



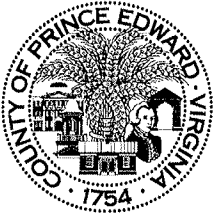
**PRINCE EDWARD COUNTY  
PLANNING COMMISSION  
February 17, 2015**

**A G E N D A**

<b>7:30 p.m.</b>	<b>1.</b>	The Chairman will call the February meeting to order.	1
	<b>2.</b>	Commission Organization	3
	<b>3.</b>	Approval of Minutes: December 16, 2014	9
	<b>4.</b>	Review of Board of Supervisors Action	13
	<b>5.</b>	Old Business	15
	<b>6.</b>	New Business	17
	<b>7.</b>	Correspondence / Informational	19
		a. HB 1849	

Next Meeting: March 19, 2015 at 7:30 p.m.





**County of Prince Edward  
Planning Commission  
Agenda Summary**

**Meeting Date:** February 17, 2015  
**Item No.:** 1  
**Department:** Planning Commission  
**Staff Contact:** W.W. Bartlett  
**Issue:** Call to Order

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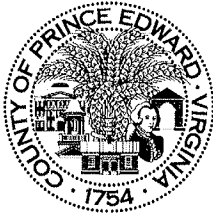
**Summary:** The County Administrator will call to order the February organizational meeting of the Prince Edward County Planning Commission and welcome new members John Prengaman and John “Jack” W. Perry, Jr.

**Attachments:**

**Recommendation:**

Motion _____	Mason _____	Hunt _____	Jones _____
Second _____	Townsend _____	Gilliam _____	Watson _____
Prengaman _____	Jenkins _____	Leatherwood _____	Perry _____





County of Prince Edward  
Planning Commission  
Agenda Summary

**Meeting Date:** February 17, 2015  
**Item No.:** 2  
**Department:** Planning Commission  
**Staff Contact:** W.W. Bartlett  
**Issue:** Commission Organization

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**Summary:**

- Election of Chairman
- Election of Vice-Chairman
- Set Day, Time and Place of Regular Meetings
- Adoption of Commission Bylaws

**Attachments:** 2015 Meeting Schedule  
Commission Bylaws

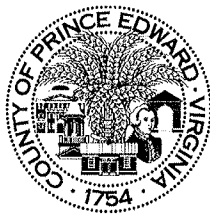
**Recommendations:** 1. Elect a Chairman  
2. Elect a Vice Chairman  
3. Establish the Regular Meeting Schedule  
4. Adopt the Bylaws

Motion \_\_\_\_\_  
Second \_\_\_\_\_  
Prengaman \_\_\_\_\_

Mason \_\_\_\_\_  
Townsend \_\_\_\_\_  
Jenkins \_\_\_\_\_

Hunt \_\_\_\_\_  
Gilliam \_\_\_\_\_  
Leatherwood \_\_\_\_\_

Jones \_\_\_\_\_  
Watson \_\_\_\_\_  
Peery \_\_\_\_\_



**PRINCE EDWARD COUNTY PLANNING COMMISSION**

**2015 Regular Meeting Schedule**

Tuesday, January 20, 2015

Tuesday, February 17, 2015

Tuesday, March 17, 2015

Tuesday, April 21, 2015

Tuesday, May 19, 2015

Tuesday, June 16, 2015

Tuesday, July 21, 2015

Tuesday, August 18, 2015

Tuesday, September 15, 2015

Tuesday, October 20, 2015

Tuesday, November 17, 2015

Tuesday, December 15, 2015

## Bylaws of the Prince Edward County Planning Commission

*As adopted by Prince Edward County Planning Commission on June 15, 2010, and amended.*

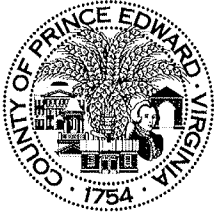
- 1) Meetings shall be held on a monthly basis, normally on the third Tuesday of the month at 7:30 P.M. in the Board of Supervisor's room. The schedule may be altered at any regularly scheduled meeting. Meetings may be cancelled due to lack of business, but the Commission shall meet at least every two months.
- 2) Additional meetings may be held at any time upon the call of the chairman, or by a majority of the members of the commission, or upon request of the Board of Supervisors following at least twenty-four hours' notice to each member of the commission.
- 3) The commission at its regular meeting in January of each year shall elect a chairman and vice-chairman. The recording secretary shall be the Director of Planning and Community Development or a designated alternate, who shall make an audiotape of the proceedings of each meeting and prepare minutes for the permanent records of the commission.
- 4) The duties and powers of the officers of the planning commission shall be as follows:
  - A. Chairman
    - Preside at all meetings of the commission.
    - Call special meetings of the commission in accordance with the bylaws.
    - Sign documents of the commission.
    - See that all actions of the commission are properly taken.
  - B. Vice-Chairman
    - During the absence, disability, or disqualification of the chairman, the vice-chairman shall exercise or perform all duties and be subject to all the responsibilities of the chairman.
  - C. Recording Secretary
    - Prepare an audiotape of the proceedings of each meeting of the commission.
    - Prepare minutes from the audiotape of each meeting in detail sufficient to include the tenor of public comments and the commission's reasoning underlying each decision or recommendation.
    - Circulate a copy of the minutes to each member of the commission before the next meeting.
    - Prepare the agenda for all commission meetings.

- Be custodian of commission records.
  - Inform the commission of correspondence relating to business of the commission and attend to such correspondence.
  - Handle funds allocated to the commission in accordance with its directives, state law, and county ordinances.
  - Sign official documents of the commission.
- 5) All maps, plats, site plans, and other materials submitted to the commission shall be filed in the office of the Director of Planning and Community Development and maintained for public access until the project to which they relate has been completed or vacated. Minutes of the commission's meetings shall be permanently filed in the office of the planner and maintained for public access.
  - 6) Matters referred to the commission by the Board of Supervisors shall be placed on the calendar for consideration and possible action at the first meeting of the commission after the referral and appropriate public notification.
  - 7) Matters coming to the commission shall be placed on the calendar for consideration only if the Director of Planning and Community Development certifies that the signature of all property owners directly involved have been affixed to the application or letter of request.
  - 8) A majority of the members of the commission shall constitute a quorum for the transaction of business, but no quorum shall be required for informational meetings at which no action is to be taken.
  - 9) Reconsideration of any decision of the commission may be taken when the interested party for such reconsideration makes a showing satisfactory to the chairman that, without fault or deliberate omission on his/her own part, essential facts were not presented to the chairman.
  - 10) Roberts Rules of Order for Committees shall govern the commission's proceedings in all cases not specifically ordered by these bylaws.
  - 11) Order of consideration of agenda items in a public hearing:
    - Director of Planning and Community Development or other staff member presents report including summary of all comments (written, electronic and verbal) received from interested parties and makes a recommendation.
    - Commission members may question the staff member on the presentation.
    - Proponent(s) of the agenda item make presentations as appropriate.
    - Opponent(s) of the agenda item make presentations as appropriate.
    - Applicant makes rebuttal of objections not previously covered.



- Commission members may question applicant, proponents, or opponents or may offer comments on the agenda item.
  - Commission may opt to gather additional information about the matter and take action at a future meeting, or vote on recommendation, whether approving or denying request, to Board of Supervisors.
- 12) Any member of the commission who has any personal or financial interest in any matter before the commission shall declare the nature of that interest and shall if the interest constitutes a legal conflict of interest by Virginia law recuse him/herself from the deliberations on that matter, including lobbying other members, participating in the discussions, or voting on the matter. In cases where the interests do not raise to the level of legal conflict of interest by Virginia law, a member may voluntarily recuse him/herself in the interest of avoiding the appearance of conflict. All commission members shall be sensitive to the importance of impartiality and shall endeavor to always avoid any actual or appearance of conflict of interest.
  - 13) Each member of the commission who has knowledge that he/*she* will be unable to attend a scheduled meeting of the commission shall notify the County Administrator's office at the earliest opportunity. The Director of Planning and Community Development shall notify the chairman if projected absences will produce a lack of quorum. Members who are absent from three consecutive meetings, or who are absent from more than half of the commission's meetings during a calendar year, will be referred to the Prince Edward County Board of Supervisors for possible replacement.
  - 14) The vice-chairman shall succeed the chairman if he vacates his office before his term is completed. A new vice-chairman shall be elected at the next regular meeting.
  - 15) These bylaws may be recommended for amendment at any meeting having a quorum present by a majority vote, provided that notice of such proposed amendment has been given to each member in writing at least two weeks prior to its consideration. If recommended for approval, proposed amendments must then be adopted by the Board of Supervisors before becoming effective.
  - 16) Planning Commission members are strongly encouraged to attend a Virginia Certified Planning Commissioner's Training Program within two years of their appointment to the Planning Commission. This certification course will provide a basic foundation of planning law, history, and technical expertise needed by planning commissioners to maximize their competency and ability to render legally defensible decisions and recommendations. Costs associated with the program will normally be paid by Prince Edward County.





County of Prince Edward  
Planning Commission  
Agenda Summary

Meeting Date: February 17, 2015  
Item No.: 3  
Department: Planning Commission  
Staff Contact: W.W. Bartlett  
Issue: Approval of Minutes – December 16, 2014

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**Summary:**

The December 16, 2014 Planning Commission meeting draft minutes are attached.

**Attachments:**

December 16, 2014 Draft Minutes

**Recommendation:**

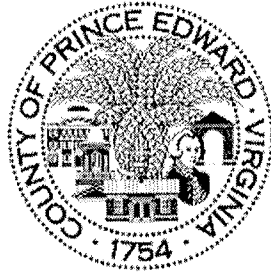
**Acceptance**

Motion \_\_\_\_\_  
Second \_\_\_\_\_  
Prengaman \_\_\_\_\_

Mason \_\_\_\_\_  
Townsend \_\_\_\_\_  
Jenkins \_\_\_\_\_

Hunt \_\_\_\_\_  
Gilliam \_\_\_\_\_  
Leatherwood \_\_\_\_\_

Jones \_\_\_\_\_  
Watson \_\_\_\_\_  
Perry \_\_\_\_\_



**Prince Edward County Planning Commission  
Meeting Minutes  
December 16, 2014  
7:30 pm**

Members Present: William Porterfield, Chairman Chris Mason, Vice Chairman  
Donald Gilliam Preston L. Hunt  
Mark Jenkins Robert "Bobby" Jones  
Jack Leatherwood W. Parker Terry  
John Townsend Cannon Watson

Staff Present: Wade Bartlett, County Administrator

The December 16, 2014 meeting was called to order at 7:30 p.m. by Chairman Porterfield.

**Approval of Minutes: October 21, 2014:**

Chairman Porterfield requested any changes or corrections be made known; being none, he declared the October 21, 2014 meeting minutes approved as circulated.

**Review of Board of Supervisors Actions**

Mr. Bartlett reported the Board of Supervisors appointed John Prengaman and Jack W. Peery, Jr., and reappointed Jack Leatherwood and Cannon Watson to the Planning Commission.

Mr. Bartlett congratulated John F. Townsend for being chosen by the Board of Supervisors for recommendation to the Circuit Court Judge to serve on the Board of Zoning Appeals.

Mr. Bartlett then stated Mr. Robert "Rob" Fowler will begin as the new Planning Director on January 5, 2015. He has 27 years' experience, having worked in the Hampton area and in Lynchburg.

Mr. Bartlett announced the dissolution of the RC&D, which will occur during the first half of 2015. He stated the reason is the lack of funding; the RC&D was started in 1991 with federal funding which was cut in 2010. He said two of the 185 projects they worked were the Civil Rights in Education Trail and the Buy Fresh Buy Local program.

Mr. Bartlett said VDOT and the Board of Supervisors will hold the Six Year Plan meeting on February 10, 2015.

Mr. Bartlett then said the Board approved the Rezoning and the Special Use Permit for the Concrete and Asphalt plant; he added that the State has approved Luck Stone to fill out and submit their permit application.

Mr. Bartlett then reported the Town of Farmville has requested boundary adjustments:

- 48.9 acres off Scott Drive and Milnwood Road be brought into the Town. (101 Farmville District)
- Approximately 225 acres fronting on Germantown Road (a portion of the old Smith Farm) be brought into the Town. (701 Farmville District)

Commissioner Watson asked if there have been any “war games” held. Mr. Bartlett stated that the Board did not approve the Neathery’s request for the military simulation games.

#### **Old Business**

Chairman Porterfield stated that most know this meeting marks the end of his term; he said the current Commissioners are a good group and are always constructive. He said the Commissioners will need to elect a new Chairman, and gave several pointers for the Commission, including the recurrent issue regarding the building lot size and the necessity to keep current on Legislative changes regarding the Zoning Ordinance. He advised the Commission to attend the meetings held in June or July of each year regarding these changes. Chairman Porterfield stated it has consistently been a pleasure and he has enjoyed working with the group.

#### **New Business**

Chairman Porterfield announced Dominion Virginia Power will hold an informational meeting regarding the Natural Gas Pipeline on Tuesday, January 13, 2015, at the Fort Pickett Officers Club, Blackstone. He said if Prince Edward County can get natural gas, it would make a significant difference.

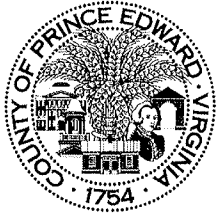
Chairman Porterfield stated a meeting date will need to be set for January; after some discussion, the Commissioners concurred that the regular Planning Commission meetings will continue to be held on the third Tuesday of each month, unless otherwise announced.

Commissioner Jones stated there will be an informational meeting regarding the Locket Creek Road (State Route 619) bridge project on Monday, January 26, 2015 at 5:30 p.m. at the Rice Firehouse. Commissioner Jones then said he has enjoyed working with Chairman Porterfield over the years and thanked him for sharing his knowledge and wisdom.

Chairman Porterfield declared the meeting adjourned at 7:51 p.m.

**Next Meeting:                    January 20, 2015 at 7:30 p.m.**





**County of Prince Edward  
Planning Commission  
Agenda Summary**

**Meeting Date:** February 17, 2015  
**Item No.:** 4  
**Department:** Planning Commission  
**Staff Contact:** W.W. Bartlett  
**Issue:** Review of Board of Supervisors Action

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**Summary:**

- Sam Coleman was appointed to the Board of Zoning Appeals. He will replace Mr. Garnett. Per Section 15.2-2308 of the Code of Virginia “members of the BZA shall hold no other public office...” Mr. Garnett serves on the board of the Regional Jail, thus he could not also serve on the BZA.
  
- The Board voted to approve the dissolution of the Old Dominion RC&D Council.
  
- The Board authorized the preparation of an Enterprise Zone Boundary Amendment. This will include an application period, a public hearing and submission of any changes to the Department of Housing and Community Development (DHCD)

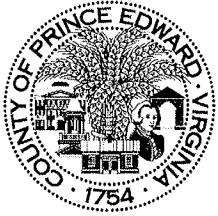
**Attachments:**

**Recommendations:**

Motion _____	Mason _____	Hunt _____	Jones _____
Second _____	Townsend _____	Gilliam _____	Watson _____
Prengaman _____	Jenkins _____	Leatherwood _____	Peery _____







County of Prince Edward  
Planning Commission  
Agenda Summary

Meeting Date: February 17, 2015  
Item No.: 5  
Department: Planning Commission  
Staff Contact: W.W. Bartlett  
Issue: Old Business

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**Summary:**

There is no old business to discuss at this time.

**Attachments:**

**Recommendations:**

Motion \_\_\_\_\_  
Second \_\_\_\_\_  
Prengaman \_\_\_\_\_

Mason \_\_\_\_\_  
Townsend \_\_\_\_\_  
Jenkins \_\_\_\_\_

Hunt \_\_\_\_\_  
Gilliam \_\_\_\_\_  
Leatherwood \_\_\_\_\_

Jones \_\_\_\_\_  
Watson \_\_\_\_\_  
Peery \_\_\_\_\_





**County of Prince Edward  
Planning Commission  
Agenda Summary**

**Meeting Date:** February 17, 2015  
**Item No.:** 6  
**Department:** Planning Commission  
**Staff Contact:** W.W. Bartlett  
**Issue:** New Business

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**Summary:**

With the hiring of a Director of Planning and Community Development, the County staff will have more manhours available to complete various projects. It is the recommendation of the County Staff that the Planning Commission discuss work items that the Commission would like to see accomplished in the next year. Some of these could be

- Reprinting the zoning ordinance to include all past changes/amendments.
- Review the zoning ordinance to determine if additional amendments or additions are needed.
- Additional items desired by the Commission

**Attachments:**

**Recommendations:**

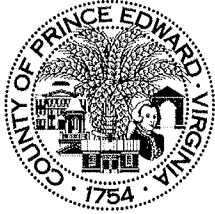
Motion \_\_\_\_\_  
Second \_\_\_\_\_  
Prengaman \_\_\_\_\_

Mason \_\_\_\_\_  
Townsend \_\_\_\_\_  
Jenkins \_\_\_\_\_

Hunt \_\_\_\_\_  
Gilliam \_\_\_\_\_  
Leatherwood \_\_\_\_\_

Jones \_\_\_\_\_  
Watson \_\_\_\_\_  
Peery \_\_\_\_\_





County of Prince Edward  
Planning Commission  
Agenda Summary

**Meeting Date:** February 17, 2015  
**Item No.:** 7  
**Department:** Planning Commission  
**Staff Contact:** W.W. Bartlett  
**Issue:** Correspondence/Informational

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**Summary:**

- A. Attached you will find HB1849. This bill proposes to make substantial changes to the approval of variances by changing the definition of "variance. The bill is complex and makes major changes to the standards for granting zoning variances, which is a process that has been clarified by years of case law. The bottom line is that the bill will make it easier to obtain a variance. The bill also changes the rules and procedures for local staff interacting with the Board of Zoning Appeals (BZA). When an applicant has an application for a variance or an appeal of a zoning administrator's decision, the "non-legal staff" of the locality and the applicant may not talk with BZA members about the matter without the applicant being there. If this rule is violated, the information must be conveyed to the other party. The restriction does not apply to the lawyers for the locality or board.
  
- B. Attached you will find an updated contact list for the Planning Commission.

**Attachments:**

- A. HB 1849
- B. Planning Commission Contact List

**Recommendation:**

Motion _____	Mason _____	Hunt _____	Jones _____
Second _____	Townsend _____	Gilliam _____	Watson _____
Prengaman _____	Jenkins _____	Leatherwood _____	Perry _____

15104882D

**HOUSE BILL NO. 1849**

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Counties, Cities and Towns

on February 6, 2015)

(Patron Prior to Substitute—Delegate Marshall, D.W.)

*A BILL to amend and reenact §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2308.1, relating to variances.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-2201, 15.2-2308, 15.2-2309, and 15.2-2314 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2308.1 as follows:**

**§ 15.2-2201. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Affordable housing" means, as a guideline, housing that is affordable to households with incomes at or below the area median income, provided that the occupant pays no more than thirty percent of his gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances authorized by this chapter, local governments may establish individual definitions of affordable housing and affordable dwelling units including determination of the appropriate percent of area median income and percent of gross income.

"Conditional zoning" means, as part of classifying land within a locality into areas and districts by legislative action, the allowing of reasonable conditions governing the use of such property, such conditions being in addition to, or modification of the regulations provided for a particular zoning district or zone by the overall zoning ordinance.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units. The term "development" shall not be construed to include any tract of land which will be principally devoted to agricultural production.

"Historic area" means an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation.

"Incentive zoning" means the use of bonuses in the form of increased project density or other benefits to a developer in return for the developer providing certain features, design elements, uses, services, or amenities desired by the locality, including but not limited to, site design incorporating principles of new urbanism and traditional neighborhood development, environmentally sustainable and energy-efficient building design, affordable housing creation and preservation, and historical preservation, as part of the development.

"Local planning commission" means a municipal planning commission or a county planning commission.

"Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under jurisdiction of the U.S. Department of Defense, including any leased facility, or any land or interest in land owned by the Commonwealth and administered by the Adjutant General of Virginia or the Virginia Department of Military Affairs. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

"Mixed use development" means property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

"Official map" means a map of legally established and proposed public streets, waterways, and public areas adopted by a locality in accordance with the provisions of Article 4 (§ 15.2-2233 et seq.) hereof.

"Planned unit development" means a form of development characterized by unified site design for a variety of housing types and densities, clustering of buildings, common open space, and a mix of building types and land uses in which project planning and density calculation are performed for the entire development rather than on an individual lot basis.

"Planning district commission" means a regional planning agency chartered under the provisions of Chapter 42 (§ 15.2-4200 et seq.) of this title.

"Plat" or "plat of subdivision" means the schematic representation of land divided or to be divided and information in accordance with the provisions of §§ 15.2-2241, 15.2-2242, 15.2-2258, 15.2-2262, and 15.2-2264, and other applicable statutes.

"Preliminary subdivision plat" means the proposed schematic representation of development or

HOUSE SUBSTITUTE

HB1849H1

2/9/15 19:5

60 subdivision that establishes how the provisions of §§ 15.2-2241 and 15.2-2242, and other applicable  
 61 statutes will be achieved.

62 "Resident curator" means a person, firm, or corporation that leases or otherwise contracts to manage,  
 63 preserve, maintain, operate, or reside in a historic property in accordance with the provisions of  
 64 § 15.2-2306 and other applicable statutes.

65 "Site plan" means the proposal for a development or a subdivision including all covenants, grants or  
 66 easements and other conditions relating to use, location and bulk of buildings, density of development,  
 67 common open space, public facilities and such other information as required by the subdivision  
 68 ordinance to which the proposed development or subdivision is subject.

69 "Special exception" means a special use; that is a use not permitted in a particular district except by  
 70 a special use permit granted under the provisions of this chapter and any zoning ordinances adopted  
 71 herewith.

72 "Street" means highway, street, avenue, boulevard, road, lane, alley, or any public way.

73 "Subdivision," unless otherwise defined in an ordinance adopted pursuant to § 15.2-2240, means the  
 74 division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose  
 75 of transfer of ownership or building development, or, if a new street is involved in such division, any  
 76 division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall  
 77 relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation  
 78 of any single division of land into two lots or parcels, a plat of such division shall be submitted for  
 79 approval in accordance with § 15.2-2258.

80 "Variance" means, in the application of a zoning ordinance, a reasonable deviation from those  
 81 provisions regulating the *shape*, size, or area of a lot or parcel of land; or the size, *height*, area, bulk, or  
 82 location of a building or structure when the strict application of the ordinance would ~~result in~~  
 83 ~~unnecessary or unreasonable hardship to the property owner~~ *unreasonably restrict the utilization of the*  
 84 *property*, and such need for a variance would not be shared generally by other properties, and provided  
 85 such variance is not contrary to the ~~intended spirit and~~ purpose of the ordinance; ~~and would result in~~  
 86 ~~substantial justice being done~~. It shall not include a change in use, which change shall be accomplished  
 87 by a rezoning or by a conditional zoning.

88 "Zoning" or "to zone" means the process of classifying land within a locality into areas and districts,  
 89 such areas and districts being generally referred to as "zones," by legislative action and the prescribing  
 90 and application in each area and district of regulations concerning building and structure designs,  
 91 building and structure placement and uses to which land, buildings and structures within such designated  
 92 areas and districts may be put.

93 **§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.**

94 A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior  
 95 enabling laws, shall establish a board of zoning appeals that shall consist of either five or seven  
 96 residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a  
 97 locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his  
 98 designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of  
 99 office shall be for five years each except that original appointments shall be made for such terms that  
 100 the term of one member shall expire each year. The secretary of the board shall notify the court at least  
 101 thirty days in advance of the expiration of any term of office, and shall also notify the court promptly if  
 102 any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.  
 103 Members may be reappointed to succeed themselves. Members of the board shall hold no other public  
 104 office in the locality except that one may be a member of the local planning commission. A member  
 105 whose term expires shall continue to serve until his successor is appointed and qualifies. The circuit  
 106 court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least  
 107 one but not more than three alternates to the board of zoning appeals. At the request of the local  
 108 governing body, the circuit court for any other locality may appoint not more than three alternates to the  
 109 board of zoning appeals. The qualifications, terms and compensation of alternate members shall be the  
 110 same as those of regular members. A regular member when he knows he will be absent from or will  
 111 have to abstain from any application at a meeting shall notify the chairman twenty-four hours prior to  
 112 the meeting of such fact. The chairman shall select an alternate to serve in the absent or abstaining  
 113 member's place and the records of the board shall so note. Such alternate member may vote on any  
 114 application in which a regular member abstains.

115 B. Localities may, by ordinances enacted in each jurisdiction, create a joint board of zoning appeals  
 116 that shall consist of two members appointed from among the residents of each participating jurisdiction  
 117 by the circuit court for each county or city, plus one member from the area at large to be appointed by  
 118 the circuit court or jointly by such courts if more than one, having jurisdiction in the area. The term of  
 119 office of each member shall be five years except that of the two members first appointed from each  
 120 jurisdiction, the term of one shall be for two years and of the other, four years. Vacancies shall be filled  
 121 for the unexpired terms. In other respects, joint boards of zoning appeals shall be governed by all other

122 provisions of this article.

123 C. With the exception of its secretary and the alternates, the board shall elect from its own  
124 membership its officers who shall serve annual terms as such and may succeed themselves. The board  
125 may elect as its secretary either one of its members or a qualified individual who is not a member of  
126 the board, excluding the alternate members. A secretary who is not a member of the board shall not be  
127 entitled to vote on matters before the board. ~~For~~ *Notwithstanding any other provision of law, general or*  
128 *special, for the conduct of any hearing, a quorum shall be not less than a majority of all the members of*  
129 *the board and the board shall offer an equal amount of time in a hearing on the case to the applicant,*  
130 *appellant or other person aggrieved under § 15.2-2314, and the staff of the local governing body.* Except  
131 for matters governed by § 15.2-2312, no action of the board shall be valid unless authorized by a  
132 majority vote of those present and voting. The board may make, alter and rescind rules and forms for its  
133 procedures, consistent with ordinances of the locality and general laws of the Commonwealth. The board  
134 shall keep a full public record of its proceedings and shall submit a report of its activities to the  
135 governing body or bodies at least once each year.

136 D. Within the limits of funds appropriated by the governing body, the board may employ or contract  
137 for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of  
138 the board may receive such compensation as may be authorized by the respective governing bodies. Any  
139 board member or alternate may be removed for malfeasance, misfeasance or nonfeasance in office, or  
140 for other just cause, by the court that appointed him, after a hearing held after at least fifteen days'  
141 notice.

142 E. Notwithstanding any contrary provisions of this section, in the City of Virginia Beach, members  
143 of the board shall be appointed by the governing body. The governing body of such city shall also  
144 appoint at least one but not more than three alternates to the board.

145 § 15.2-2308.1. *Boards of zoning appeals, ex parte communications, proceedings.*

146 A. *The non-legal staff of the governing body may have ex parte communications with a member of*  
147 *the board prior to the hearing but may not discuss the facts or law relative to a particular case. The*  
148 *applicant, landowner or his agent or attorney may have ex parte communications with a member of the*  
149 *board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex*  
150 *parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform*  
151 *the other party as soon as practicable and advise the other party of the substance of such*  
152 *communication.*

153 B. *Any materials relating to a particular case, including a staff recommendation or report furnished*  
154 *to a member of the board, shall be made available without cost to such applicant, appellant or other*  
155 *person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event less than three*  
156 *business days of providing such materials to a member of the board. If the applicant, appellant or other*  
157 *person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the*  
158 *locality other than those materials provided to the board, such request shall be made pursuant to*  
159 *§ 2.2-3704. Any such materials furnished to a member of the board shall also be made available for*  
160 *public inspection pursuant to subsection F of § 2.2-3707.*

161 C. *For the purposes of this section, "non-legal staff of the governing body" means any staff who is*  
162 *not in the office of the attorney for the locality, or for the board, or who is appointed by special law or*  
163 *pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte*  
164 *communications with any attorney or staff of any attorney where such communication is protected by the*  
165 *attorney-client privilege or other similar privilege or protection of confidentiality.*

166 D. *This section shall not apply to cases where an application for a special exception has been filed*  
167 *pursuant to subdivision 6 of § 15.2-2309,*

168 § 15.2-2309. Powers and duties of boards of zoning appeals.

169 Boards of zoning appeals shall have the following powers and duties:

170 1. To hear and decide appeals from any order, requirement, decision, or determination made by an  
171 administrative officer in the administration or enforcement of this article or of any ordinance adopted  
172 pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the  
173 administrative officer was correct. *The determination of the administrative officer shall be presumed to*  
174 *be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his*  
175 *determination after which the appellant has the burden of proof to rebut such presumption of*  
176 *correctness by a preponderance of the evidence. The board shall consider the purpose and intent of any*  
177 *applicable ordinances, laws, and regulations in making its decision. For purposes of this section,*  
178 *determination means any order, requirement, decision or determination made by an administrative*  
179 *officer.*

180 2. ~~To authorize~~ *Notwithstanding any other provision of law, general or special, to grant upon appeal*  
181 *or original application in specific cases such a variance as defined in § 15.2-2201 from the terms of the*  
182 *ordinance as will not be contrary to the public interest, when, owing to special conditions a literal*



183 enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the  
 184 ordinance shall be observed and substantial justice done, as follows: the burden of proof shall be on the  
 185 applicant for a variance to prove by a preponderance of the evidence that his application meets the  
 186 standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

187 When a property owner can show that his Notwithstanding any other provision of law, general or  
 188 special, a variance shall be granted if the evidence shows that the strict application of the terms of the  
 189 ordinance would unreasonably restrict the utilization of the property or that the granting of the variance  
 190 would alleviate a hardship due to a physical condition relating to the property or improvements thereon  
 191 at the time of the effective date of the ordinance, and (i) the property interest for which the variance is  
 192 being requested was acquired in good faith and where by reason of the exceptional and any hardship  
 193 was not created by the applicant for the variance; narrowness, shallowness, size, or shape of a specific  
 194 piece of property at the time of the effective date of the ordinance, or where by reason of exceptional  
 195 topographic conditions or other extraordinary situation or condition of the piece of property, or of the  
 196 condition, situation, or development of property immediately adjacent thereto, the strict application of  
 197 the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the  
 198 property or where the board is satisfied, upon the evidence heard by it, that the granting of the variance  
 199 will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience  
 200 sought by the applicant, provided that all variances shall be in harmony with the intended spirit and  
 201 purpose of the ordinance: (ii) the granting of the variance will not be of substantial detriment to  
 202 adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition  
 203 or situation of the property concerned is not of so general or recurring a nature as to make reasonably  
 204 practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;  
 205 (iv) the granting of the variance does not result in a use that is not otherwise permitted on such  
 206 property or a change in the zoning classification of the property; and (v) the relief or remedy sought by  
 207 the variance application is not available through a special exception process that is authorized in the  
 208 ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning  
 209 ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.

210 No such variance shall be authorized by the board unless it finds:

- 211 a. That the strict application of the ordinance would produce undue hardship relating to the property;
- 212 b. That the hardship is not shared generally by other properties in the same zoning district and the  
 213 same vicinity; and
- 214 c. That the authorization of the variance will not be of substantial detriment to adjacent property and  
 215 that the character of the district will not be changed by the granting of the variance.

216 No variance shall be authorized granted except after notice and hearing as required by § 15.2-2204.  
 217 However, when giving any required notice to the owners, their agents or the occupants of abutting  
 218 property and property immediately across the street or road from the property affected, the board may  
 219 give such notice by first-class mail rather than by registered or certified mail.

220 No variance shall be authorized unless the board finds that the condition or situation of the property  
 221 concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of  
 222 a general regulation to be adopted as an amendment to the ordinance.

223 In authorizing granting a variance, the board may impose such conditions regarding the location,  
 224 character, and other features of the proposed structure or use as it may deem necessary in the public  
 225 interest; and may require a guarantee or bond to ensure that the conditions imposed are being and will  
 226 continue to be complied with. Notwithstanding any other provision of law, general or special, the  
 227 property upon which a property owner has been granted a variance shall be treated as conforming for all  
 228 purposes under state law and local ordinance; however, the structure permitted by the variance may not  
 229 be expanded unless the expansion is within an area of the site or part of the structure for which no  
 230 variance is required under the ordinance. Where the expansion is proposed within an area of the site or  
 231 part of the structure for which a variance is required, the approval of an additional variance shall be  
 232 required.

233 3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing  
 234 as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or  
 235 the occupants of abutting property and property immediately across the street or road from the property  
 236 affected, the board may give such notice by first-class mail rather than by registered or certified mail.

237 4. To hear and decide applications for interpretation of the district map where there is any  
 238 uncertainty as to the location of a district boundary. After notice to the owners of the property affected  
 239 by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret  
 240 the map in such way as to carry out the intent and purpose of the ordinance for the particular section or  
 241 district in question. However, when giving any required notice to the owners, their agents or the  
 242 occupants of abutting property and property immediately across the street or road from the property  
 243 affected, the board may give such notice by first-class mail rather than by registered or certified mail.  
 244 The board shall not have the power to change substantially the locations of district boundaries as

245 established by ordinance.

246 5. No provision of this section shall be construed as granting any board the power to rezone property  
247 or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by  
248 the governing body.

249 6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The  
250 board may impose such conditions relating to the use for which a permit is granted as it may deem  
251 necessary in the public interest, including limiting the duration of a permit, and may require a guarantee  
252 or bond to ensure that the conditions imposed are being and will continue to be complied with.

253 No special exception may be granted except after notice and hearing as provided by § 15.2-2204.  
254 However, when giving any required notice to the owners, their agents or the occupants of abutting  
255 property and property immediately across the street or road from the property affected, the board may  
256 give such notice by first-class mail rather than by registered or certified mail.

257 7. To revoke a special exception previously granted by the board of zoning appeals if the board  
258 determines that there has not been compliance with the terms or conditions of the permit. No special  
259 exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when  
260 giving any required notice to the owners, their agents or the occupants of abutting property and property  
261 immediately across the street or road from the property affected, the board may give such notice by  
262 first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the  
263 right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that  
264 there has not been compliance with the terms and conditions of the permit, then it may also revoke  
265 special exceptions in the manner provided by this subdivision.

266 8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days  
267 to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to  
268 act, finds and declares that weather or other conditions are such that it is hazardous for members to  
269 attend the meeting. Such finding shall be communicated to the members and the press as promptly as  
270 possible. All hearings and other matters previously advertised for such meeting in accordance with  
271 § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

272 **§ 15.2-2314. Certiorari to review decision of board.**

273 Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals,  
274 or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may file with the  
275 clerk of the circuit court for the county or city a petition that shall be styled "In Re: [date] Decision of  
276 the Board of Zoning Appeals of [locality name]" specifying the grounds on which aggrieved within 30  
277 days after the final decision of the board.

278 Upon the presentation of such petition, the court shall allow a writ of certiorari to review the  
279 decision of the board of zoning appeals and shall prescribe therein the time within which a return  
280 thereto must be made and served upon the secretary of the board of zoning appeals or, if no secretary  
281 exists, the chair of the board of zoning appeals, which shall not be less than 10 days and may be  
282 extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed  
283 from, but the court may, on application, on notice to the board and on due cause shown, grant a  
284 restraining order.

285 Any review of a decision of the board shall not be considered an action against the board and the  
286 board shall not be a party to the proceedings; however, the board shall participate in the proceedings to  
287 the extent required by this section. The governing body, the landowner, and the applicant before the  
288 board of zoning appeals shall be necessary parties to the proceedings *in the circuit court*. The court may  
289 permit intervention by any other person or persons jointly or severally aggrieved by any decision of the  
290 board of zoning appeals.

291 The board of zoning appeals shall not be required to return the original papers acted upon by it but it  
292 shall be sufficient to return certified or sworn copies thereof or of the portions thereof as may be called  
293 for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to  
294 show the grounds of the decision appealed from and shall be verified.

295 ~~If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition  
296 of the matter, it may take evidence or appoint a commissioner to take evidence as it may direct and  
297 report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a  
298 part of the proceedings upon which the determination of the court shall be made.~~ The court may reverse  
299 or affirm, wholly or partly, or may modify the decision brought up for review.

300 In the case of an appeal from the board of zoning appeals to the circuit court of an order,  
301 requirement, decision or determination of a zoning administrator or other administrative officer in the  
302 administration or enforcement of any ordinance or provision of state law, or any modification of zoning  
303 requirements pursuant to § 15.2-2286, the findings and conclusions of the board of zoning appeals on  
304 questions of fact shall be presumed to be correct. The appealing party may rebut that presumption by  
305 proving by a preponderance of the evidence, including the record before the board of zoning appeals,

306 that the board of zoning appeals erred in its decision. Any party may introduce evidence in the  
307 proceedings in the court. The court shall hear any arguments on questions of law de novo.

308 In the case of an appeal by a person of any decision of the board of zoning appeals that denied or  
309 granted an application for a variance, ~~or application for a special exception~~, the decision of the board of  
310 zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by ~~showing~~  
311 to the satisfaction of the court that the board of zoning appeals applied erroneous principles of law, or  
312 where the discretion of the board of zoning appeals is involved, the decision of the board of zoning  
313 appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance *proving by*  
314 *a preponderance of the evidence, including the record before the board of zoning appeals, that the*  
315 *board of zoning appeals erred in its decision.*

316 *In the case of an appeal by a person of any decision of the board of zoning appeals that denied or*  
317 *granted application for a special exception, the decision of the board of zoning appeals shall be*  
318 *presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the*  
319 *court that the board of zoning appeals applied erroneous principles of law, or where the discretion of*  
320 *the board of zoning appeals is involved, the decision of the board of zoning appeals was plainly wrong,*  
321 *was in violation of the purpose and intent of the zoning ordinance, and is not fairly debatable.*

322 *In the case of an appeal from the board of zoning appeals to the circuit court of a decision of the*  
323 *board, any party may introduce evidence in the proceedings in the court in accordance with the Rules*  
324 *of Evidence of the Supreme Court of Virginia.*

325 Costs shall not be allowed against the locality, unless it shall appear to the court that it acted in bad  
326 faith or with malice. In the event the decision of the board is affirmed and the court finds that the  
327 appeal was frivolous, the court may order the person or persons who requested the issuance of the writ  
328 of certiorari to pay the costs incurred in making the return of the record pursuant to the writ of  
329 certiorari. If the petition is withdrawn subsequent to the filing of the return, the locality may request that  
330 the court hear the matter on the question of whether the appeal was frivolous.