

BACKGROUND on Board of Zoning Appeals

In most localities, as in Albemarle, the members of the Board of Zoning Appeals (BZA) are appointed by the Circuit Court. Their powers and duties include the following:

- *Appeals of decisions by administrative officers:* Hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the zoning ordinance.
- *Appeals of decisions by the zoning administrator:* Hear and decide appeals from decisions of the zoning administrator, including any modification of zoning requirements by the zoning administrator.
- *Variances:* Hear and decide applications for variances.
- *Special use permits:* Hear and decide applications for special use permits if the power is delegated to the BZA by the governing body.
- *Interpret the district map:* Hear and decide applications to interpret the district map where there is any uncertainty about the location of a district boundary.

Their decisions relating to variances are administrative with an exercise of discretion. Decisions relating to appeals from the Zoning Administrator's decisions or decisions by administrative officers are quasi-judicial in nature. The chart on the proceeding page puts their decisions in the context of decisions made by other Boards and Commissions, including the Planning Commission.

The Different Nature of Various Land Use Decisions				
Act	Types of Land Use Decisions	Key Qualities	Effect of Being Classified As Such	Presumptions
Legislative	CPAs ZTA ZMAs Special exceptions Special use permits Certificates of appropriateness Exceptions under subdivision laws	Made only by the governing body (exception for SUPs delegated to the BZA) Prescribes a course of conduct by establishing policy or law Balances private conduct against the public health, safety and welfare	Broad discretion Broad range of immunities attach to decision makers Exempt from due process challenges (though statutory procedures must be complied with)	Presumed to be reasonable and valid (constitutional)
Administrative, which does not include the exercise of discretion, i.e., ministerial	Site plans Subdivision plats Certificates of occupancy	Implement policy or law by applying the facts in the particular circumstances to the law or policy	When the requirements of the law or policy have been satisfied, approval is required; there is no discretion to deny	No presumption that decision-maker acted correctly Failure to act correctly will be found to be arbitrary and capricious
Administrative, which includes the exercise of discretion	Variances Decisions determining whether performance standards are satisfied	Limited discretion delegated by governing body to lower body or officer to apply specific standards to a set of facts Standards must be as reasonably precise as the subject matter requires or permits	Decision must be based only on the standards specified by the governing body Exercise of discretion must be reasonable	No presumptions Exercise of discretion must be reasonable or it will be found to be arbitrary and capricious
Quasi-judicial	Official determinations Appeals	Grants or denies a privilege or benefit	Factual determinations are critical, and findings of fact must be made to allow judicial review	Factual determinations presumed correct; no presumption of correctness for legal conclusions

This chart is from Chapter 8 of the Land Use Law Handbook entitled "The Differences Among the Legislative, Ministerial, Discretionary and Quasi-Judicial Acts." This Handbook is written by the Albemarle County Attorney's Office and is available online.