

**ALBEMARLE COUNTY BOARD OF ZONING APPEALS**  
**VIRTUAL MEETING**  
**TUESDAY, JULY 6, 2021 – 2:00 P.M.**

Board Members: John Shepherd  
Marcia Joseph  
Ed Robb  
Edward (Bo) Carrington  
Kurt Burkhardt

Staff Members: Bart Svoboda, Zoning Administrator  
Marsha Alley, BZA Clerk and Recorder  
Nicole Jones, A/V Specialist

County Attorney: Andy Herrick, Deputy County Attorney

BZA Attorney: James Bowling, IV (absent)

**1. Call to Order**

The meeting was called to order at 2:00 p.m. by Chairman John Shepherd.

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 July 6, 2021 to order. This is an electronic meeting. This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(16), ‘An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.’”

Mr. Shepherd identified those members electronically present. All Board members were present.

Mr. Shepherd stated, “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, with all of the Board members present.

**3. Public Hearings**

There were no public hearings scheduled.

**4. Welcome Mr. Burkhardt**

Mr. Shepherd introduced Mr. Kurt Burkhardt and said the group welcomes him and looks forward to working with him.

**4. Approval of Minutes**

**A. May 4, 2021**

Mr. Robb said he would be abstaining from the vote because he was absent from the meeting.

1 Mr. Shepherd would like the names of those present added to the minutes to meet minimum requirements  
2 for regulatory purposes.

3  
4 Mr. Burkhart said he would also like to abstain from voting, as he was not appointed to the Board at the  
5 time of the May 4, 2021 meeting.

6  
7 Mr. Svoboda stated that the names of all in attendance and absent from the last meeting are included at the  
8 top of the minutes. He said he is verifying that this is sufficient.

9  
10 Mr. Shepherd said this is sufficient.

11  
12 **MOTION:** Ms. Joseph moved to approve the minutes of May 4, 2021. Mr. Carrington seconded the  
13 motion, which carried unanimously (3:0). Mr. Robb and Mr. Burkhart abstained from the vote.

## 14 15 **5. Old Business**

### 16 **A. Update on Formatting of Meeting Minutes**

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18 Mr. Shepherd said that during the last meeting, they discussed reducing the minutes from near verbatim to  
19 something more limited that captures the minimum requirements for minutes and records decisions, votes,  
20 etc. He said the Board had asked staff to work with Beth Golden to follow the format that the  
21 Architectural Review Board uses, which is felt to be succinct but clear.

22  
23 Mr. Shepherd said he thought Ms. Golden did a good job of capturing the meeting. He said that in the  
24 future, he would try to clarify the discussions at the end so that the decisions and actions, along with their  
25 bases, are made as clear as possible. He noted that the Board has the opportunity to review and seek  
26 changes to every set of minutes.

27  
28 Mr. Shepherd expressed his appreciation to Ms. Joseph for making the minutes process a topic to the  
29 Board and staff. He said there was much discussion between Ms. Golden and staff in working out details,  
30 and oversight by Mr. Herrick to ensure that even if the volume of minutes were reduced, the requirements  
31 are still included. He commented that he appreciates everyone's efforts.

32  
33 Ms. Joseph said it was incredibly effective to have Mr. MacCall typing on the screen and designate why it  
34 was or was not approved, particularly any conditions. She said this provided words that everyone could  
35 look at and agree to simultaneously, instead of being written down later or just in the minutes. She said  
36 she hoped the Board would continue with that process and asked Mr. Svoboda for that confirmation.

37  
38 Mr. Svoboda said that staff would do their best to adjust the motions in real time, which requires  
39 reconfiguring of the PowerPoint if there's not an agreement on a decision to pinpoint the rationale. He  
40 said if everything is captured at the end, it consolidates the conclusions both in reviewing the minutes  
41 upon completion and any wordsmithing needed during the meeting in real time.

42  
43 Ms. Joseph thanked Mr. Svoboda for his input.

44  
45 Mr. Shepherd also expressed his appreciation.

46  
47 Mr. Burkhart asked what the allocation of time has been for those compiling minutes in the past.  
48

1 Mr. Svoboda said that the current process is to record the meeting and send the recording to the  
2 transcriptionist, who turns them into minutes for the Board. He said there have been various versions, and  
3 this one has been used for a little over a year. He said before the minutes read like a lengthy book with no  
4 page numbers and no references on the side column.

5  
6 He said that something like an appeal by an applicant or other aggrieved party could necessitate a  
7 verbatim set of minutes. He said sometimes those situations are known ahead of time, and the Board can  
8 make that request prior to the first draft of summary minutes—but moving forward, the summary minutes  
9 would be effective. Mr. Svoboda said staff review time has not been tracked in house, but it takes staff at  
10 least one whole day to review the tape. He explained that from a workload perspective, it's more efficient  
11 to send it to the transcriptionist.

12  
13 Mr. Shepherd said that a 90-minute to two-hour meeting covering a hearing could result in minutes of 40-  
14 50 pages, and they were long and difficult to dig out the important points. Mr. Shepherd said that the  
15 improvement could be appreciated if some of the old versions had been reviewed—particularly items  
16 appealed in circuit court, which meant compiling minutes from several meetings and a voluminous pile of  
17 paper.

18  
19 Ms. Joseph jokingly said that the example Mr. Shepherd is referring to had 592 pages.

20  
21 Mr. Shepherd said it took a lot to whittle down that large volume to telling a succinct and complete story.  
22 He said there was a lot of motivation from that, which influenced what is being presented for minutes  
23 now. He said he is happy with the change and hopes others are as well.

24  
25 Mr. Robb asked for confirmation that the meetings are recorded.

26  
27 Mr. Shepherd confirmed they are.

28  
29 Mr. Robb said if any cases went to court, the best evidence rule would apply, and he suggests that the  
30 actual recordings would be the evidence, not the transcripts, though he acknowledged that Mr. Herrick  
31 may correct that assumption.

32  
33 Mr. Herrick said the parties of the case could submit whatever evidence they want for the proceedings,  
34 but his sense is that a judge would prefer a transcript as it would be quicker for the judge to read and go  
35 back to, rather than an audio or video recording.

36  
37 Mr. Robb said that is correct, but the transcript could be used in place of the recording.

38  
39 Mr. Herrick confirmed and said there would need to be an agreement that the written transcript is an  
40 authoritative and authentic and correct recording of the meeting itself. He said that would need to be  
41 stipulated prior to entering it into evidence.

42  
43 Mr. Robb said that is correct, but an attorney from either side could say they don't agree with the  
44 transcript. He then asked if the actual recording is the evidence.

45  
46 Mr. Herrick said that would be for the judge to decide to accept a written transcript or to have an  
47 audio/video recording.

1 Mr. Robb said yes, but the judge could decide that the recording is necessary and that the recording is the  
2 best evidence.

3  
4 Mr. Herrick again reiterated that the judge would decide what would be accepted.

5  
6 Mr. Robb said that he does not disagree, and that maybe he is too much involved in criminal cases, but the  
7 best evidence would be the recording.

8  
9 Mr. Herrick said the judge would make that determination.

10  
11 Mr. Robb said he does not disagree with that.

12  
13 Mr. Shepherd said that the efforts to reduce the volume of the minutes is done with full recognition that  
14 the meeting is recorded and every syllable is available for study if others want to find that.

15  
16 Mr. Robb said that is correct, and he is not disagreeing with that either. He said he thinks a statement was  
17 made that the minutes were significant, and they are, but the most significant evidence would be the  
18 actual recording. He asked for confirmation from Mr. Herrick.

19  
20 Mr. Herrick said he hates to keep repeating himself but said that it would be for the judge to decide, but  
21 it's good to have both available.

22  
23 Mr. Robb said he knows that, and that is not the question.

24  
25 Mr. Shepherd said he thinks Mr. Robb's point is that the recording is the source material, and anything  
26 written after that is kind of derivative, so the recordings are very important.

27  
28 Mr. Robb confirmed and said that was his point and thanked Mr. Shepherd for acknowledging.

29  
30 Mr. Shepherd said they will move forward with the new format, and while the Board will continue to  
31 review and discuss, he feels it is a good process moving forward. Mr. Shepherd then expressed thanks to  
32 Ms. Golden for boiling things down. He said he knows it's harder to make choices about what's being  
33 typed than going after every word heard as it requires more judgment and effort of a different sort.

34  
35 Mr. Shepherd asked if there was any further discussion and said there is no Board action required.

## 36 37 **6. New Business**

### 38 **A. Brief County Cybersecurity Update**

39  
40 Mr. Svoboda said there have been multiple conversations with IT and it is unclear if the private BZA web  
41 page access would remain since albemarle.org email addresses are not used. He said they would still  
42 receive their email packets, and all the information is the same as what is posted online except for things  
43 like materials for executive session. He said that the Board is not subject to the Knowbe4 cybersecurity  
44 training, and the goal is to reduce unnecessary access and trainings by keeping them in a more public  
45 space.

46  
47 Ms. Joseph said that this was welcome and that she is using her own computer and was concerned about  
48 completing something that could cause cross-contamination to her personal computer.

1 Mr. Svoboda said that he apologizes for any confusion, but with all of the cyberattacks that are happening,  
2 staff wants to ensure everything is secure, and he appreciates the Boards understanding.

3  
4 Mr. Robb asked if anyone had taken the cybersecurity course.

5  
6 Mr. Shepherd said he did not.

7  
8 Mr. Svoboda said he did.

9  
10 Mr. Robb said he thought it was pretty good. He said that it's been done for two consecutive years now  
11 and he thought it was a requirement, but it came from outside the County, which gave him pause.

12  
13 Mr. Shepherd said he struggled getting into the program and was then notified by Ms. Alley that it was  
14 not required to complete at that point.

15  
16 Mr. Robb was concerned that he was in the wrong by completing it.

17  
18 Mr. Svoboda said it is a good course and is helpful, but from this point forward, it would not be required  
19 for the BZA to complete the course.

20  
21 Mr. Robb said he is glad he took it and recommends it to everyone.

22  
23 Ms. Alley said that Knowbe4 is a company contracted to provide training for Albemarle local government  
24 regarding protocols and policies. She assured Mr. Robb that his completing the course is not an issue.  
25 She said that IT has looked at the profiles of the BZA members and has now removed the albemarle.org  
26 association with those email addresses, so training will no longer be required.

27  
28 Mr. Shepherd said that if there is a requirement in the future, it should be made clear as to what is needed  
29 from each Board member.

30  
31 Ms. Alley confirmed this.

32  
33 **B. Renewal of BZA Legal Services –Closed Session**

34  
35 Mr. Shepherd moved to a closed session.

36  
37 Mr. Shepherd asked Ms. Alley to talk about the process first to make sure the Board is clear. He said that  
38 he is going to read something into the minutes and then the Board members will close this current online  
39 meeting session and follow the link provided in the email to the closed session.

40  
41 Ms. Alley said this is correct.

42  
43 Mr. Shepherd said he would like to set a time to reconvene and confirmed with Board members that 10  
44 minutes was an acceptable time frame to discuss the topic.

45  
46 **MOTION:** At 2:35 p.m., Mr. Shepherd moved that the Albemarle Board of Zoning Appeals goes into a  
47 closed meeting pursuant to section 2.2-3711(A) of the code of Virginia under § 1 to discuss employment  
48 of legal counsel for the Board of Zoning Appeals. Ms. Joseph seconded the motion, which passed  
49 unanimously (5-0).

1  
2 Mr. Shepherd said the Board is going to now leave this meeting and will reconvene at 2:45 p.m.

3  
4 Ms. Alley interjected to say that Mr. Herrick and Mr. Svoboda should remain in this meeting until the  
5 Board members rejoin after the closed session.

6  
7 **CLOSED SESSION**

8  
9 Mr. Svoboda asked Mr. Herrick if there were any protocol issues if a Board member did not rejoin the  
10 meeting.

11  
12 Mr. Herrick said there are none if roll call is taken again to reopen the session.

13  
14 **MOTION:** At 2:45 p.m., Mr. Shepherd moved that the Albemarle County Board of Zoning Appeals  
15 certified by a recorded vote, that to the best of each member's knowledge, only public business matters  
16 lawfully exempted from the open meeting requirements that Virginia Freedom of Information Act and  
17 identified in the motion authorizing the closed session were heard, discussed, or considered in the closed  
18 session. Mr. Robb seconded the motion, which passed unanimously (4-0). Mr. Burkhardt was absent as  
19 there were technical issues in rejoining the meeting.

20  
21 Mr. Carrington stated that he was going to have to step out for another commitment in about five minutes.

22  
23 **MOTION:** Ms. Joseph moved that the Board approve the letter written July 7, 2021 to James M. Bowling  
24 IV, and the letter will confirm the terms of his legal representation of the Albemarle County Board of  
25 Zoning Appeals for the period of July 1, 2021 through June 30, 2022. Mr. Carrington seconded the  
26 motion, which passed unanimously (4-0). Mr. Burkhardt was absent.

27  
28 **C. Status of County Building Posture**

29  
30 Mr. Shepherd said the final topic is to discuss the reopening of the building, meeting protocols, etc.

31  
32 Mr. Svoboda said currently that issue still under review, and emergency management staff are looking  
33 into how to make the transition into either returning fully to the office, allowing the continuation of the  
34 current model, or coming up with a hybrid process. Mr. Svoboda said his staff would keep the Board  
35 posted.

36  
37 Mr. Shepherd asked if Mr. Svoboda had any sense of what has or has not been decided for open meetings.

38  
39 Mr. Svoboda said that more than likely, it will be sometime after September before decisions will be  
40 made. He said that the hybrid system has been discussed, but the difficulty is with public hearings in  
41 terms of scheduling speakers and order. He said there are some technological difficulties that are being  
42 explored, but it will likely be a month or more before he knows the direction where things will land.

43  
44 Mr. Robb asked if selective meetings could be held in the building when fewer people are required.

45  
46 Mr. Svoboda said that was possible, and they would try to keep the protocol as similar as possible and not  
47 have special rules for special things. He said public hearings would be kept in one set of protocols versus  
48 a community meeting that would be easier access and doesn't have the same burden for recordation.

1 Mr. Robb asked if Mr. Svoboda was part of the decision-making process.

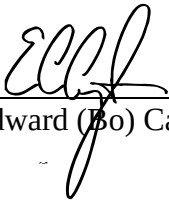
2  
3 Mr. Svoboda responded that he is not but may be asked for input. He said that while he is not on the team  
4 making that decision, the Director of Community Development is on the team and is aware of the Board  
5 and Planning Commission situations.  
6

7  
8 **7. Adjournment at 2:55 pm**

9 **MOTION:** Ms. Joseph moved to adjourn the meeting. Mr. Carrington seconded the motion, which passed  
10 unanimously (4-0). Mr. Burkhart was absent due to technical difficulties in rejoining the meeting.  
11

12 (Recorded by Marsha Alley and transcribed by Beth Golden)

13  
14 Respectfully Submitted,  
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20 Edward (Bo) Carrington, Secretary Board of Zoning Appeals  
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