

Berryville – Clarke County
Government Center
101 Chalmers Court, Suite A
Berryville, VA 22611



**TOWN OF
BERRYVILLE**
VIRGINIA

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**BERRYVILLE BOARD OF ZONING APPEALS
ORGANIZATIONAL MEETING**

Thursday, January 19, 2023 - 7:00 p.m.
Berryville-Clarke County Government Center
101 Chalmers Court – **Main Meeting Room** – Second Floor
Berryville, Virginia

AGENDA

1. Call to Order – Christy Dunkle, Zoning Administrator
2. Election of Officers – Chair, Vice Chair
3. Approval of Agenda
4. Approval of Minutes – August 16, 2018
5. Discussion – Section 505 Board of Zoning Appeals of the Berryville Zoning Ordinance
6. Discussion – Certified Board of Zoning Appeals Training opportunities
7. Other
8. Adjourn

Harry Lee Arnold, Jr.
Mayor

Erecka L. Gibson
Vice Mayor

Council Members

William Steinmetz
Ward 1

Diane Harrison
Ward 2

Grant Mazzarino
Ward 3

Ryan Tibbens
Ward 4

Keith R. Dalton
Town Manager

**BOARD OF ZONING APPEALS
TOWN OF BERRYVILLE
MINUTES OF CALLED MEETING
Thursday, August 16, 2018**

A called meeting of the Berryville Board of Zoning Appeals was held on Thursday, August 16, 2018. The meeting was called to order by Christy Dunkle, Town Planner, at 7:00 p.m. in the Berryville – Clarke County Council Chambers located at 101 Chalmers Court in Berryville, Virginia.

ATTENDANCE

The members of the Board present were: Dandridge Allen, Margaret Barthel, Wilson Kirby, Gwen Malone

Absent: None

The following staff member was present: Christy Dunkle, Town Planner

Others in attendance: Kurt and Sherry Leta

Press: None

Ms. Dunkle called the meeting to order at 7:00 p.m.

ELECTION OF OFFICERS

Ms. Malone nominated Ms. Margaret Barthel as Chair, seconded by Mr. Kirby, the motion passed unanimously by voice vote.

Ms. Malone nominated Dr. Allen for Vice Chair, seconded by Mr. Kirby, the motion passed unanimously by voice vote.

Chair Barthel continued the meeting.

APPROVAL OF AGENDA

Mr. Kirby moved, seconded by Ms. Malone, to approve the agenda as written. The motion passed unanimously by voice vote.

APPROVAL OF MINUTES

Ms. Malone moved, seconded by Mr. Kirby, to approve the minutes of February 5, 2016 meeting as written. The motion passed unanimously by voice vote.

The Chair opened the public hearing at 7:03pm.

PUBLIC HEARING – Variance

Kurt Leta, Owner, is requesting a variance from Section 202.1(I), Uses Permitted by Right (accessory structure setback requirement), of the Town of Berryville Zoning Ordinance in order to allow three accessory structures to be installed on the property line on the

parcel located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2 Residential. VR 02-18

Chair Barthel opened the public hearing and asked staff to describe the request. Ms. Dunkle described the request for a variance from a side setback for accessory structures under Section 202.1(l) of the Berryville Zoning Ordinance.

Chair Barthel recognized Mr. Leta. He said that he had placed three sheds on his property in order to store trash cans and other items. He said that he chose nice looking sheds and that the square footage of the accessory structures did not warrant Architectural Review Board approval but tried to take the location into account. He added that half of his property is in the floodplain and deemed unusable. Mr. Leta said the three sheds were each 4'x6'. He said there were a number of restrictions on the use of his property.

There was a discussion about the existing fence along the property line. Mr. Kirby asked about the petition that was submitted as part of the application. Mr. Leta said he asked several of the neighbors whether his property looked better with the structures or without and he indicated that all believed that it looked better with the structures. Mr. Kirby asked if there were any calls concerning the request. Ms. Dunkle said that there were four calls to her office requesting clarification on the request. She said she received several complaints but not relating to this request.

Ms. Malone asked for confirmation of the shed location and why the sheds couldn't be further south. Mr. Leta said he had a bucket truck that he has for sale adjacent to this area which would prohibit the placement of the sheds in that area.

Dr. Allen asked about the floodplain area. Ms. Dunkle told the Board the regulations for accessory structures within the floodplain area. There was a discussion about the installation of the structures. Mr. Leta said that he was not aware of any zoning requirements for sheds. He added that he received a zoning violation letter and said that he would obtain a zoning permit from the Town. He said he would donate or move the sheds if the decision was made to deny the variance.

There was a discussion about maintenance behind sheds and the reasoning behind the five foot setback requirements in residential areas. There was a discussion about the fence being located inside of the adjacent property by approximately two feet. Mr. Leta concluded that moving the sheds five feet off of the property line would not allow him to park or drive on the driveway.

Chair Barthel said that moving the sheds at the end of the driveway would make the sheds more visible. Mr. Leta said he could move the sheds in the front yard but his grandchildren would not have a place to play. Mrs. Leta added that the sheds were purchased to clean up the yard and driveway.

There was a discussion as to why the applicant bought three separate sheds rather than one larger one.

There being no further comments the Chair closed the public hearing at 7:22pm.

DISCUSSION – Variance Request

Chair Barthel asked for any additional discussion by members of the Board. She reminded members that maintaining consistent determinations is important for the BZA. Ms. Malone said she is hard pressed to see this as a hardship and is concerned about setting a precedent for similar requests in the future. Mr. Kirby said their job was to enforce the zoning ordinance.

There being no further discussion, Mr. Kirby made the motion that the Berryville Board of Zoning Appeals deny the request for a Variance to the accessory structure setback requirement under Section 202.1(l) of the Berryville Zoning Ordinance for the property located at 217 West Main Street, identified as Tax Map Parcel number 14A4-((A))-36 zoned R-2 Residential. The motion was seconded by Ms. Malone. The motion passed unanimously by voice vote.

OTHER

The Chairman called for other business. Ms. Dunkle said that Town Council had recommended that Ryan Tibbens be appointed to the BZA to fill Ms. Rodriguez's unexpired term. She added he is a teacher in Loudoun County.

ADJOURNMENT

There being no further business to come before the Board, on motion by Ms. Malone, seconded by Mr. Kirby, the meeting was adjourned at 7:42p.m.

Margaret Barthel, Chair

Christy Dunkle, Recording Secretary

Staff is requesting a review of Section 505 of the Berryville Zoning Ordinance which established the Board of Zoning Appeals whose tasks include consideration of appeals, variances, and zoning map interpretations. This ordinance section was updated in 2016 in order to conform to changes to the Code of Virginia.

Section 505.1 is an overview of the Board’s organization and procedures. Please review this section in order to discuss at the meeting.

Sections 505.2 and 505.3 identifies the process of appeals of the Board and the Zoning Administrator, respectively.

Section 505.4 addresses variances and identifies the process by which an application can be made and outlines other requirements. This section also describes actions that would be taken by the Board. A critical part of the variance process, identified in Section 505, is the strict application of the terms of the ordinance and whether an application would unreasonably restrict the utilization of the property or that “the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance.”

Section 505.5 addresses zoning map interpretations made by the Zoning Administrator.

Section 506 identifies the process by which the Zoning Administrator may grant a modification from any provision if the request is no more than 10% of the regulation. This option was previously not available.

Section 504 – Schedule of Fees, Charges, and Expenses

SECTION 504 - SCHEDULE OF FEES, CHARGES, AND EXPENSES

- 504.1** The Town Council shall establish, by resolution, a schedule of fees, charges, and expenses and collection procedures for zoning permits, certificates of use and occupancy, special permits, variances, appeals, amendments, and other matters pertaining to this Ordinance.
- 504.2** The schedule of fees shall be available for inspection in the office of the Zoning Administrator and may be altered or amended by the Governing Body by resolutions. Until all application fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

(02/16) **SECTION 505 - BOARD OF ZONING APPEALS**

There shall be established a Board of Zoning Appeals (Board) that shall consider appeals, variances, and zoning map interpretations.

505.1 ORGANIZATION AND PROCEDURES

- (a) **Membership**
The Board shall consist of five residents of the Town of Berryville, appointed by the Circuit Court of Clarke County. Members of the Board shall hold no other public office in the locality except that one may be a member of the Berryville Planning Commission.
- (b) **Alternate Members**
The Town Council may request the Circuit Court of Clarke County to appoint not more than three alternates to the Board of Zoning Appeals, pursuant to the provisions of Virginia Code § 15.2-2308(A).
- (c) **Terms of Office**
The terms of office for members of the Board shall be for five years each except that original appointments shall be made for such terms that the term of one member shall expire each year. The Secretary of the Board shall notify the court at least thirty (30) days in advance of the expiration of any term of office, and shall also notify the Court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his/her successor is appointed and qualifies.
- (d) **Officers**
With the exception of its Secretary and the alternates, the Board shall elect from its own membership its officers who shall serve annual terms as such and may succeed themselves. The Board may elect as its Secretary either one of its members or a qualified individual who is not a member of the Board, excluding alternate members. A Secretary who is not a member of the Board shall not be entitled to vote on matters before the Board.
- (e) **Quorum**
For the conduct of any hearing, a quorum shall be not less than a majority of all the members of the Board.

Section 505 – Board of Zoning Appeals

- (f) **Procedures**
The Board may make, alter, and rescind rules and forms for its procedures, consistent with Town ordinances and general laws of the Commonwealth.
- (g) **Records**
The Board shall keep minutes and a full record of its proceedings and other official actions, which shall be filed in the office of the Board and shall be public records.
- (h) **Report**
The Board shall submit a report of its activities to the governing body at least once each year.
- (i) **Witnesses**
The Chairman of the Board, or the acting Chairman in the Chairman's absence, may compel attendance of witnesses and administer oaths of witnesses.
- (j) **Employees**
Within the limits of funds appropriated by the Town Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
- (k) **Compensation**
Members of the Board may receive such compensation as may be authorized by the Town Council.
- (l) **Removal**
Any Board member or alternate may be removed for malfeasance, misfeasance, or nonfeasance in office, or for other just cause, by the Court that appointed the member or alternate, after a hearing held after at least fifteen (15) days notice.
- (m) **Meetings**
The Board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the Chairman, or Vice Chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with Virginia Code § 15.2-2312 shall be conducted at the continued meeting and no further advertisement shall be required.
- (n) **Hearings – Procedures**
 1. The non-legal staff of the Town Council may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. The applicant, landowner, or their agent or attorney may have ex parte communications with a member of the Board prior to the hearing but may not discuss the facts or law relative to the case before the Board. 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. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussion prior to a public meeting to which staff of the governing body, the applicant, landowner, or their agent or attorney are all invited. For purposes of this section, “non-legal staff of the Town Council”

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shall mean any staff who is not in the office of the attorney for the Town, or for the Town Council, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the Board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or protection of confidentiality.

2. Any materials relating to the case before the Board, including a staff recommendation or report furnished to a member of the Board, shall be made available without cost to an applicant, appellant, or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event less than three business days providing such materials to a member of the Board. If the applicant, appellant, or other person aggrieved under § 15.2-2314 requests additional documents or materials to be provided by the locality other than those materials provided to the Board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the Board shall also be made available for public inspection pursuant to Subsection F of § 2.2-3707.
3. At a hearing the Board shall offer an equal amount of time to the applicant, appellant, or any other person aggrieved under § 15.2-2314, and the Town staff.

505.2 APPEAL OF DECISION OF BOARD

Any person or persons jointly or severally aggrieved by any decision of the Board, or any aggrieved taxpayer, or any officer, department, board, or bureau of the locality, may file with the Clerk of the Clarke County Circuit Court a petition specifying the grounds on which aggrieved within 30 days after the final decision of the Board.

505.3 APPEALS OF ADMINISTRATIVE DETERMINATIONS

- (a) The Board shall 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. The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for their determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The Board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, "determination" means any order, requirement, decision, or determination made by an administrative officer. Any appeal of a determination to the Board shall be in compliance with this section, notwithstanding any other provision of law, general or special.
- (b) An appeal to the Board may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town affected by any decision of the Zoning Administrator, or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of the Zoning Ordinance, or any modification of zoning requirements pursuant to Virginia Code § 15.2-2286.

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- (c) Any written notice of a zoning violation of any written order or administrative determination of the Zoning Administrator shall include a statement informing the recipient of the of the recipient's right to appeal the notice of zoning violation or the written order or administrative determination within 30 days, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given. The appeal shall be taken within 30 days after the decision appealed from by filing with the Zoning Administrator, and with the Board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record based upon which the action appealed from was taken.
- (d) An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his/her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.
- (e) The Board shall fix a reasonable time for hearing an appeal, and shall give public notice and hold a public hearing as provided by Virginia Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.
- (f) The Board shall make its decision within 90 days of the filing of the appeal, unless the appellant and the Board mutually agree upon an extended period.
- (g) In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from.
- (h) The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer.

505.4 VARIANCES

The Board shall hear upon appeal or original application in specific cases requests for variances, as defined in Virginia Code § 15.2-2201, from the terms of this ordinance. A variance shall not include a change in use.

- (a) Any property owner, tenant (with the written consent of the property owner), government official, department, board or bureau may make application for a variance. Applications shall be made to the Zoning Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket to be acted upon by the Board.
- (b) The Zoning Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
- (c) No variance shall be considered except after public notice and hearing as required by Virginia Code § 15.2-2204. However, when giving any required notice to the

owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first class mail rather than by registered or certified mail.

(d) Action on Variance Application

1. The burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that the application meets the standards for a variance as defined in Virginia Code § 15.2-2201 and the criteria set out in this section.
2. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and;
 - (a) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
 - (b) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
 - (c) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;
 - (d) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and
 - (e) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process of modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.
 - (f) The concurring vote of a majority of the membership of the Board shall be necessary to approve a variance.
 - (g) In granting a variance the Board shall tailor the variance to provide the minimum variance necessary to alleviate the hardship, and the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use, as it may deem necessary in the public interest. The Board may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
 - (h) The Board will not consider substantially the same application within one (1) year of previous Board action.

505.5 ZONING MAP INTERPRETATIONS

The Board shall hear and decide applications for interpretations of the zoning district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by Virginia Code § 15.2-2204, the Board may interpret the map in such way as to

carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. The concerning vote of a majority of the membership of the Board shall be necessary to decide in favor of the applicant.

505.6 LIMITATIONS ON POWERS OF BOARD

The Board shall not have the power to rezone property or to base Board decisions on the merits of the purpose and intent of Town ordinances duly adopted by the Town Council.

506 MODIFICATIONS

- (a) The Zoning Administrator may grant a modification from any provision contained in the Zoning Ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements if the Administrator finds in writing that:
 - 1. the strict application of the ordinance would produce undue hardship;
 - 2. such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
 - 3. the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification.
- (b) The Zoning Administrator may not grant a modification that is more than 10% of a regulation standards.
- (c) Before the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. Before the granting of a modification, the Zoning Administrator shall consult with the Chair and Vice Chair of the Board of Zoning Appeals.
- (d) The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The Zoning Administrator shall provide a copy of a written decision to the Board of Zoning Appeals within five working days from making the decision.
- (e) The decision of the Zoning Administrator may be appealed to the Board of Zoning Appeals as provided in Section 505.3 of this Ordinance.

SECTION 507 - VIOLATION AND PENALTY

- 507.1** All departments, officials, and public employees of this jurisdiction who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Ordinance. They shall issue permits for uses, buildings, or purposes only when they are in

Section 505 – Board of Zoning Appeals

harmony with the provisions of this Ordinance. Any such permit, if issued in conflict with the provisions of this Ordinance, shall be null or void.

- 507.2** Any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating, causing, or permitting the violation of any of the provisions of this Ordinance, shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand dollars (\$1,000). Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during which any portion of any violation of this Ordinance is committed, continued, or permitted by such person, firm, or corporation, and shall be punishable as herein provided.

The Land Use Education Program, based at Virginia Commonwealth University, offers certification training for planning commissioners and board of zoning appeals members. The Certified Board of Zoning Appeals Program description is below:

The Certified BZA (Board of Zoning Appeals) Program is designed to provide each registrant with a comprehensive overview of zoning in Virginia and the critical role the BZA plays in deciding issues involving zoning and zoning decisions. The course covers the legal foundations of zoning as well as the duties, powers and responsibilities of the BZA. The program also reviews the role of procedural and substantive due process in BZA deliberations as well as principles of meeting management and decision making. The course is especially valuable for newly appointed BZA members as well as zoning practitioners. Veteran members of local BZA's have also found the course to be of great value. This event is composed of two training sessions (opening and closing sessions) and a self-study component lasting 10 weeks. The self-study component includes required readings and homework assignments. Attending and critiquing a BZA meeting is also required.

The next BZA training, which begins on February 16, 2023, will be virtual. Please review the information in this staff report. The registration deadline is February 8, 2023.

Additional information can be found at this link: <https://cura.vcu.edu/land-use-education/>.

[Summary](#)[Fees](#)[Register Now](#)

44th Certified Board of Zoning Appeals Program (VIRTUAL)

February 16, 2023 – April 28, 2023

9:00 AM-3:30 PM

🕒 Viewing in Eastern Time

The Certified BZA Program is designed to provide each registrant with a comprehensive overview of zoning in Virginia and the critical role the BZA plays in deciding issues involving zoning and zoning decisions. The course covers the legal foundations of zoning as well as the duties, powers and responsibilities of the BZA. The program also reviews the role of procedural and substantive due process in BZA deliberations as well as principles of meeting management and decision making.

The class consists of three parts:

- Opening Session:
 - Thursday, February 16, 9:00 AM to 3:30 PM and
 - Friday, February 17, 9:00 AM to 12:30 PM
- At-home Study:

- February 18 through April 27
- Closing Session:
 - Friday, April 28, 9:00 AM to 3:30 PM

Students at the Opening and Closing sessions will hear from experts, practitioners, and educators about the fundamentals of land use, zoning, and planning. They will also receive textbooks for the at-home study portion, which includes a series of simple assignments to guide students through the texts. We anticipate the course will require a time commitment of two to three hours each week.

PLEASE NOTE: This course will be conducted virtually via Zoom. We will mail the textbooks needed for the at-home portion of the program to the address each student is registered with.

Fees

Below is all of the pricing information for the event.

Admission Items

Event Registration

General Attendee Fee

\$500.00

[Refund policy](#)

Register By

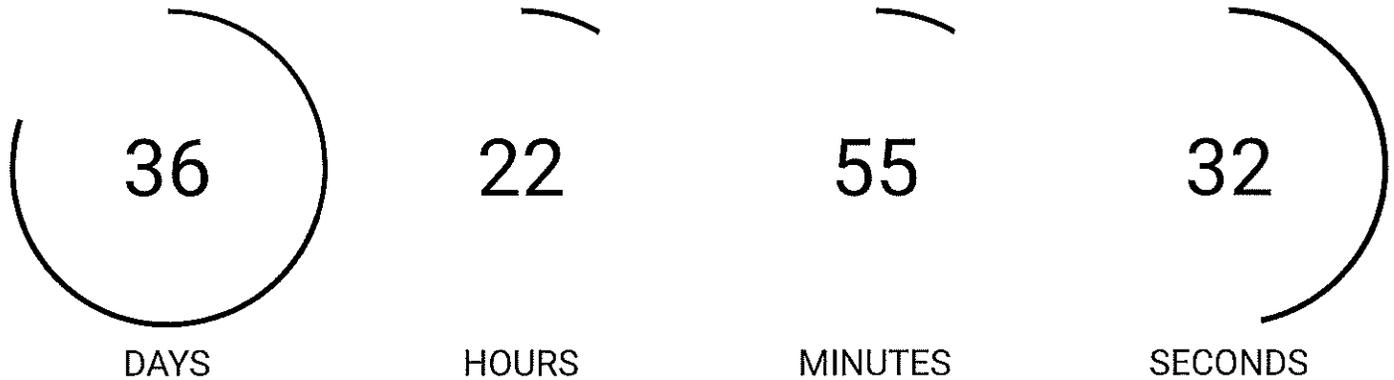
Register Now

[Already registered?](#)

February 8, 2023 11:45 PM

🕒 Viewing in Eastern Time

Countdown to the Event



Contact Us



VCU

L. Douglas Wilder School of
Government and Public Affairs

Center for Urban and Regional Analysis

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