

# CHARLESTON COUNTY Board of Zoning Appeals

## Rules of Procedure

The Board of Zoning Appeals (BZA) of Charleston County is a quasi-judicial body established to interpret and grant relief from the *Charleston County Zoning and Land Development Regulations Ordinance (ZLDR)*. The administrative office of the BZA shall be located in the office of the Charleston County Zoning and Planning Department (CCZPD). The actions of the BZA are governed by the *ZLDR* and the *Code of Laws of South Carolina, Title 6, Chapter 29, Article 5 Local Planning-Zoning et seq.* The action of the BZA and its members shall comply with *Robert's Rules of Order* unless such rules are in conflict with the adopted BZA Rules of Procedure. The BZA Rules of Procedure shall always be available to the public upon request.

The BZA has decision making authority over three (3) types of applications:

1. Appeal of Zoning-Related Administrative Decisions may be filed when there is an alleged error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the *ZLDR*.
2. Variances may be filed when strict application of the zoning ordinance would cause an unnecessary hardship. The BZA's actions must be based on specific standards as contained in the *ZLDR*.
3. Special Exceptions allow the BZA to permit uses if certain terms and conditions in the *ZLDR* are satisfied.

In each case, the BZA is authorized to approve, to approve with conditions, or to deny a request. The BZA is authorized to refer the application to staff or to defer action if additional information is deemed necessary.

## MEMBERSHIP

1. Charleston County Council determines members of the BZA for their specific expertise, community knowledge, and concern for the future welfare of the total community and its citizens. They shall represent a broad cross section of community interest, concerns and professions. Each member must be a resident of Charleston County.
2. Should a vacancy occur in the membership of the BZA, the Secretary of the BZA, for the purpose of appointing a replacement member, will give immediate notice to the Clerk of County Council.
3. Members who resign by absenteeism or due to holding dual offices must vacate their seat immediately upon resignation. Members who resign for other reasons will serve until their successors are appointed and qualified.

## OFFICERS

1. CHAIR - Each March the BZA shall elect one (1) of its members to serve as Chair. The duration of the term shall be one (1) year. The Chair may be reelected. The Chair shall be a voting member of the BZA.

2. VICE-CHAIR - Each March the BZA shall elect one (1) of its members to serve as Vice-Chair. The duration of this term shall be one (1) year. The Vice-Chair may be reelected.
3. In the event that both the Chair and the Vice-Chair are absent from a meeting, the legal staff shall conduct an election from among those members present to determine who shall conduct that meeting.
4. SECRETARY - Each March the BZA shall elect one (1) of its members or a member of the CCZPD to serve as Secretary. The duration of the term shall be one (1) year. The Secretary may be reelected. In March of each year the Secretary shall provide the BZA a written document setting forth the terms of the existing members.
5. Should a vacancy occur among the officers of the BZA, an election shall be held at the next regularly scheduled meeting to fill the unexpired term of that officer.

### **BOARD MEMBER ATTENDANCE**

1. It is most important that members of the Board be present at meetings of the Board. When a member is planning to be tardy or not able to attend a meeting of the Board, said member should so notify the Board's administrative personnel in advance. Staff will inform the Chair of the anticipated tardiness or absence.
2. Board members shall be allowed (3) three excused absences during a term-year (March 1 thru February 28). Excused absences include personal and family emergencies, absences due to work related responsibilities, religious holidays, and when the regular meeting has been changed from the first Monday of the month to the second Monday of the month. Excused absences shall be allowed only after a written request is submitted to the Secretary of the BZA for the meeting which the member is requesting the absence.
3. If a member of the Board should fail to be present or leave during a meeting, such actions shall count as an unexcused absence with the following exceptions: an unforeseen family emergency, an unforeseen health issue, or a member's recusal from the case.
4. If a member of the Board has (2) two unexcused absences or has over (4) four total absences of regularly scheduled meetings of the Board during a term-year (March 1 thru February 28), it shall be construed as Resignation by Absence, and the Secretary of the BZA, for the purpose of appointing a replacement member, will give immediate notice to the Clerk of County Council. If a member of the Board should leave during a meeting, such actions shall count as an unexcused absence subject to this paragraph with the following exceptions; an unforeseen family emergency, and unforeseen health issue, or a member's recusal from the case.

### **MEETINGS**

1. Each November the BZA shall establish its schedule of meetings for the next calendar year, customarily the first Monday of each month. The time and place of the meetings shall be specified in the schedule. The BZA public hearing dates, times, and locations are subject to change provided all required notifications have been met. The BZA may schedule additional public hearings if necessary.



2. A quorum is necessary in order for the BZA to conduct business. A quorum shall consist of a simple majority of the total membership of the BZA.
3. Should an emergency situation arise that cannot be addressed by CCZPD, staff may ask the Chair to call a special meeting to address that specific situation when waiting until the next regularly scheduled meeting of the BZA will dangerously and seriously affect an applicant or the general welfare of the community. The special meeting may be called at the discretion of the Chair. Alternatively, such a special meeting may be called upon the request of three (3) members of the BZA to the Chair. When a special meeting is called at least a fifteen (15) calendar day notice shall be given to the BZA and the public.
4. When a regularly scheduled meeting is canceled as a result of a hurricane or other emergency situation, a substitute meeting may be held after at least a fifteen (15) calendar day notice to the BZA and the public.
5. Members of the BZA shall not be part of a discussion with a proponent or opponent of any pending application except during BZA public hearings. If a proponent or opponent approaches a member regarding an application, the member shall disclose that information at the BZA meeting when the matter is called.
6. Members of the BZA should disqualify themselves from discussion and voting if they have any business relationship with any proponent or opponent of an application or if any proponent or opponent of an application has sought to influence the vote in any forum other than the public hearing.
7. Members of the BZA shall recuse themselves from participating in any matter in which there is a financial or personal interest in the property or action concerned or will be directly affected by the decision.
8. Swearing of witnesses by CCZPD staff may be done individually or as a group. All persons addressing the BZA to give testimony or evidence must be sworn in. All persons addressing the BZA to give testimony or evidence shall state their full name and current address.
9. Public hearings of the BZA shall be conducted in accordance with these Rules of Procedure and all applicable laws. The normal order of hearing, subject to modification by the Chair, shall be:
  - a. Variances and Special Exceptions
    - i. Statement of matter to be heard (Chair or Secretary)
    - ii. Presentation of Application by Staff (limited to five [5] minutes);
    - iii. Questions to Staff by BZA;
    - iv. Presentation of Application by Applicant (limited to five [5] minutes);
    - v. Questions to the Applicant by BZA;
    - vi. Presentation of information either in support of or in opposition to the Application (limited to two [2] minutes per person);
    - vii. Applicant's Reply to Opposition (limited to two [2] minutes); and
    - viii. BZA Motions to Close the Case to the Public.
    - ix. BZA Motions Concerning Application, stating specific findings of fact and conclusions of law.



- b. Appeals of Zoning-Related Administrative Decisions
  - i. Statement of matter to be heard (Chair or Secretary)
  - ii. Presentation by Appellant (limited to ten [10] minutes);
  - iii. Questions to the Appellant by BZA;
  - iv. Presentation by official being appealed (limited to ten [10] minutes);
  - v. Questions to the Official being appealed by BZA;
  - vi. Presentations or information either in support of or in opposition to the Appeal (limited to two [2] minutes per person);
  - vii. Appellant's Reply to Opposition (limited to two [2] minutes);
  - viii. BZA Motions to Close the Case to the Public.
  - ix. BZA Motions Concerning Appeal, stating specific findings of fact and conclusions of law.

Time limits may be extended by motion and affirmative simple majority vote of the BZA.

- 10. A time-keeper from CCZPD staff will be designated by the BZA Secretary.
- 11. The Chair shall set the agenda for all meetings of the BZA. All applications for Appeals, Variances and Special Exceptions that are to be considered by the BZA, must be complete and filed at the administrative office no less than six weeks prior to the next regularly scheduled BZA meeting. The Chair may place an item on the agenda, including waiving application deadlines contained in Section 3.1.4 of the *ZLDR*, provided that all notification requirements contained in the *ZLDR*, and required by South Carolina State Law, are met.
- 12. All information on file for cases on the agenda must be in the possession of the members of the BZA at least five (5) working days prior to the meeting at which the cases are to be heard, unless otherwise provided herein.
- 13. All written material submitted either in support of or in opposition to an application, must be received by the administrative office of CCZPD by noon at least one working day prior to the public hearing during which the application is to be considered. The written material will be delivered to the BZA at the public hearing.
- 14. At the public hearing, the case file prepared by CCZPD staff shall be entered into the official records of the BZA.
- 15. At the public hearing, the BZA may make a motion to accept and consider written material submitted during live witness testimony either in support of or in opposition to an application. If the motion passes, all new evidence shall be entered into the official records of the BZA. The party must be prepared to answer BZA questions concerning said material.
- 16. The BZA, by its own motion, may certify contempt to the Circuit Court if false, misleading, or incomplete statements are made by any person presenting information to the BZA.
- 17. The BZA, by its own motion, may call additional witnesses. The BZA has authority to subpoena witnesses.
- 18. After each case has been voted on, the Secretary or Chair shall announce into the record whether a case was approved, approved with conditions or denied.



19. Cases to be heard by the BZA may be deferred for a period of time not to exceed ninety (90) days. For the record, the reason given for postponement must be clearly stated in the motion for deferral. All requests and deferments shall be made in accordance with ZLDR.
20. Upon vote of the BZA, a member from the prevailing side may make a motion to reconsider a case at the same or next BZA meeting. Any member may second the motion. If the motion to reconsider the case is granted, then the case will be scheduled and heard by the BZA at the same or next available BZA public hearing provided all required notifications have been met. A case may be reconsidered only once.
21. The BZA may vote to consider amending or removing a condition(s) for approved Variances or Special Exceptions within a year from the approval date, only when the applicant/owner can demonstrate to the BZA that the condition(s) is not feasible and/or cannot be reasonably met. Financial reasons shall not be considered. If a motion to reconsider a condition(s) is granted, it will be scheduled and heard by the BZA at the next available BZA public hearing.
22. The Planning/Zoning Director may request that the BZA consider amending or adding a condition(s) to approved Variances or Special Exceptions when the condition(s) related to an approval is found to jeopardize the public health, safety, or welfare.
23. The BZA Secretary shall sign all orders.

**ADDITIONS, DELETIONS OR MODIFICATIONS**

Additions, deletions or modifications to these procedures may be adopted by the BZA at a regular meeting when such changes have been previously presented and discussed at a prior BZA meeting.

**SEVERABILITY**

If a court of competent jurisdiction determines that any provision of these Rules of Procedure is invalid, that ruling shall apply only to the provision in question and will not invalidate any other provision of these Rules of Procedure. If any court of competent jurisdiction rules invalid the application of any provision of these Rules of Procedure, that ruling that not affect the application of these Rules of Procedure not specifically included in the judgment.

<p><b>Date Adopted:</b> <u>7/6/2020</u></p>	<p><b>Signatures of BZA Members:</b></p>	
<p><b>Signature of Attorney:</b></p> <p><u>Kelvin M. Huger</u> Kelvin M. Huger</p>	<p><u>William H. Ray, Jr.</u> William H. Ray, Jr., Chair</p> <p><u>Lauri Lechner</u> Lauri Lechner, Vice-Chair</p>	<p><u>H. Bernard Freeman</u> H. Bernard Freeman</p> <p><u>Joseph A. Boykin</u> Joseph A. Boykin</p> <p><u>Ross Nelson</u> Ross Nelson</p>
<p><b>Signature of BZA Secretary:</b></p> <p><u>Jenny J. Werking</u> Jenny J. Werking</p>	<p><u>Samuel W. McConnell, Jr.</u> Samuel McConnell, Jr.</p> <p><u>Morgan Allison</u> Morgan Allison</p>	<p><u>Robert Woodul</u> Robert Woodul</p> <p><u>Thomas R. Goldstein</u> Thomas R. Goldstein</p>