

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
VIRTUAL MEETING
TUESDAY, JANUARY 5, 2021 – 2:00 P.M.

Board Members: John Shepherd
Marcia Joseph
Ed Robb
Randy Rinehart
Edward (Bo) Carrington

Staff Members: Bart Svoboda, Zoning Administrator
Francis MacCall, Deputy Zoning Administrator
Marsha Alley, BZA Clerk and Recorder

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.

Mr. Shepherd said he would start by reading some information that makes the meeting a legal meeting and explains the protocols.

Mr. Shepherd read the following statement into the record: “Good afternoon. As Chairman of the Albemarle County Board of Zoning Appeals, I call the meeting for January 5, 2021 to order. This is an electronic meeting. Please be patient as we all become familiar with this meeting alternative and virtual process.

“This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(14), ‘An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.’ BZA members who are electronically present at this meeting are...”

Mr. Shepherd asked the board members to announce themselves.

Mr. Randy Rinehart, Ms. Marcia Joseph, Mr. Bo Carrington, Mr. Ed Robb, and Mr. Shepherd each announced their presence.

Mr. Shepherd continued reading the statement: “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 homepage and on the Albemarle County Calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received.”

2. Establish a Quorum

Mr. Shepherd established a quorum, as all board members had stated their presence.

1 Mr. Shepherd introduced Mr. Bart Svoboda, Zoning Administrator; Ms. Marsha Alley, Recording Clerk;
2 Mr. Andy Herrick, Deputy County Attorney representing the County; and Mr. Francis MacCall, Deputy
3 Zoning Administrator.

4
5 Ms. Joseph noted that Mr. Jim Bowling was listed as an attendee.

6
7 After a brief pause, Mr. Bowling joined the meeting.

8
9 Mr. Shepherd introduced Mr. Bowling, who was representing the Board of Zoning Appeals.

10 11 **3. Annual Organizational Meeting**

12 Mr. Shepherd explained that this was the board's annual organizational meeting. He said they would elect
13 officers, review and readopt the Rules of Procedure, look at the meeting schedule, and look at the annual
14 report. He said they would start with the nomination and election of officers.

15 16 **A. Election of Officers**

17 Mr. Shepherd said that as presented to him, they would go through the individual offices, seek
18 nominations, and vote for people individually. He said they could also do this as a slate. He asked if
19 anyone had an opinion or preference on that.

20
21 Mr. Rinehart nominated Mr. Shepherd as Chair, Ms. Joseph as Vice Chair, and Mr. Carrington as
22 Secretary for 2021.

23
24 Mr. Robb seconded the nomination.

25
26 Mr. Shepherd asked if there was any discussion about this and heard none. He said he appreciated the
27 opportunity to serve in this position another year and looked forward to it. He thanked Mr. Rinehart for
28 the nomination.

29
30 Mr. Shepherd asked if they needed to require restating the motion in order to follow the total protocol.

31
32 **MOTION:** Mr. Rinehart moved to nominate Mr. Shepherd as Chair, Ms. Joseph as Vice Chair, and Mr.
33 Carrington as Secretary and that nominations be closed. Mr. Robb seconded the motion, which carried
34 unanimously (5-0).

35 36 **B. Review and Re-Adopt Rules of Procedure**

37 Mr. Shepherd asked if anyone had comments to offer and heard none. He said he himself had not found
38 that there was anything he wanted to change. He said he had no suggestions about changing the rules, as
39 they seemed to have gotten the BZA through a fairly complicated procedural year. He said he was glad
40 that they were in place. He said a lot of work had been done to them a couple of years ago, and he
41 believed he was fine with it.

42
43 **MOTION:** Mr. Rinehart moved for the adoption of the current rules of procedure for 2021. Mr.
44 Carrington seconded the motion, which carried unanimously (5-0).

45 46 **C. Review and Adopt 2021 Meeting Schedule**

47 Mr. Shepherd asked if there were any comments or questions about the meeting schedule. He said he had
48 a quick question. He asked Ms. Alley if there was an opportunity to change the time of day more

1 generally. He asked if Tuesday was wide open, or if they had just found themselves to be lucky on that
2 day.

3
4 Ms. Alley replied that she believed they had spoken about this at a previous meeting. She said she did
5 inquire with Facilities, but they could not guarantee anything until the BZA actually made the request.
6 She said they could not give her any confirmation on a hypothetical, in case someone else came in the
7 meantime and took their spot.

8
9 Ms. Joseph said she had a vague feeling that in the Rules and Procedures the BZA just approved, they talk
10 about the time, though she was not positive. She said on the schedule itself, however, they have a deadline
11 for filing time (3:00 pm), but they do not have the time on the schedule. She said it makes it easier for
12 everyone who is applying to know that the time that the Board is meeting is 2:00 p.m. She asked if this
13 could be put on the schedule.

14
15 Ms. Alley said she could add this. She asked if it would be suitable to add it to the column or elsewhere.

16
17 Ms. Joseph said it was fine, just as long as when the public comes in, they go online and know that the
18 meeting itself is at 2:00 p.m.

19
20 Ms. Alley said she could certainly make that change.

21
22 Mr. Shepherd asked if anyone wanted to pursue the idea of changing the meeting time. He said he was not
23 proposing it, but it was a chance to talk about it. He said 2:00 pm worked for him, as he was in the rhythm
24 of it himself.

25
26 Ms. Joseph said that at one point, Mr. Rinehart had preferred an earlier morning time. She asked him if he
27 was still thinking this way. She said they did move one meeting earlier.

28
29 Mr. Shepherd said there had been a special meeting that was early.

30
31 Mr. Rinehart said he could not remember. He said he was fine as long as it was not 2:00 in the morning.
32 He asked what the advantage would be to changing it. He said he thinks they should have an open mind
33 about it, but he was thinking about the staff and how the current time could give them extra time in the
34 morning to prepare for the afternoon, should that need arise.

35
36 Ms. Joseph said she was also thinking of the public, and since this meeting has been a 2:00 pm meeting
37 forever now, she believes people have it in their heads that this is when the meeting occurs. She said this
38 was another portion of this.

39
40 Mr. Shepherd said he was looking at whether anyone had a strong idea about changing the time, but he
41 did not think this was what they were saying. He said he believed that the board was comfortable with the

1 time as it currently was. Mr. Shepherd said with that, and with the addition of putting the meeting time on
2 the schedule, he would invite a motion to approve it.

3
4 **MOTION:** Ms. Joseph moved to approve the meeting schedule, with the addition of the time that the
5 meeting is held. Mr. Rinehart seconded the motion, which carried unanimously (5-0).

6
7 **D. Review BZA Annual Report for 2020**

8 Mr. Shepherd said he had one question. He said the report was revised to add some information about the
9 two court appeals. He told Mr. Herrick that he wanted to make sure that the synopsis or description of the
10 issue was stated well enough.

11
12 Mr. Herrick said the wording of this was up to the BZA and that he was fine with it.

13
14 Mr. Shepherd said he had reviewed the annual report carefully and had no further comments about it. He
15 asked if there was any other discussion, questions, or comments about the annual report. He said one
16 thing he had spoken to Mr. Svoboda about was that at that point, he believed this would be forwarded to
17 the Board of Supervisors.

18
19 Mr. Svoboda said yes. He said they will take it to the Board of Supervisors with the BZA's approval,
20 which was the next step. He said it would be going to the Supervisors in February.

21
22 Mr. Shepherd asked if the annual report will also appear on the County's website, or if this was something
23 that would be discussed. He said he was asking the question, but he was suggesting that the annual report
24 is something that he thinks would come up fairly easily in a Google search in getting a picture of what the
25 BZA does.

26
27 Mr. Svoboda said yes. He said the report historically lives under the agenda and the materials of the first
28 meeting of the BZA annually. He said if they wanted to create a separate tab, for instance, on the webpage
29 that says, "Annual Reports," this is probably a possibility. He said as was discussed, it was probably best
30 that he and Mr. Shepherd get together to walk through the webpage and see where it would best fit.

31
32 Mr. Shepherd suggested that for the time being, they discuss whether or not they want to approve it as it is
33 written. He said they can save that discussion for a future meeting, once they understand the options and
34 how to best approach it. He said it is his hope that it be easily accessible, but they could talk about that.

35
36 Mr. Svoboda asked for direction, that if there were no objections to posting it separately on the webpage,
37 and if they could meet their guidelines from IT on how they post it on the webpage, that they go ahead
38 and do that as opposed to reporting back and waiting. He said this was a suggestion and was up to the
39 board.

40
41 Mr. Shepherd asked if others had ideas about that. He said he personally thinks that the annual report
42 should easily be found by people who are searching.

43
44 Mr. Carrington said that as the new person on the team, he thinks it is a great synopsis document of what
45 the board has done over the past year. He agreed with Mr. Shepherd that it should be easily accessible.

46
47 Mr. Shepherd asked if this could be made as a two-part motion, or if it should be included in the motion
48 with the approval. He asked if anyone wanted to capture this in a motion.

1 **MOTION:** Mr. Rinehart moved to approve the annual report, as presented, and that the board further ask
2 that it be posted on the County's website. Mr. Robb seconded the motion, which carried unanimously (5-
3 0).

4
5 Ms. Joseph said she wanted to say something about the annual report. She said it was not anything about
6 content, but she thinks it is an important thing that she wanted to go on the record. She said she wanted
7 the Board of Supervisors to recognize how helpful it is to the BZA to have Mr. Bowling with them so that
8 they can consult with him on different issues. She said she wanted to also be able to thank them, at some
9 point in time, for taking the leap and making the expenditure. She thanked Mr. Bowling as well.

10
11 Mr. Shepherd thanked Ms. Joseph for saying this. He said he wished he would have thought of it himself,
12 as he definitely agreed. He told Mr. Bowling that he has really helped the BZA. He said he thinks their
13 decisions are better and that this has been very helpful. He said he appreciates the work that Mr. Bowling
14 is doing with them and that the BZA was lucky to find him.

15
16 Mr. Bowling said they are a nice board.

17
18 Mr. Shepherd said this concluded the organizational meeting.

19
20 **4. Public Hearings**

21 Mr. Shepherd said for the record that there were no public hearings scheduled.

22
23 **5. Approval of Minutes**

24 **A. December 1, 2020**

25 Mr. Shepherd asked if the board had had the opportunity to review the minutes and if there were any
26 comments.

27
28 Mr. Carrington said there was a lot of content to capture, and he thought it was well done.

29
30 Mr. Robb and Mr. Rinehart said they did not have any comments.

31
32 Ms. Joseph said she would have to abstain from the vote because she did not have the time to read
33 through them. She apologized.

34
35 Mr. Shepherd said he had no comments.

36
37 Mr. Robb said that under Old Business, he wanted to make a comment that would relate to the minutes of
38 the last meeting. He asked if Mr. Shepherd preferred he do that now, now that they had basically accepted
39 the minutes.

40
41 Mr. Shepherd said they were in the middle of approving the minutes. He asked if this had to do with the
42 minutes, or if Mr. Robb wanted to go back and talk about the annual report.

43
44 Mr. Robb said he wanted to briefly talk about the minutes of the last meeting, but he believed it would be
45 better done under Old Business.

46
47 Mr. Shepherd asked if the board was prepared to approve the minutes, as written, from the last meeting.

48
49 Mr. Robb said yes.

1 Mr. Rinehart said he was not sure that this was the case. He said if Mr. Robb wanted to comment on the
2 minutes, he should do so before approving them.

3
4 Mr. Robb said he had a follow-up question that would not be included in the minutes. He asked if this was
5 too confusing.

6
7 Mr. Shepherd replied that it was a little confusing. He said they could separate it out if Mr. Robb was
8 prepared to vote.

9
10 Mr. Robb said he would withdraw and that he was prepared to vote.

11
12 **MOTION:** Mr. Robb moved to approve the minutes of the December 1, 2020 meeting. Mr. Rinehart
13 seconded the motion, which carried unanimously (4-0). Ms. Joseph abstained.

14 **6. Old Business**

15 Mr. Shepherd asked Mr. Robb what his concern had been.

16
17
18 Mr. Robb said being in law enforcement, he was concerned about the follow-up enforcement of
19 agreements and discussions that were made regarding, for instance, the North Pointe situation. He said
20 there were certain promises made during that meeting, and he wondered if the County has seen fit to
21 follow up to see if those agreements and promises have been acted on.

22
23 Mr. Robb said they get these promises all the time, and very frequently, they fall through the cracks. He
24 said he was concerned about that and wondered where they go from there. He said perhaps Mr. Svoboda
25 could answer.

26
27 Mr. Shepherd said he could answer to that. He said the construction entrance was closed. He said it was
28 blocked with jersey barriers, and a bank has been graded in front of it to block the entrance.

29
30 Mr. Robb commended Mr. Shepherd for his actions. He asked if the County has a system to follow up on
31 these agreements and positions. He said he was concerned, as they had come up with these demands or
32 requirements. He asked Mr. Svoboda if there is a follow-up within a certain length of time, such as 30
33 days or a month.

34
35 Mr. Svoboda replied that they have been aware and monitoring the site for North Pointe that the
36 construction access has been removed from Pritchett Lane to Route 29, and the bridge has finally been
37 completed. He said he believed it actually took a little longer than the applicant had stated because about a
38 week after that, there was about a week's worth of rain, but this has been done.

39
40 Mr. Svoboda said for conditions such as the variance that was approved, those inspections are done and
41 are part of the permit process. He said they are done both at the preliminary stage and then at the final
42 stage for those that are applicable, such as the way that the building looks or whether there is screening
43 required. He said those variance conditions are part of the final zoning, and so there is, indeed, a
44 mechanism and method to follow up on those things.

45
46 Mr. Robb asked if it would be in order somehow that if the BZA made this a requirement of their next
47 meeting, a meeting following when these agreements are reached, just as a matter of policy and practice,
48 that staff would give the BZA that report.

1 Mr. Svoboda said they could, but the struggle would be that for the permit that is pulled for the barn, there
2 is no time limit as long as construction continues. He said for the variance, as an example, they may be
3 done next month, or they may be done three years from now. He said in order to report back, that is a lot
4 of staff time to monitor the one particular permit.

5
6 Mr. Svoboda said that when they go through the report annually, staff can tell the BZA whether or not the
7 permit has been completed. He said this may be a better way to manage resources more efficiently.

8
9 Mr. Robb thanked Mr. Svoboda for his response.

10
11 Mr. Shepherd said it seems to him that for every application, there is an end point that requires some kind
12 of final approval, generally. He said there are various processes where a bond is released or a certificate of
13 occupancy or clearance is obtained. He said it seems that the mechanisms are in place, but it may be
14 helpful for the board to hear the fruits of its labors to see how things play out. He said it would be a good
15 idea to follow up on things. He said perhaps with the annual report next year, they can see where things
16 are. He said this could be discussed further.

17
18 Mr. Svoboda said yes.

19
20 Mr. Rinehart said he thinks that in the course of reporting, the board is asking staff to do that, but even if
21 they had not accomplished that requirement, they cannot go back on it. He said it would just be
22 information only, and the BZA does not have the authority if the applicant did not comply. He said this is
23 staff's job, and so he wants to make sure the board does not unnecessarily take up staff's time to have to
24 have a report to them on those things. He said that in the course of reporting, however, this is fine. He said
25 the BZA, as a body, should not have staff report to them at certain periods of time, such as when
26 something did not make the 30 days. He said for staff to let the BZA know that it did not happen, this was
27 not the BZA's job.

28
29 Mr. Shepherd agreed. He said he had not given this any thought until now, but as they were discussing it,
30 he believes that all the things they are acting on are associated with applications that have end dates and
31 all sorts of conditions built into them. He said the board saw the proffers and conditions on North Pointe.
32 He said it is a tremendous thing and a large program to monitor the site work and construction there, as
33 well as the stormwater management, which is beyond the BZA's scope. He said there are approvals along
34 the way and final approvals, which might be interesting to the BZA, but as far as monitoring the progress,
35 he does not think it is appropriate for the BZA. He said the building process is in the hands of the owner
36 to determine the timing.

37
38 Mr. Rinehart asked if they had made a decision. He said he was looking at it from the staff's point of
39 view, even in the case of Mr. Herrick reporting to the BZA on certain appeals. He said he did not want to
40 see the BZA making it a requirement to ask staff. He said if the BZA made a decision about something,
41 they move on. He said if staff wants to let the board know certain things, that is one thing, but he did not
42 want to put in an unnecessary requirement. He said staff has enough to do as it is, adding that this was just
43 his opinion.

44
45 Mr. Robb said he did not want it to be misunderstood. He clarified he was not saying that it had to be a
46 requirement. He said he was asking if there was a mechanism in place by the County to follow up on
47 these particular promises that are made. He said he knows that from past experiences over the years, there
48 are promises made by certain people, and those promises are never carried out. He said he knows this
49 because he has seen it, and he often wonders what is happening with this because if one makes promises,
50 they must keep them.

1
2 Mr. Robb said he was not suggesting that they have to have a weekly or monthly report. He said he was
3 asking if there was a mechanism, and if so, at the BZA level, they should be able to ask what has
4 happened, without the intention of doing anything that would reflect unfavorably on anyone other than
5 just asking what happened.
6

7 Mr. Robb said if they are going to act in the capacity of being judges, judges do not have the requirement
8 to make sure that the agreements are followed up with because there is staff who does that. He said his
9 question is a simple one: whether or not Mr. Svoboda has a mechanism.
10

11 Mr. Svoboda replied yes. He said the “promises,” to use Mr. Robb’s term, that staff has jurisdiction over
12 are the ones that are conditions placed on applications and ordinance requirements, State Code
13 requirements, and the like. He said statements that an applicant makes generally are not within staff’s
14 jurisdiction, meaning they do not have the authority to hold someone to a promise that they made
15 verbally.
16

17 Mr. Svoboda said he would use screening as an example. He said if an applicant says, “Sure, I don’t mind
18 planting ten trees,” but the condition says six trees, then staff’s authority lies with six trees, not with ten.
19 He said this is why they are very careful when they have the discussions and write the conditions in the
20 reports that they are specific about what happens and are clear in the conditions of what will be required.
21 He said the requirements are the conditions and the ordinance. He said beyond that, there is no
22 jurisdiction from the County that stretches farther than that.
23

24 Mr. Svoboda said staff looks at those through the permit process, so anything that comes in with a site
25 plan – whether it is a proffer, special use permit condition or variance condition – is reviewed at the time
26 of application, or at the timing of the proffer. He said a proffer may say that, though not a BZA item,
27 Road X needs to be built by December 2021, and staff monitors that condition to make sure it is met as
28 they review permits, as the project goes on. He said there are different triggers for different things.
29

30 Mr. Svoboda said using North Fork Research Park as an example, those proffers are 20 years old. He said
31 there are still triggers in them that have not been met because they are based on square footage as opposed
32 to a specific date. He said North Pointe has some similar ones, and there are timing issues that staff
33 monitors as the project progresses. He said some are related to permits while others are related to dates,
34 and they do have a mechanism for that. He said in terms of the variance that is the BZA’s purview, those
35 conditions will be checked when the application is made to first make sure that when the permit is issued,
36 it matches those requirements and that again, at final approval, what was proposed was actually built.
37

38 Mr. Svoboda said this was the longer answer, and that the short answer was there are mechanisms in place
39 to make sure that those conditions are met. He said he hoped this helped.
40

41 Mr. Shepherd asked Mr. Robb if this resonated with him.
42

43 Mr. Robb replied yes.
44

45 Mr. Shepherd said he hesitated to add to this, but he believed it was his understanding that the zoning
46 enforcement program is a complaint-driven system as well when dealing with violations. He said some of
47 the closest observers of projects are neighbors, as they just saw with North Pointe, and he thinks it is
48 typical that neighbors are very interested in the conditions that are put on projects. He said if neighbors
49 see conditions not being met, they can report to the Zoning Department, and this would be in a very
50 focused way, dealing with a particular issue that the Zoning Inspectors would go after.

1
2 Mr. Shepherd said he has mentioned this in public hearings in the past, when people are concerned about
3 what is, for them, a controversial project in their backyard, that the Zoning Department stands ready to
4 investigate complaints. He asked Mr. Svoboda if he had stated this correctly.

5
6 Mr. Robb said he was not intending to belabor the issue. He said they could talk about this for the rest of
7 the day, but he made his point, and his point went back a long time. He said he, along with Mr. Svoboda,
8 has seen where promises are made but never kept. He said he realizes staff has a limit to their jurisdiction
9 and capabilities to enforce, but this does not mean it is okay for people to make promises and not keep
10 them. He said perhaps Mr. Bowling had an opinion on this.

11
12 Mr. Robb said he was not looking for trouble, but he was looking to support the people who are out there
13 at North Pointe and were not getting responses to their complaints. He said trucks were rolling up and
14 down the road, and problems were there. He said the BZA heard the representatives from the contractor
15 say that they would meet with the residents and that they were more than happy to do all that they could
16 to make the neighbors comfortable, happy, and understanding. He said this did not happen, however, and
17 perhaps it has happened since.

18
19 Mr. Robb said they have to look after the citizens of the County and although everyone does that, the
20 citizens sometimes fall by the wayside.

21
22 Mr. Shepherd said this was good to keep in mind.

23 24 **7. New Business**

25 Mr. Rinehart said in May of 2021, his term expires or ends, and he wanted to announce that he did not
26 want to run for reappointment to the Board of Zoning Appeals. He said he has been on the board for
27 around 25 years, and it is time for him to get the gold watch and head to the pasture. He said he could be
28 traveling to Alaska, which would result in him missing four meetings. He added that there were other
29 reasons as well.

30
31 Mr. Rinehart said he wanted to stay for as long as it takes until the June meeting for the applicants, for the
32 judge making the appointment, and so forth. He said he would relinquish his spot earlier if that was the
33 case, but he could stay through June if necessary. He said he was not leaving town, but it was simply
34 time, as he has done this for enough years. He said it has meant a lot to him, but he made the decision that
35 it was a good point to hang it up.

36
37 Ms. Joseph said this was a huge disappointment, but she hoped Mr. Rinehart knew that she wished him a
38 wonderful time in Alaska. She said the board would use him as much as they possibly can until June. She
39 added that it was up to Mr. Rinehart to recruit someone.

40
41 Mr. Shepherd said his reaction was to say “thank you” to Mr. Rinehart. He said he did not want to make
42 this a retirement party that goes on and on each month, but he has a lot of respect for Mr. Rinehart, who
43 has helped him in a lot of ways with guidance personally as well as in general. He said Mr. Rinehart’s
44 experience over the years was embodied in so much of the institution and reflected in his decisions and
45 reactions. He said it is helpful and powerful.

46
47 Mr. Shepherd said he respected Mr. Rinehart’s decision. He thanked Mr. Rinehart and added that he
48 looked forward to getting a few more months out of him.

1 Mr. Shepherd said it occurred to him that this could be a smooth transition without a large gap if the judge
2 can be notified of the coming opening and start the process. He said in some ways, by Mr. Rinehart
3 announcing this early, it was a tremendous help to the board to avoid the five-month vacancy that they
4 have had in the past, causing all sorts of problems with quorums and split decisions. He said announcing
5 it early gives them a chance for a good transition to bring the next person on.
6

7 Mr. Rinehart said it was a total respect of something he has believed in over the years. He said they are
8 delighted that Mr. Carrington is there, but the angst it caused before he came on was something that he
9 did not want to see the board go through.
10

11 Mr. Shepherd said it would take some time to absorb this news.
12

13 Ms. Joseph said she was so incredibly negligent in not reading the minutes because they were 49 pages
14 long. She asked the attorneys if there was any way that those minutes could be reduced. She asked if they
15 had to contain everything verbatim. She asked what the legal requirement is for minutes. She said she
16 knows the audio is stored digitally, but because they have the audio, she wondered if they had to have
17 minutes that were also verbatim.
18

19 Mr. Bowling replied that the simple answer was no, but it was more complicated than that, as Mr. Herrick
20 knows. He said over the years, he thinks this has been a debate with the Board of Supervisors. He said
21 since the clerk ultimately serves the Board of Zoning Appeals, he or she is employed by the Board of
22 Supervisors in the County, which tends to dictate how minutes are created.
23

24 Mr. Bowling said Mr. Herrick is much more familiar with the process than he is, and so he would let him
25 speak.
26

27 Mr. Herrick said the minutes that are currently kept for the BZA far exceed the legal standards in terms of
28 the requirements. He said all that the Freedom of Information Act (FOIA) requires is simply a record of
29 the motions made and the actions taken. He said what is currently being created (near-verbatim minutes)
30 far exceeds the legal standards.
31

32 Mr. Herrick said he personally would not be opposed to a reduction or making the minutes more concise
33 or brief. He said there is nothing requiring that they be as long as they are now, but this is ultimately a
34 decision for the BZA to make rather than for staff or the other attorneys.
35

36 Mr. Rinehart said that in the past, they went for a number of months with short minutes, unless they had a
37 legal case and needed it, or they requested it after a meeting that was contentious. He said for a long time,
38 they never had word-for-word minutes. He said he did not know why they could not go back to that.
39

40 Mr. Robb said the evidence, in the event that anything would come to the courts, would be the recording
41 that is being made. He asked if that was correct. He said therefore, the minutes themselves (or the
42 transcripts) are not accurate anyway. He said they have had discussions related to this during the course of
43 the last few years. He said the transcripts identify, generally, what was being said, but not necessarily
44 exactly what was said. He said he did not see any reason why they needed to have minutes that are
45 prepared by a stenographer and put into their meeting requirements. He said he would agree with Mr.
46 Rinehart that they have had them much shorter, and they could easily be a synopsis that could be created
47 by someone.
48

49 Mr. Shepherd said he wondered if it did not actually require more skill to write shorter minutes than
50 basically capturing the entire discussion. He said he has done minutes himself and knows that there is a

1 lot of discretion in them, or there can be, if one is dealing with summaries of discussions. He said the
2 bottom line for him would be that he would want the minutes to reflect the basis of the board's decision.
3 He said with variances where they are dealing with two threshold issues and five more criteria, this is
4 something where they assume it will be appealed and where they would want to the board to spell out the
5 basis of the decision. He said the same is true for an appeal in that they boil down to a few points, and
6 they would want to have clarity on catching the basis of a decision on an appeal.

7
8 Mr. Shepherd said he cringes when he reads himself being captured verbatim, as it is a humbling
9 experience and it seems that much of that could be gone.

10
11 Mr. Shepherd asked how the board would approach that, and what would be involved with that. He asked
12 if it would be a training with Ms. Beth Golden.

13
14 Mr. Herrick said it is his understanding that Ms. Golden is their professional transcriptionist. He said if
15 this is a subject the board would like staff to explore further, he would suggest that they come back at a
16 future meeting with some alternatives. He said he could think of other departments or boards and
17 committees that work with Community Development, such as the Architectural Review Board and
18 Conservation Easement Authority, that do their minutes differently but still meet the requirements of the
19 FOIA. He said if this is a topic that the board wants to go into further, staff could come back at a future
20 meeting with examples of how other boards and commissions handle it.

21
22 Mr. Shepherd said this was a great idea.

23
24 Ms. Joseph said this sounded perfect, adding that the reason that the BZA, as a board, reads the minutes is
25 to make sure that they feel they are accurate. She said there always is that second level, so there is
26 someone listening, someone writing down what they think the board said, and the board having the end
27 responsibility of saying this was how it went down. She said they will always have that input. She said
28 she has done minutes as well and normally, when people are yammering on, she will say that there was
29 extensive discussion concerning the issue, and they came to a conclusion. She said the BZA has a
30 responsibility to make sure that what is represented is correct.

31
32 Mr. Shepherd said hearing examples of other boards' minutes would be helpful, and he looked forward to
33 that.

34
35 Mr. Rinehart asked the attorneys that if the board members should make a casual statement within the
36 discussion of a case that was off-the-cuff, and it is written down, if this is one example of why the audio
37 tape is played in court. He said they could slip up by saying something that jeopardizes a court case
38 without intending to. He said he never thought about this until Ms. Joseph somewhat implied it.

39
40 Mr. Bowling said this was not in any way to slight the fantastic job that the transcribers do for the County,
41 in that they are not court reporters that certify what is saying, and they want to be exactly sure what was
42 said. He said in every case of any importance, what he does in a matter of practice is to get the transcript.
43 He said it used to be a real problem to not only board members, but also the public, to actually listen to
44 the transcripts, but given the miracles of modern communication (or the curse of it), it is now relatively
45 easy to stay in the comfort of one's home and listen to the audio of a public meeting.

46
47 Mr. Herrick said he would address Mr. Rinehart's concerns about an individual member saying something
48 that would jeopardize the board as a whole. He said the argument that they frequently make, which is true
49 in court, is that the board speaks through its resolutions and adopted orders. He said regardless of any

1 comments that any individual board member might make, the board's official action is reflected in the
2 adopted resolutions and orders. He said this is all that the court should be considering.

3
4 Mr. Shepherd said this was a good discussion and that he looked forward to hearing more on this. He
5 asked if there was any other new business.

6
7 Mr. Svoboda said there were no meetings in February and March.

8
9 Mr. Shepherd said he hoped that by late summer or fall, they would be meeting again in the auditorium.

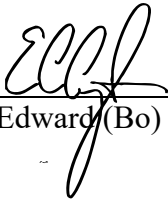
10
11 **8. Adjournment**

12 **MOTION:** At 2:57 p.m., Mr. Robb moved to adjourn the meeting. Mr. Carrington seconded the motion,
13 which passed unanimously (5-0).

14
15 (Recorded by Marsha Alley and transcribed by Beth Golden)

16
17 Respectfully Submitted,

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24



Edward (Bo) Carrington, Secretary Board of Zoning Appeals