ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING VIA ZOOM
TUESDAY, JULY 7, 2020 – 2:00 P.M.

Board Members:	Marcia Joseph
	Ed Robb
	John Shepherd
	Randy Rinehart
Staff Members:	Bart Svoboda, Zoning Administrator
	Rebecca Ragsdale
	Marsha Alley, BZA Recording Clerk
County Attorney:	Andy Herrick, Deputy County Attorney
BZA Attorney:	James Bowling, IV

1. Call to Order

The meeting was called to order at 2:00 p.m. by Chairman John Shepherd. He said this is an electronic meeting, and asked for patience as they become familiar with this meeting alternative. The Chairman read the following statement and asked each member to announce their presence to establish a quorum.

This meeting is being held pursuant to and in compliance with Emergency Ordinance No. 20-A(8); An Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster. The BZA Members who are electronically present at this meeting are… (each BZA Members stated their name to establish a quorum as noted below).

The persons responsible for receiving public comment are the Board of Zoning Appeals of Albemarle County.

The opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website on the Board of Zoning Appeals home page and on the Albemarle County calendar.

2. Establish a Quorum

The BZA established a quorum with four members present.

Mr. Shepherd said the BZA members who are electronically present at this meeting are: John Shepherd, Randy Rinehart, Marcia Joseph (BZA Secretary), and Ed Robb (Vice Chair). Ms. Joseph, Mr. Robb, Mr. Rinehart, and Mr. Shepherd each stated their presence.

Mr. Shepherd introduced others in attendance: James Bowling (BZA Attorney); Andy Herrick (County Attorney); Bart Svoboda, Zoning Administrator; Marsha Alley, BZA Recording Clerk; Rebecca Ragsdale (County Staff); and Ms. Rebecca Costanzo, Mr. David Mitchell, and Mr. Todd Shallenberger (representatives for the applicant).

3. Public Hearing

A. Project Number: SP202000009 North Pointe Middle Entrance Sign (Property Owner/Applicant: CWH Properties Limited Partnership; TMP: 03200-00-00-02000)

Ms. Joseph disclosed that in 2015 or so, she worked with North Pointe to help them negotiate and secure a sewer line easement across a property. She said she has not had any contact with them since then, other than seeing Mr. Mitchell at Mr. Don Wagner's funeral, and that she had worked with Mr. Wagner on North Pointe those years ago.

Ms. Joseph said at this point, she was sure she was able to consider this matter before the BZA without being influenced by the prior work she had done with North Pointe.

Mr. Shepherd asked if anyone had comments or concerns about this and heard none.

Mr. Shepherd said they would start with the presentations, and turned the meeting over to Mr. Svoboda to offer his staff report, noting he could share his 15-minute time allotment with Mr. Herrick.

Mr. Svoboda, Zoning Administrator, presented the location map, noting the location is just north of Proffit Road. He indicated on the map to Northside Drive and Hall's Auto Body. He explained that directly across from this area is where the entrance road will be.

Mr. Svoboda presented another map noting the location.

Mr. Svoboda said the petition has three proposed entrances from Seminole Trail (north, middle, and south). He said the application proposes to erect one sign in the public right of way. He said it is considered the middle entrance to the development.

Mr. Svoboda said the sign meets all the eligibility requirements for it to be considered for a Special Use Permit and will need final authorization by VDOT. He said VDOT (as both the applicant and the board are aware) provided a preliminary email from Mr. Adam Moore that indicates the location is acceptable. He said VDOT will still have to confirm this as they move through the sign permit stages of the application.

Mr. Svoboda presented the location drawing, providing more specificity as to where the sign is to be located. He said the right of way currently is not VDOT's, going back into the development, but will be. He indicated to a location on the map labeled "Sign" and "Lights."

Mr. Svoboda presented a rendering of the sign, noting that it appears to be split, which is fine under the ordinance. He said in Section 4.15.12, there is a section that indicates that if the sign faces are not more than 45 degrees apart, they qualify as just one sign face, meaning they are the same as being parallel or back-to-back.

Mr. Svoboda presented an additional rendering that showed the sign materials and what the sign will potentially look like.

Mr. Svoboda said the board is not required to make specific findings in support of this action. He said staff has found there is no substantial detriment in terms of whether the proposed Special Use Permit will be a detriment to nearby properties, whether the character of the nearby area remains unchanged, and whether the proposed Special Use Permit will be in harmony with the purpose and intent of this chapter. He presented the list of criteria in Zoning Ordinance 34.5 regarding the Special Use Permit and the consistency with the Comprehensive Plan.

Mr. Svoboda said staff believes the proposal satisfies the goals of the sign regulations and the criteria for issuance of the Special Use Permit. He said staff recommends approval of the request with the following conditions: 1) provide authorization from VDOT for the final location of the sign, and 2) the sign shall comply with approval of the Certificate of Appropriateness as approved by the ARB.

Mr. Svoboda concluded his presentation and said he had the proposed motions available.

Mr. Herrick said he had nothing to add.
Mr. Shepherd asked the applicant for their presentation.

Mr. Todd Shallenberger (representative for the applicant, Water Street Studio) said he has worked closely with Mr. David Mitchell (applicant/owner and developer of the project).

Mr. Shallenberger said the location is just north of Airport Road and that the plan is partly to expound on the ideas of Albemarle County and its rural character. He said it is also an Entrance Corridor to the City, and the applicant wanted to expound on that character by having stone walls and piers on both sides, flanking the entrance, as well as native plantings.

Mr. Shallenberger said they put the sign in the middle of the median to make it visible for northbound and southbound lanes. He said in the elevation facing the property and entrance, one can see how the walls fit in with the sloping grade. He said the piers punctuate and make for a nice entrance sequence for visitors and residents. He said the sign wall or pedestal is in the middle.

Mr. Shallenberger presented an enlarged view showing more of the overall planting plan, where the applicant is borrowing language from the County, such as “flowering trees” and “shade trees.” He said there will be lawn in front of the stone wall, and that farther down Route 29, there will be a series of shade trees, groundcover, and native meadow punctuating the edge all the way down.

Mr. Shallenberger presented a front elevation, noting it is tapered on the sides to make for easier visibility. He said the applicant started to work with a sign consultant to help select the most visible letters so that it is easily readable.

Mr. Shallenberger said they have received approval from the ARB on this, earlier in June. He said the sign material is intended to look like COR-TEN steel without being COR-TEN, as the applicant worries about COR-TEN rusting and discoloring the pedestal. He said they have worked with a sign supplier that has made aluminum signs that appear like COR-TEN. He presented images of examples of this, adding that the look the applicant is after is to expound on the rural and industrial nature of the County.

Mr. Shallenberger said the piers have been mocked up onsite and that the size has been reduced slightly from what was seen in the presented image. He said on top of the piers, there will be an armillary, which is made out of steel or aluminum (which the applicant had yet to determine). He said it is more of a garden element that would help to identify to the community and the project.

Mr. Shallenberger said they have also battered the walls. He presented an elevation of the walls to demonstrate how they fit with the grade. He said the south wall emerges from the earth and is a straight datum, but the ground plain is sloping slightly, so it starts off at about 1 foot 5 inches and tapers to about 5 feet at the corner of the pier. He said it is the same on both sides, noting it was important to get the engagement with the pier to be similar on both sides so that one is passing through more of a threshold.

Mr. Shallenberger presented some model shots of what the applicant was proposing, looking at the sign from the northbound perspective as one enters the site during the daytime and showing what the sign would look like, as well as from southbound. He said for the evening, there was a slight modification made after one of the members of the ARB recommended implementing halo lighting. He said the letters will be backlit with halo lighting and that they will still have uplighting from the ground to help showcase the sign.

Mr. Shallenberger presented an example of the armillary and stone. He said the applicant wants the stone to fit in with some of the other stone walls seen on Route 29, such as the North Fork wall.

Mr. Shallenberger presented uplighting sheets and concluded his presentation.

Mr. Shepherd asked if anyone else from the applicant's team wanted to use their remaining time.

Mr. Mitchell and Ms. Costanzo said they had nothing to add.

Mr. Shepherd opened the public hearing and asked if there was any public comment. Hearing none, he closed the hearing for public comment. He asked if staff had any remarks.

Mr. Svoboda said he did not have any closing remarks. He said the applicant had gone through the process and had spoken with all in-house and external agencies to make sure the project stays on the right path. He added that he had the proposed motions available.

Mr. Shepherd asked if there were further remarks from the applicant and heard none.

Mr. Shepherd brought the discussion to the board.

Mr. Rinehart asked Mr. Svoboda if the board would be seeing the same request for the other two entrances down the road.

Mr. Svoboda said he did not believe so. He said the applicant may be able to answer that question. He said this was the main access and what the request was limited to.

Mr. Shepherd asked if the applicant would like to speak to that.

Mr. Mitchell said VDOT has transformed their southernmost entrance into a right-in and right-out, and not allowing a crossover as originally anticipated due to design changes they have made. He said there is a similar landscaping plan approved at that location, but the applicant has not decided and probably won't until they know they have tenants in that corridor. He said the applicant probably will request it at some point and that he would want it to match as it is all one large development.

Mr. Mitchell said the northernmost entrance is not actually something the applicant controls but is under the control of Mr. Spurzem of Neighborhood Properties. He said Mr. Spurzem has to go through his own separate plan for this which he could not speak to.

Mr. Shepherd asked if the board, then, may see this request for the southern entrance at a future time.

Mr. Mitchell replied yes. He said he would want it to match so it would be very similar.

Ms. Joseph asked Mr. Herrick if he could explain the intent of this particular part of the ordinance. She said it seems as if the ARB reviews this and the ordinance allows for it as long as VDOT has no concern. She asked why this is a Special Use Permit process that the applicant has to go through when the applicant could simply get VDOT approval, adding that it could be written much differently in the ordinance as far as the requirements.

Mr. Herrick replied that the BZA's responsibilities are usually to hear variances and appeals from Zoning Administrator determinations. He said this is one of the minor areas in Albemarle where the power to grant Special Use Permits is reserved for the Board of Zoning Appeals as well. He said in some jurisdictions, the Boards of Zoning Appeals hear all Special Use Permits but that in Albemarle, this is the one small part of the Zoning Ordinance where special permit authority is reserved for the BZA. He said why this was, and why the standards are as they are, he could not shed much light on. He said the BZAs are allowed to rule on Special Use Permits when authority has been delegated to them.

Mr. Herrick said these types of sign applications are seen occasionally; although they are not the "bread and butter" of BZAs.

Ms. Joseph said it seems as if the way the ordinance is written, it is very specific in terms of the information that needs to be addressed prior to approval of the Special Use Permit which was the reason for her question. She said perhaps they could have this conversation some other time.

Mr. Herrick said he honestly could not shed much light on this but perhaps Mr. Svoboda could.

Mr. Svoboda said he believed this was less than a variance, and that also, when the governing body adopted this section, they wanted a second look or special look at these as opposed to allowing them everywhere by right. He said he could do some research and follow-up on this. He said he suspected that this was created to offer a second look that a request does meet the criteria as opposed to making it available everywhere.

Ms. Joseph said one thing that concerned her was in reading the staff report body, it stated that the applicant had received written approval from VDOT and that this was very specific. She said one of the conditions of approval is to receive written approval from VDOT. She asked how many times the BZA, prior to this request, has done this, and if it is always noted that the approval will not be available at the time the BZA hears this. She asked if this was a normal occurrence, as her expectation was that as she was paging through the report, she would see something from VDOT with their seal of approval and an engineer's signature, acknowledging they have received approval.

Mr. Svoboda replied that this is done in a preliminary fashion. He said when they go to install the road, they want to make sure that the curb and gutter, drainage piping, and other things are set. He said they get a preliminary approval and make sure that as the field conditions develop into the actual construction, the spacing and everything needed there is sufficient. He said they then apply for the sign permit, which VDOT signs off on. He said it is similar to an initial approval for a site plan review, and then the final approval afterwards to make sure that the design holds true throughout the construction. He said VDOT actually accepting the road into the secondary system is involved in this.

Ms. Joseph said a small paragraph explaining this in the staff report would have been very helpful to her -- that once the road is there, the applicant will receive the final approval from VDOT. She said right now, they are looking at a drawing, and they don't know if they will hit rock, move it over 2-3 feet, or exactly how this will be positioned. She said while they hope the engineering is sound, they never know what will happen once things are punched in. She said she understands this part but that it would be helpful to the BZA to not have to wade through the staff report trying to find information if there was just a paragraph or two explaining this.

Ms. Joseph said it was a lovely design. She said she was trying to figure out how much she should look at the design (being a former ARB member) or simply look at the simple aspects of this. She said she was trying to figure out how she fits into the process.

Mr. Robb said he had no questions or comments.

Mr. Shepherd said his questions had all been answered. He emphasized the points Ms. Joseph made, noting that in this case, the VDOT process sounded very logical and that his job was to be simple as far as looking for ARB approval and VDOT approval. He said in not actually seeing the VDOT approval, it was confusing to review, which prompted him to ask for more

information about that. He said he wanted to underline that concern moving forward and that the clarity that would come from that would be good.

Mr. Shepherd asked if this discussion had prompted any further questions or concerns and heard none.

MOTION: Mr. Rinehart moved to approve SP202000009 with the conditions outlined by staff: : 1) provide authorization from VDOT for the final location of the sign, and 2) the sign shall comply with approval of the Certificate of Appropriateness as approved by the ARB. Ms. Joseph seconded the motion which passed unanimously (4-0).

4. Approval of Minutes

A. June 6, 2020

Ms. Joseph remarked that the word "diligently" was said at least seven times and that nearly six pages out of fifteen were devoted to Ms. Long and her speech.

Ms. Joseph said there is a part on page 2 where Mr. Svoboda is speaking that noted he was "inaudible." She asked if Mr. Svoboda may want to review this and determine what it was he thought he may have said.

Ms. Joseph said on page 3, the first paragraph's last sentence said there is the opportunity to have the "discretion" of a Special Exception. She said it might need to say "decision" instead but wasn't sure and wanted to check on that.

Ms. Joseph asked if whoever completes the minutes could also number the lines so that when they are referencing these minutes, they will know what page and line they are looking at as this would make it easier to do so.

Ms. Joseph said she was sorry for being tough on Ms. Long, but it was something that gave her pause that perhaps the board could talk about.

Mr. Shepherd asked Mr. Svoboda if he was able to look into Ms. Joseph's question about the "inaudible."

Mr. Svoboda asked for the page number.

Ms. Joseph replied it was on page 2, in the sixth paragraph, in the second line to the bottom of that paragraph.

Mr. Svoboda said he would have to try to listen to the tape.

Mr. Shepherd asked, assuming everything else was sufficient, to approve the minutes with the provision that Ms. Golden or staff will go back and listen to the tape to try to discern exactly what Mr. Svoboda said to make the correction, without any further action from the board.

Mr. Herrick replied that unless there was a pending need to get these minutes approved immediately, his suggestion would be that this outstanding matter would be resolved first before this would be up for approval. He said that way, any remedy that would be made to the minutes could come back before the BZA to make sure this is what the BZA had in mind.

Mr. Shepherd suggested to move forward with that.

Mr. Rinehart asked if this needed to be on the record.

Mr. Herrick replied that if someone wanted to make a formal motion to defer consideration of the June 2 minutes until the next meeting, this would be the way to do it formally.

MOTION: Mr. Rinehart moved to defer consideration of approval of the June 2, 2020 minutes until the next BZA meeting. Ms. Joseph seconded the motion.

Mr. Rinehart said, in terms of what Ms. Joseph said about there being six pages of Ms. Long's statements, what the BZA had talked about is that they would convey their feelings toward the Chairman and that he did so on the topic Ms. Joseph brought up. He said going forward, there needs to be more discipline in channeling in the comments of the representatives of the applicant to be more succinct. He said he appreciated Ms. Joseph pointing out that it was six pages long. He said he had conveyed his feelings to Mr. Shepherd after the meeting.

Mr. Shepherd said he appreciated this from Mr. Rinehart and Ms. Joseph. He said he understands the concern there and will take this on and be aware of it in the future. He said he would not comment further on the substance of it but that the message was received.

The motion to defer approval of the minutes was passed unanimously (4-0).

5. Old Business

Mr. Svoboda said that earlier, Ms. Joseph had requested an update on the open BZA position.

Ms. Alley said she chatted via email with Mr. Travis Morris in the Board of Supervisors Clerk's Office, and he has been forwarding any applications to the Circuit Court. She said Mr. Morris has not heard anything. She said the court is in possession of the applications, and now it is a matter of waiting until the court notifies the board. She said they have not heard anything from the court at this point.

Mr. Shepherd said the board is anxious to fill the seat as it makes the board much more effective. He said decisions made with ties are unsatisfactory to everyone so they look forward to having full complement with an odd number of members.

Mr. Shepherd said he wanted to talk about training. He said he did not know exactly what form the board's training would take, but he would like to add to the training a segment that will address the expectations and formatting of staff reports. He said this is apropos following the discussion that day about the confusion with the exact approval and situation of VDOT. He said

he would like to be able to talk about that generally, in the future, with an open back-and-forth discussion which would be helpful.

Mr. Shepherd said initially, he would like to make the request that if a document is referred to in the staff report, he would like to see a copy of it. He said if an ordinance section is referenced, he would like to see a copy of the ordinance. He said the basic idea behind this is that it is almost a matter of customer service to the board. He said he was not exactly sure, formally, what their relationship is. He said the board does not supervise the staff, but what he is asking for is, as a board member, being able to concentrate on the issues in front of him. He said if an ordinance is referenced but is not included, it means he has to look it up to double-check it. He said he is meticulous, and if the ordinance is referenced, he has to go back and read the whole thing. He said rather than this, he would rather see it in front of him.

Mr. Svoboda said staff could do that.

Mr. Shepherd said part of this was that he wanted to give the theory behind the practice, and boil it down to if something is referenced, it is provided. He said he wants to reduce the searching and trying to put the puzzle together so he can focus on the issues. He said he would appreciate this being considered as it would make things better for everyone.

Mr. Svoboda said he had a quick question, which could be followed up with a brief work session. He asked if they wanted to have the references in a hard copy form, or if a link was better. He said he would try to include the links in the report but that he also realizes that at times, it is more helpful to have the copies in hand. He asked if the board wanted one or both.

Ms. Joseph indicated she wanted a hard copy.

Mr. Shepherd agreed. He said this was more of a key than the maps. He said there is a lot of information, but there are a few things that are critical to decision making. He said when in doubt, the hard copy should be provided of the section that is being referred to.

Mr. Svoboda said staff could do this. He said as they grow together and understand the information the board needs, they would get this down.

Mr. Rinehart said in thinking about this topic, he was curious about this being a thick packet of redundancy, and what the board was really approving. He said he would guess they could have had one sheet of paper for the site plan, and one sheet of paper of what the sign will look like. He said that was all the board needed that day. He asked if he was looking at this too simply as he would much rather follow what Mr. Shepherd just said as far as having the backup material for an ordinance versus the many pages that were provided.

Mr. Svoboda said generally, staff sends everything that the applicant sends in. He said what they don't want to do is determine, from what the applicant submits, what is important and what is not. He said they will keep an eye on what staff duplicates and try not to duplicate those efforts. He said if the applicant, for instance, sends in two pages, staff will send the board two. He said if

the applicant sends in 50 pages, staff will send the board 50 pages as staff wants the board to have all the information the applicant sent in.

Mr. Rinehart asked if his request to cut down the pages was being petty, and for Mr. Shepherd and Ms. Joseph (with their prior experience) to weigh in.

Mr. Shepherd said in his opinion, he understands the need to send everything to avoid precluding something that might be crucial but that his request would be to highlight and focus on what is important. He said these are basically, to him, appendices. He said in this particular case, as far as he could tell, the board had to make sure they were not out of conformance with the general findings that must be made for a Special Use Permit.

Mr. Shepherd said in this case, there were two things they had to see: ARB approval and VDOT approval. He said with that, he thinks this was the board's job. He said qualitative analysis of the appearance of the sign was, to him, interesting, but not to the point. He said to bring the board's attention to the reason they are there, and the decisions they have to make, is the key to a good staff report, which leads to a good decision, and perhaps also good analysis on the part of the staff to begin with.

Mr. Rinehart said he always subscribes to the notion, "less is more." He said it is a shame to waste all the paper that would be thrown away.

Ms. Joseph said what Mr. Rinehart was saying was important. She told Mr. Svoboda that an explanation of what was happening would have been helpful, as she spent a lot of time looking at the graphics, and the graphics she received where somewhat dark. She said there was reference to a wall, and the only thing she could see was an enormous wall. She said it was actually a building, but they didn't label it. She said in looking at that, it took her a while to figure out what was going on. She said a simple explanation of what the applicant was doing and the elements were needed.

Ms. Joseph said she understood what Mr. Rinehart was saying, as she got herself discombobulated looking for the dimensions of the wall. She said finally, she found it on a certain page. She said an overview of what is going on would be helpful. She encouraged staff not to think this kind of explanation would be too basic for her as she needs all the information they can provide her. She encouraged staff not to make assumptions that she knows anything about what is going on as she was just stepping into this.

Mr. Shepherd said he was encouraged by this conversation and that it would lead to a positive outcome.

6. New Business

Mr. Shepherd thanked Mr. Bowling for his good service to the BZA thus far. He said Mr. Bowling is definitely helping and that he both appreciates and enjoys this. He said for the record, he wanted to say that Mr. Bowling has done a good job helping the board. He said Mr. Bowling did not ask him to say this but that Mr. Bowling donated almost $1,000 worth of earnings as his

time he put into his work on the board so far exceeded what had been allocated by the Board of Supervisors.

Mr. Shepherd said this has been a complicated time and that part of this timing included Mr. Bowling guiding and helping the board with its response to appeals of board actions in the Circuit Court. He said he wanted to acknowledge Mr. Bowling's approach, as far as the billing goes, and his good work in the larger scheme of things.

Mr. Shepherd said he looked forward to more work with Mr. Bowling in the future as it has been of great service to the BZA.

Mr. Bowling thanked the board. He said after meeting in executive session, they had talked about a barn with a room full of people. He said "worse" is not the right word, but as far as controversy goes, that may have gotten worse. He said things seemed to have calmed down and that he suspected this was the normal evolution or flow of the BZA's job. He said it has been a pleasure to work with the board.

Mr. Shepherd remarked that the board does not typically see easy cases with the exception of what they reviewed that day.

Mr. Rinehart asked Mr. Svoboda when they would know when the board will meet in August. He asked if the Board of Supervisors (BOS) meeting on Yancey Lumber was taking place on August 17.

Mr. Svoboda replied yes and hesitated stating that he would have to check on the BOS meeting date.

Mr. Rinehart said he wanted to ask this question before making the motion to adjourn, as he wanted clarification as to if the BZA were to hear that case in August, if it would be too short of a time between the Board of Supervisors (if it didn't go the applicant's way) to meet in August and that Mr. Svoboda had indicated "yes."

Mr. Svoboda asked if it was correct that the BZA's deferral was to August.

Mr. Rinehart replied this was correct, and asked if there was enough time between the Board of Supervisors meeting and the August meeting to have a legal notice. He said Mr. Svoboda had implied before that there was.

Mr. Svoboda replied this was still true.

Mr. Rinehart asked if they did not yet know if the BZA will be meeting in August.

Mr. Svoboda replied that the BZA has a meeting scheduled in August and that currently, he would plan on that. He said he would double-check the dates but that he knew they had enough time to make the legal notice. He said it would happen quickly, within a number of days after the Board of Supervisors meeting, if not actually the next day. He said this was the deferral date and

that they would be having that meeting to either hear the appeal, withdrawal, or an additional deferral, which were all still options on the table.

Mr. Shepherd said he had trouble imagining what would be left for the BZA to decide after the Board of Supervisors had heard it, but they would take it as it comes as it is still a pending matter.

Mr. Svoboda said this was correct.

Mr. Shepherd said he doubted there would be much staff would have to add to the staff report from before. He said the issues from that that were deferred (the two setback issues) are narrow and confined.

Mr. Svoboda said yes.

7. Adjournment

MOTION: At 3:02 p.m., Mr. Rinehart moved to adjourn the meeting. Mr. Robb seconded the motion which passed unanimously (4-0).

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,

