliance with the proffers from 2013. Know that the person, like Mr. Lockey, could come back to rezone the property so that other uses could be allowed there if City Council were to approve that rezoning to amend the proffers but the question this evening is about staff's determination about compliance with the conceptual plan and the proffer of 2013.
- Mr. Byrd: I want to correct some statements I made. Now looking at the ordinance itself, the repair vehicles and all activities related to that is number seven under session 10-3-90. The parking is number 14 and the one I read of general services that was number eight in that section of the ordinance.
- Mr. Holsinger: Is that under the by right use?
- Mr. Byrd: These are just the ordinances because I had made statements about things related to numbers and I just wanted to clarify that.
- Mr. Blanks: We should clarify that typically number 8 the general services and repair shops is more for appliances and things than it is for actual vehicles. Vehicles have an actual section called out that says vehicles... I just wanted to clarify.
- Chair Phillippi: We have been trampling the weeds for a little bit 201 now.
- Mr. Byrd: I feel that clarifying some of these is important because I think that is what has led us to the situation. People have not been clear about what was going on and now we have someone in front of us who is trying to appeal the situation that I do not think I would be in favor of. Going against how staff has looked at the ordinances of the City. It comes to me as you are either desiring a thing that the governing body does not want to have on that parcel or you had a misunderstanding of what you have a right to have there and we need to have that...
- Mr. Lockey: That may be true. I was trying to let them park the vehicles they needed to park there not distinguishing between a parking lot like you say for run in run out like the dollar store but one they can leave the vehicles there while we are working on them. They do not work on them outside anymore. It is kind of squishy on the back side of the parking lot because some of it is on the M property and some of it is on the B-2 property. That gets to be another issue, exactly where the properties are. I kind of know where they are but I do not know specifically six inches one way or the other where the line is.
- Mr. Byrd: I would review the existing documents that you have to see what were those governing body's positions on the ordinance number seven, repair of vehicles,

recreational equipment, trailers with all activity storage of inoperable vehicles completely enclosed within a permanent structure be able excluded overruled because that is referring to what you are talking about if you want to have vehicles from a repair shop stored there. That might require fencing and all kinds of other things. That is not what we are dealing with before us because you are appealing their decision. Their decision is concerned with the zoning that has your property being nothing.

Chair Phillippi: Do you have anything further Mr. Lockey?

Mr. Lockey: I have just always been confused by the idea that just because there is nothing in that blob on the plat it means there can be absolutely nothing there because the property does say it can be used for parking. It does not say that vacant spaces have to remain vacant. There is some good [unintelligible] on the proffers. If you read the proffers it does not say all vacant areas will remain vacant, it just says the property can be used for this and this including parking and it does not say that that cannot be used for parking it just says...They keep saying there is nothing drawn in it so you cannot have anything in it. I am confused by that logic there.

Chair Phillippi: I think one of the things there is if you look at the letter from the applicants of the proffer back in 2013, the following is proffered, the conceptual site plan is provided in exhibit A as proffered. That right there means that the way that site was drawn with that vacant lot, that is part of the proffer that exists with that. Do we have any further questions for Mr. Lockey?

Mr. Lockey: I think I have said everything I can say. I still would like to try again. If I am told I cannot do it, I will try again to get it rezoned as necessary to keep the business there. I would hate to lose a business in the City.

Chair Phillippi: With that, I am going to go ahead and close the public comment section because I do not see anyone. Now we come to the motion portion of the evening.

Mr. Byrd: Well, in light of the fact that when the minor subdivision plat occurred and no zoning was changed then that means the current zoning is what it is. Therefore, I move to deny the appeal of the administrative decision for 813 Chicago Avenue identified as tax map parcel 39-F-6.

Chair Phillippi: We have a motion, do we have a second?

Mr. Holsinger: I will second.

Chair Phillippi: Any further discussion on the motion?

Mr. Byrd: I would like to point out that this is a strange case. I have seen a zoned area be then later subdivided and part of that sold off to someone else when they know the zoning for that is nothing.

Mr. Holsinger: To that end that is why I struggled with the idea. The idea that the proffers are in a file cabinet in City Hall and not with the deed. I cannot get past that in my mind but I understand what we are here to decide for today.

Mr. Byrd: I am going to have to make sure when I am at Planning Commission in a couple of days that I mention that we need to be a bit more clearer in what we are for and against when we have a lot of proffers attached to something or a lot of proffers to remove things to make sure people understand where we are so that they do not have to appeal decisions.

Mr. Holland: My frustration is he did not know this. There was no willful act to do this. I get that what happens and I understand that. He is trying to find a way to make it right and I am not seeing we are helping him with that. I do not agree with that. We are the Friendly City, right? I am frustrated that he had this \$300 fee, another \$300 fee I think he paid a lawyer too. He is trying to make it right, he is not trying to go around some of the other cases we had where they ignored getting a building permit. You are a contractor that is on you dude I am not feeling sorry for you one bit. I do not think this is right and I get what we are here to decide but we are not helping somebody who is trying to make it right. If somebody can help him with that I would appreciate it. Any suggestions with that?

Chair Phillippi: That is talking to legislative bodies because they are the ones who can change things.

Mr. Holland: As in the City Council?

Chair Phillippi: City Council and also the General Assembly with their authority that they get provided the Board of Zoning Appeals.

Mr. Holand: If that was you standing there, how would you feel?

Chair Phillippi: I have already said, I would be frustrated with the situation.

Mr. Holland: I am not a touchy feely guy, I just feel he is trying to do something right. Reward it, encourage it and work with him.

WHEREAS: Chair Phillippi called for a roll call vote: Mr. Holland: No; Mr. Holsinger: Yes; Mr. Byrd: Yes; Ms. Maskell: No; Chair Phillippi: Yes

BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 3-2 to deny the appeal.

The next order of business was the approval of the Board of Zoning Appeals annual summary.

Ms. Dang: Last year as you can see within the report you all had three items that you all considered over two meetings. This report is required by City Code for us to put together and I am happy to answer any questions you all have. I also ask that you all take a vote that this be forwarded to City Council for their review.

Chair Phillippi: Anybody have any questions on the report for Ms. Dang?

Mr. Holsinger: I move to submit the report to City Council.

Mr. Byrd: Second.

BE IT, THEREFORE, RESOLVED: The Board unanimously approved the BZA 2023 Annual Summary.

With no further business, the meeting adjourned at 5:23pm.

Respectfully submitted, _____Chair

_____Secretary



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Legislation Text

File #: ID 26-195, **Version:** 1

Subject:

Board of Zoning Appeals Annual Report 2024 & 2025

Presented By: Tyler Blanks, Zoning Administrator

Review of the 2024 and 2025 annual summaries of Board of Zoning Appeals activities.

Summary of the
Board of Zoning Appeals'
2024 and 2025 activities
as required by
Section 10-3-134
of the City Code



2024

BOARD OF ZONING APPEALS
MEMBERSHIP

Matthew Phillippi
Chair

Thomas Jenkins
Vice-Chair
Term Expired: March 2024

Adriel Byrd
Planning Commission Representative
Resigned November 2024

Morgan Maskell
Appointed: February 2024

Stan Holland
Resigned: December 2024

Jeffrey Holsinger

2025

BOARD OF ZONING APPEALS
MEMBERSHIP

Matthew Phillippi
Chair

Valerie Washington
Planning Commission Representative
Appointed: Jan 2025
Resigned: July 2025

Morgan Maskell
Resigned: July 2025

Jeffrey Holsinger

Shannon Porter
Planning Commission Representative
Appointed August 2025

Todd Alexander
Appointed October 2025

Requests Before the Board: 2024

Address	Applicant	Request	BZA Action	Date
813 Chicago Avenue	Lock-Minn Holdings LLC	Appeal of an administrative decision regarding a violation of proffers associated with the 2013 rezoning of the subject property.	Denied the appeal (3-2)	5/6/2024

Requests Before the Board: 2025

No requests were heard. The Board did not meet in 2025.



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Legislation Text

File #: ID 26-194, **Version:** 1

Subject:

Consider adoption of proposed updates to the existing Rules of Procedure

Presented By: Tyler Blanks, Zoning Administrator

The Board will consider adopting changes to their existing Rules of Procedure. The purpose of these changes is to better align the Rules of Procedure with City and State Code, as well as provide more structure and guidance for conducting meetings and business.



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

409 SOUTH MAIN STREET, HARRISONBURG, VA 22801
OFFICE (540) 432-7700 • FAX (540) 432-7777

To: Board of Zoning Appeals
From: Travis Cornett, Zoning Technician
Date: June 1, 2026 (Regular Meeting)

Subject: Consider adoption of proposed updates to the Rules of Procedure

Introduction

This memorandum outlines staff's proposed changes to the Board of Zoning Appeals (BZA)'s Rule of Procedures. This memorandum contains two bulleted lists, the first outlining changes to existing articles and the second outlining articles that were added. This list is not exhaustive, as many minor grammatical and formatting changes were made throughout the Rules of Procedure document; such changes have been omitted for brevity. The article titles in this memorandum are based on the proposed procedures. The current article numbers/names have been provided in parentheses where applicable.

Modified Articles

Article II. Officers (currently Article I.)

- The frequency of which a new Chair and Vice-Chair will be elected was changed from biennially to annually and elections were moved to be held in March.
- A new section was added going over the appointment of the Secretary.
- Procedures for elections were expanded to be more comprehensive.
- A reference to a City Code section was removed.

Article IV. Meetings (currently Article II.)

- Section 1 was updated to account for holidays and allow for changing of the day, time or place of a regular meeting through passing a resolution to that effect.
- Section 2 was added to give the Board the authority to adjust a meeting date if conditions are too hazardous to conduct a meeting.
- Sections 3 & 10 were added to allow the Board to adjourn meetings to a later time or place when necessary.
- Sections 4 & 5 were added to provide notice requirements and instructions for special meetings.
- Section 8.e "Election of Officers (when required under these procedures)" was added to the order of business.
- Section 9 was added stating that public comment under "Other business" in the order of business shall not be considered a public hearing.
- Sections 11 & 12 were added to allow Board members to attend meetings remotely.

Article V. Procedure for Public Hearing Cases (currently Article III. Procedure for Hearing Cases)

- Section 2 & 3 were added stating that appeals and applications must be submitted on the proper forms and gives a timeline for when items to be considered must be submitted.
- Section 4 was added stating that if an applicant or appellant does not attend the hearing, the Board may defer the case or make a decision in their absence.
- The order for hearing a case was updated and expanded upon to be clearer in section 5.
- The previous section 3 was broken up and expanded upon in sections 6, 7, and 8. These sections outline how presentations and rebuttals are to be handled.
- Two lines were added to section 10. One explains that conditions must be related to the case, reasonable, and enforceable and clearly stated. The other states that a concurring vote of a majority of the members shall be necessary for a successful motion.

Article VI. Rehearing (currently Article IV.)

- Sections 1 & 2 were switched for clarity.

Article X. Dismissal of Cases (currently Article VIII.)

- This article was expanded to include specific reasons that a case might be dismissed. It also states that such dismissals shall be without prejudice, and allows for cases to be continued rather than dismissed if good cause is shown.

Added Articles

Article I. Authority & Scope

- This article was added as a general umbrella to catch any discrepancies that might arise from changes to the State Code or Zoning Ordinance.
- Article III. Duties of Officers This article was added to explain what the duties of the Chair, Vice-Chair and Secretary are.

Article X. Ex Parte Communication

- This article was added to explicitly state the requirements surrounding ex parte communication, as outlined in the state code (15.2-2308.1). It goes over what members should avoid & what they should do if such communications take place.

Attachments

- 1) *Rules of Procedure (Current)*
- 2) *Rules of Procedure (2026 Update)*

**RULES OF PROCEDURE
THE BOARD OF ZONING APPEALS
CITY OF HARRISONBURG, VIRGINIA
(Current Procedures)**

ARTICLE I. OFFICERS

1. The Board of Zoning Appeals (the Board) shall organize and elect a Chair and a Vice-Chair biennially in the month of May, or during the next scheduled meeting of the Board.
2. The Chair shall preside at all meetings and hearings of the Board and shall decide all points of order or procedure. The Chair, or in their absence, the Vice-Chair, may administer oaths and compel the attendance of witnesses. (As per Section 10-3-134 of the City of Harrisonburg Zoning Ordinance)

ARTICLE II. MEETINGS

1. Regular meetings of the Board of Zoning Appeals shall be held on the first Monday in each month, as needed, at 4:00 p.m., unless that day falls on a legal holiday, in which case the meeting may be changed at the consensus of the Board. Staff shall make site visits available for the Board members on, or before the day of the regular meeting.
2. Special meetings may be held at other times as determined necessary by the Board, provided at least 24 hours notice of such meeting is given to each member.
3. A quorum of the Board shall consist of three members of the five member Board; one of which shall be either the Chair or Vice-Chair.
4. Hearings shall be open to the public and shall be held by the Board in City Council Chambers at 409 South Main Street or in such other place as the Board may deem necessary.
5. The order of business at all regular meetings of the Board shall be as follows:
 - a. Call to order
 - b. Roll Call
 - c. Determination of a quorum
 - d. Consent of agenda
 - e. Approval of minutes of previous meeting(s)
 - f. Hearing and consideration of cases on the agenda
 - g. Other business
 - i. New business
 - ii. Old business

- iii. Public input
- h. Adjournment

ARTICLE III. PROCEDURE FOR HEARING CASES

1. Cases shall be heard in the order, in which they appear on the agenda, except a case may be advanced for hearing by order of the Board upon good cause shown.
2. At the hearing, the order shall be as follows:
 - a. Presentation of case and explanation and/or report by Zoning Administrator or their designee when pertinent.
 - b. Open public hearing
 - i. Statement of applicant or appellant
 - ii. Statements of other persons in favor
 - iii. Statements by those opposed
 - iv. Applicant's rebuttal
 - c. Close public hearing
3. The Chair may prescribe a reasonable time limit for each side to present its case. To maintain orderly procedure, each side shall proceed without interruption by the other. Cross-examination will not be permitted, but questions may be directed to the Chair who may allow limited questioning. The name and address of each person speaking shall be recorded in the minutes.
4. At the time for considering the case, the Chair may call for a motion or if the Board decides that it is not sufficiently informed, it may continue the case and may request further information.
5. The final disposition of any appeal or application shall be in the form of a motion sustaining, reversing, varying or modifying the order, requirement or determination appealed from if it is an appeal. The motion shall set forth what variations or modifications are permitted and what conditions, if any, shall be complied with. Said motion shall refer specifically to the applicable provision in the City Code and shall set forth facts and findings in the case on which the decision is based, which shall be consistent with the requirements of law.
6. If a motion fails to receive a quorum, the motion has died and the application or appeal will be carried over for another motion until a final disposition is reached. The vote of each member present on each motion shall be recorded with the motion.
7. In any case in which the Board has denied an application, no such application shall be again considered by the Board within one year from the date of such refusal.

ARTICLE IV. REHEARING

1. No rehearing of any decision by the Board shall be had except on motion by a member of the Board who previously voted on the decision, which shall be made not later than the first regular meeting succeeding the meeting at which the motion was acted on; such motion shall be to reconsider the vote, and shall be carried by not less than three affirmative votes.
2. No motion for a rehearing shall be entertained unless new evidence is submitted, which could not reasonably have been presented at the original hearing. In all cases, the request for rehearing shall be in writing, reciting the reasons for the request, and shall be accompanied by the necessary information, including a recitation of all evidence, which could not reasonably have been presented at the original hearing.
3. If a rehearing is granted, the case shall be put on the agenda for a rehearing. The same procedure as to notices shall be followed as in the original application.

ARTICLE V. ADVICE

No informal request for advice will be officially considered.

ARTICLE VI. SUSPENSION OF RULES

These rules may be suspended in whole or in part, only upon the unanimous vote of the entire Board.

ARTICLE VII. AMENDMENTS

These rules may be amended or modified by the affirmative vote of three members of the Board.

ARTICLE VIII. DISMISSAL OF CASES

Any application, appeal, motion, or rehearing may be dismissed for failure of the applicant to comply with the by-laws or these rules.

RULES OF PROCEDURE
THE BOARD OF ZONING APPEALS
CITY OF HARRISONBURG, VIRGINIA
(Proposed Procedures)

Adopted: [insert date]

ARTICLE I. AUTHORITY & SCOPE

1. These Rules of Procedure are intended to be consistent with the Code of Virginia, the City of Harrisonburg Zoning Ordinance, and other applicable law. In the event of a conflict, applicable law and the Zoning Ordinance control.
2. These rules govern Board of Zoning Appeals and its organization, meeting conduct, public hearings, decision documentation, and related administrative processes.

ARTICLE II. OFFICERS

1. The Board of Zoning Appeals (the “Board”) shall hold its annual meeting to organize and elect a Chair and Vice-Chair and to review the prior year’s annual report in each month of March, or during the next scheduled meeting of the Board thereafter.
2. A Secretary for the Board shall be appointed by the city manager, or designated agent.
3. Nomination of officers shall be made from the floor at each annual meeting. Election of officers shall follow immediately. A candidate receiving a majority vote of the entire membership shall be declared elected.
4. Terms of office shall be for one year or until a successor takes office.
5. Vacancies shall be filled for an unexpired term by a majority vote of the Board.

ARTICLE III. DUTIES OF OFFICERS

1. The Chair shall preside at all meetings and hearings of the Board and shall decide all points of order or procedure. The Chair may administer oaths and compel the attendance of witnesses. In the absence of the Chair, the Vice-Chair, if present, shall preside at all meetings and hearings of the Board in place of the Chair. If the Chair and Vice-Chair are absent from any meeting, a present member shall be chosen to act as Chair.
2. The Secretary may be either a member of the Board or another person, including the Zoning Administrator or a suitable designee. The duties of the Secretary shall include keeping the minutes of the BZA’s meetings, keeping and maintaining custody of the records of the Board, drafting and signing all correspondence necessary for the execution of the duties of the Board, and such other duties as these rules may assign.

ARTICLE IV. MEETINGS

1. Regular meetings of the Board shall be held on the first Monday of each month, as needed, at 4:00 p.m., unless that day falls on a legal holiday, in which case the meeting shall be moved to the following Monday. The Board may establish a different day, time, or place to conduct any regular meeting by passing a resolution to that effect. Staff shall make site visits available for the Board members on or before the day of the regular meeting.
2. If the Chair, or the Vice-Chair if the Chair is unable to act, finds and declares that weather or other conditions are such that it is hazardous for Board members to attend a regular meeting, the meeting shall be continued to the next regular meeting date. This finding shall be communicated to the members of the Board and to the press as promptly as practicable.
3. Without further notice, a regular meeting may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the Board is complete.
4. Notice of any public hearing before the Board will be given in compliance with Section 15.2-2204 of the Code of Virginia and the Zoning Ordinance of the City of Harrisonburg.
5. A special meeting may be held when called by the Chair or requested by two or more members of the Board. The call or request shall be made to the Secretary and shall specify the matters to be considered at the meeting. Upon receipt of a call or request, the Secretary shall immediately notify each member of the Board. Whenever Virginia law requires public notice of a special meeting of the Board, the Secretary shall provide such notice.
6. A quorum of the Board shall consist of three members of the five-member Board. If a member is required to recuse themselves from a case, the Board may proceed so long as a quorum remains present.
7. Hearings shall be open to the public and shall be held by the Board in City Council Chambers at 409 South Main Street, Harrisonburg, Virginia, or in such other place or format as the Board may deem necessary.
8. The order of business at all regular meetings of the Board shall be as follows:
 - a. Call to order
 - b. Roll Call
 - c. Determination of a quorum
 - d. Consent of agenda
 - e. Election of Officers (when required under these procedures)
 - f. Approval of minutes of previous meeting(s)
 - g. Public hearing and consideration of cases on the agenda
 - h. Other business
 - i. New business

- ii. Old business
 - iii. Public comment
 - i. Adjournment
9. General public comment under “Other business” is not a public hearing and shall not substitute for any public hearing required by law. The Chair may establish reasonable rules for public comment, including time limits and speaker procedures.
 10. The Board may continue any case or meeting to a date, time, and place certain. When a continuance is announced on the record, no further notice shall be required except as otherwise required by law.
 11. Any Board member who is unable to attend a regular or special meeting in person due to (i) an emergency or a personal matter, or (ii) a temporary or permanent disability or other medical condition, may participate in the meeting through electronic communication from a remote location that may not be open to the public, subject to the following:
 - a. A quorum of the Board is physically assembled at the central meeting location.
 - b. The member notifies the Chair and Secretary on or before the day of the meeting that he or she is unable to attend (i) due to an emergency or personal matter identified with specificity, or (ii) due to a temporary or permanent disability or other medical condition that prevents the member’s physical appearance. A member shall participate in a remote meeting due to an emergency or personal matter at no more than two meetings in each calendar year.
 - c. The Board records in its minutes the (i) specific nature of the emergency or personal matter or the fact of the disability or medical condition, and (ii) the remote location from which the member is participating.
 - d. The Board arranges for the voice of the absent member to be heard by all persons in attendance at the central meeting location.
 12. The Board by motion shall vote to approve or disapprove the member’s electronic participation. If the absent member’s remote participation is disapproved because such participation would violate the above, such disapproval shall be recorded in the minutes.

ARTICLE V. PROCEDURE FOR PUBLIC HEARING CASES

1. Cases shall be heard in the order in which they appear on the agenda, unless the Board determines that a change in order would improve the efficiency of the meeting.
2. Appeals or applications must be submitted on the proper forms. The forms must be submitted to the Zoning Administrator or their designee on the first Monday of every month by end of the business day, unless that day is a holiday, in which case the application shall be submitted the following business day. The Secretary shall transmit

- the appeal or application to the Board, along with any relevant records of the action upon which the appeal is based, and a report of the City.
3. If the applicant or appellant wishes the Board to consider additional records, documents, or other information, such records, documents, or other information must be submitted to the Secretary at least 10 business days in advance of the public hearing. Records, documents, or other written information submitted less than 10 business days prior to the public hearing, or at the public hearing itself, shall be considered at that meeting only by leave of the Board.
 4. If the applicant or appellant fails to appear at the hearing or send a representative, the Board may defer the public hearing or may hold the public hearing. If the Board holds the public hearing, the Board may defer the decision or may render its decision in the absence of the applicant or appellant.
 5. At the hearing, the order shall be as follows:
 - a. The Chair will announce the case and open the public hearing.
 - b. Presentations by the parties:
 - i. City staff will present its case.
 - ii. The applicant or appellant will present its case.
 - c. Public comments:
 - i. Statements of others in favor.
 - ii. Statements of others opposed.
 - d. Rebuttal:
 - i. Staff may respond to any comments raised by the public.
 - ii. The applicant or appellant may respond to any comments raised by the public.
 - e. The Chair will close the public hearing.
 - f. Motion, discussion, and decision by the Board.
 6. The Board shall offer an equal amount of time to the applicant or appellant and the City. The Chair shall prescribe a reasonable time limit for each side to present its case, and shall separately prescribe a reasonable time limit for each member of the public who provides comment.
 7. During either party's presentation or rebuttal, or during its discussion, any member of the Board may ask questions.
 8. The name and address of each person speaking shall be recorded in the minutes. Speakers shall also state if they are speaking for themselves or on behalf of an organization, and disclose if they are representing the applicant.
 9. At the time for considering the case, the Chair may call for a motion, or if the Board decides that it is not sufficiently informed, it may continue the case and may request further information.
 10. The final disposition of any appeal or application shall be in the form of a motion sustaining, reversing, varying or modifying the order, requirement or determination

appealed. The motion shall set forth what variations or modifications are permitted and what conditions, if any, shall be complied with. Any such conditions shall be related to the case, reasonable, and enforceable and clearly stated. Said motion shall refer specifically to the applicable provision in the City Code and shall set forth facts and findings in the case on which the decision is based, which shall be consistent with the requirements of law. A concurring vote of a majority of the members of the board shall be necessary for a successful motion.

11. If a motion fails to receive a second, the motion has died, and the application or appeal will be carried over for another motion until a final disposition is reached. The vote of each member present on each motion shall be recorded with the motion.
12. In any case in which the Board has denied an application, no substantially similar application shall be considered by the Board within one year from the date of such denial.

ARTICLE VI. REHEARING

1. No motion for a rehearing shall be entertained unless new evidence is submitted, which could not reasonably have been presented at the original hearing. In all cases, the request for rehearing shall be in writing, reciting the reasons for the request, and shall be accompanied by the necessary information, including a recitation of all evidence, which could not reasonably have been presented at the original hearing.
2. No rehearing of any decision by the Board shall be had except on motion by a member of the Board who previously voted on the decision, which shall be made not later than the first regular meeting succeeding the meeting at which the motion was acted on; such motion shall be to reconsider the vote, and shall be carried by not less than three affirmative votes.
3. If a rehearing is granted, the case shall be put on the next meeting's agenda for a rehearing. The same procedure as to notices shall be followed as in the original application.

ARTICLE VII. ADVICE

No informal request to the Board for advice or opinions will be officially considered.

ARTICLE VIII. SUSPENSION OF RULES

These rules may be suspended in whole or in part, upon the unanimous vote of the members of the Board present.

ARTICLE IX. AMENDMENTS

These rules may be amended or modified by the affirmative vote of a majority of the Board.

ARTICLE X. DISMISSAL OF CASES

Any application, appeal, motion, or request for rehearing may be dismissed for failure of the applicant or appellant to comply with these Rules of Procedure, applicable filing requirements, or other lawful requirements of the Board. Such dismissal may include, without limitation, failure to appear, failure to provide required information, or failure to proceed in an orderly manner. Unless otherwise stated by the Board, a dismissal under this section shall be without prejudice. The Board may, for good cause shown, continue rather than dismiss a matter.

ARTICLE XI. EX PARTE COMMUNICATION

Board members shall avoid discussing the facts or law relative to a particular case outside of a public meeting. This shall include discussions with staff, the applicant, or landowner or their agent or attorney. 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.



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Legislation Text

File #: ID 26-192, **Version:** 2

Subject:

Presentation on Freedom of Information Act & Ex Parte Communications by Deputy City Attorney

Presented By: Wesley Russ, Deputy City Attorney

A presentation given on the Freedom of Information Act (FOIA) and Ex Parte Communication and how they affect the BZA and their duties.



City of Harrisonburg

City Hall
409 South Main Street
Harrisonburg, VA 22801

Legislation Text

File #: ID 26-193, **Version:** 1

Subject:

Presentation on Sample Staff Reports by Zoning Administrator

Presented By: Tyler Blanks, Zoning Administrator

A presentation going over the general layout and what to expect from staff reports for both appeal cases and variances.