



Office of the Town Manager
Frank Cassidy

STAFF REPORT

Warrenton Town Council

Carter Nevill, Mayor
Heather Sutphin, Ward 1
William Semple, Ward 2
Brett Hamby, Ward 3
James Hartman, Ward 4 Vice Mayor
Eric Gagnon, Ward 5
Paul Mooney, At Large
David McGuire, At Large

Council Meeting Date:	August 13, 2024.
Agenda Title:	Request from the Board of Zoning Appeals for Funding to Retain Independent Legal Counsel
Requested Action:	Hold a Work Session to Consider the Request
Department / Agency Lead:	Community Development
Staff Lead:	Heather Jenkins, Zoning Administrator

EXECUTIVE SUMMARY

Town Staff have identified a source of funding for the BZA to retain independent legal counsel. A Resolution has been prepared for consideration by the Town Council so as to grant the funding request.

BACKGROUND

The Board of Zoning Appeals is requesting that the Town Council provide funding to retain independent legal counsel to advise the Board regarding legal matters and court filings currently before the Board. A copy of the motion passed by the Board on July 2, 2024 to request funding for legal counsel is included with this staff report as [Attachment A](#); a copy of the email detailing the specifics of the request from the Board Chair is included as [Attachment B](#).

The Board of Zoning Appeals is a quasi-judicial body that is appointed by the Fauquier County Circuit Court. The purpose of the Board is to hear and decide appeals from any order, requirement, decision or determination made by an administrative officer of the Town in the administration or enforcement of the Zoning Ordinance. The duties and powers of the Board of Zoning Appeals are regulated by the Code of Virginia, §15.2-2308 and subsequent sections, as well as the Town Zoning Ordinance, Article 11, Section 11-2 *Board of Zoning Appeals*. A copy of the relevant Code of Virginia sections is included with this staff report as [Attachment C](#); a copy of Zoning Ordinance Section 11-2 is included as [Attachment D](#).

On July 2, 2024 the Board of Zoning Appeals held a work session to discuss recent applications to the Board and court filings listing the Board at the request of the Chair. After lengthy discussion the Board members passed a motion to request that the Town Council provide funds so that the Board may retain legal counsel that is separate and independent from the Town and the Town Attorney on a short-term, as-needed basis.

STAFF RECOMMENDATION

Staff recommends that per Code of Virginia §15.2-2308, Subsection D, that the Town Council should consider the Board of Zoning Appeal's request for appropriation of funds to retain legal counsel.

Service Level/Collaborative Impact

The purpose of the Board of Zoning Appeals is to hear and decide appeals from any order, requirement, decision or determination made by an administrative officer of the Town in the administration or enforcement of the Zoning Ordinance. In the matter of an appeal, the Town Attorney represents the Town, and cannot provide legal advice to the Board of Zoning Appeals.

Fiscal Impact

The Board of Zoning Appeals relies on the Town to provide any funding necessary to perform the duties of the Board. The Board does not have a budget line item for legal counsel. Therefore, should the Board desire legal counsel, the Board must request funds from the Town Council.

Legal Impact

The Code of Virginia, §15.2-2308, Subsection D, states that upon request of the Board of Zoning Appeals, the governing body shall consider appropriation of funds so that the Board may employ or contract for services to include legal counsel.

ATTACHMENTS

- A. July 2, 2024 Motion
- B. July 5, 2024 Email from Chairman Kovalik
- C. Code of Virginia, §15.2-2308
- D. Zoning Ordinance Section 11-2