County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

401 McIntire Road, North Wing
Charlottesville, VA 22902-4579
Telephone: 434-296-5832
WWW.ALBEMARLE.ORG

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
AGENDA
TUESDAY, MAY 2, 2023 at 2:00 P.M
LANE AUDITORIUM

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   - There are no public hearings scheduled

4. Approval of Minutes
   A. January 3, 2023

5. Old Business
   A. Recognition of Service for Edgar Robb

6. New Business
   A. Review and discuss:
      i. Documenting official decisions made by the BZA and the information to be included in the official decision of the BZA
      ii. Information included in the meeting materials provided to the BZA

7. Adjournment

Opportunities for the public to access and participate in the meeting will be posted at https://www.albemarle.org/community/county-calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received.

BOARD OF ZONING APPEALS IN-PERSON MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) meeting. The following information is provided to help ensure the meeting proceeds as efficiently and effectively as possible. As a courtesy to others, please turn off all cell phones during the meeting.

General Information:

This meeting is recorded and later transcribed into minutes approved at a later meeting date.

Each item set for public hearing will begin with a presentation of the staff report. Next, the applicant or appellant for that item will be invited to speak. During the course of the process, the Chair will open the public hearing to comments from the public. At the end of these proceedings the Chair will announce that the public hearing is closed. Once the public hearing is closed, no further public comments will be allowed unless the Board asks for additional information from the applicant or appellant.

The BZA reserves the right to digress from these guidelines in any particular case.

To Members of the Public:

If you wish to address the Board, please raise your hand or stand when the Chairman asks for public comments for that item. When it is your turn for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording secretary. If you are with a group of people, you may want to have a spokesperson present your position to the Board.

In order to give all speakers equal treatment and courtesy, the Board requests that speakers adhere to the following guidelines:

- *Come forward to the speaker's podium and state your name;*
- *Address comments directly to the Board as a whole - open public debate is prohibited;*
- *State your position and give facts and other data to back it up – keep in mind that there is a* ***3 minute time limit for public comment****;*
- ***Give written statements and other supporting material to the Recording Secretary*** *(written comments are also welcome if you do not wish to speak).*

Additional Guidelines for Applicants and Appellants addressing the Board:

- *Please contact staff in Community Development ahead of the meeting to make any necessary arrangements for your presentation.* ***The Recording Secretary will also need copies of any handouts given to the BZA members for the official record of the meeting.***
- *Be clear in stating your position and do not repeat information that has been previously submitted to the Board.*
- *Stay on topic by addressing the questions in the application or by responding directly to staff's determination(s). Focus on presenting facts and data that support your position.*
- *Keep in mind there is a* ***15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.*** *The Board will ask any necessary follow-up questions to clarify points made during the presentation.*
- *Understand that the Board of Zoning Appeals cannot change County ordinances.*

The BZA reserves the right to place additional time limitations on speakers, as necessary.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD – LANE AUDITORIUM
TUESDAY, JANUARY 3, 2023—2:00 P.M.

Board Members:	John Shepherd Marcia Joseph Edward (Bo) Carrington Kurt Burkhart
Staff Members:	Bart Svoboda, Director of Zoning 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 Bart Svoboda.

2. Establish a Quorum
Mr. Svoboda established a quorum and recognized the BZA members present at the dais as: John Shepherd, Marcia Joseph, Kurt Burkhart, and Edward Carrington. Mr. Svoboda noted that Mr. Ed Robb tendered his resignation in December 2022, and this meeting would take place with four Board of Zoning Appeals members. He stated that also present were Andy Herrick, James Bowling, IV, Francis MacCall, and Marsha Alley.

3. Annual Organizational Meeting
A. Election of Officers
Mr. Svoboda asked if there were any nominations for the position of Chair.

MOTION: Mr. Burkhart nominated Ms. Marcia Joseph for the position of Chair. Mr. Carrington seconded the nomination, which passed unanimously (3-0). Ms. Joseph abstained from the vote.

Mr. Svoboda introduced Ms. Joseph as the new Chair of the Board of Zoning Appeals.

Ms. Joseph thanked the Board for their faith in her.

Ms. Joseph said that the next item was the nomination for Vice Chair.

MOTION: Ms. Joseph nominated Mr. Bo Carrington for the position of Vice Chair. Mr. Burkhart seconded the motion, which passed (3-0). Mr. Carrington abstained from the vote.

Ms. Joseph thanked Mr. Carrington for his willingness to serve. She said that the next item was the election of Secretary.

MOTION: Ms. Joseph nominated Mr. John Shepherd for the position of Secretary. Mr. Burkhart seconded the motion, which passed (3-0). Mr. Shepherd abstained from the vote.

B. Review and Re-Adopt Rules of Procedure

Ms. Joseph asked if there were any questions or discussions about the Rules of Procedure. She noted that the new part had an emphasis on virtual participation and the possible reasons for absence, and that the Chair must be notified of an absence so that the meeting could be prepared for virtual participation.

Mr. Burkhart said that in the last section of 7B(d), "two times or 25% of the meetings" was mentioned, and with so few meetings per year, it felt difficult for a Chair to make the decision about whether that would exceed 25%. He said that it would be a more definitive rule for it to be two per year.

Ms. Joseph said that she could support that.

Mr. Carrington asked if this policy was set in the code.

Mr. Svoboda said that Mr. Herrick could speak to the requirements of the BZA under the code and how the Board had directed some of this policy.

Mr. Herrick greeted the Board. He clarified that while this was titled in the agenda as "Review and Re-Adopt Rules of Procedure," many of these were newly proposed rules that were first introduced in August 2022, but the BZA had not met since then. He said that the two meetings or 25% of meetings was a maximum allowance under the state code, which was why it was drafted as such. He said that however, if the Board wanted to do a flat two meetings, so long as that two did not exceed 25%, they could do so.

Ms. Joseph asked Mr. Carrington what his thoughts were on the matter.

Mr. Carrington said that he would defer to the Chair, as she would be the one administering this rule. He said that as it matched state code, he concurred with it.

Mr. Burkhart said that if they had only two meetings in a calendar year, and someone had to be absent from one, it would affect that.

Mr. Bowling said that he recommended that situation be dealt with at the time it occurred.

Ms. Joseph said that the Board could amend the Rules of Procedure at any time.

Mr. Bowling said that the Board could also suspend the rules if necessary.

Ms. Joseph said that numbers 8 and 9 were the amendment and suspension of the Rules of Procedure, so they had other ways to allow Board members to participate. She asked if there was any further discussion.

MOTION: Mr. Shepherd moved that the Board adopt the Rules of Procedure and the new amendments as presented. Mr. Carrington seconded the motion, which passed unanimously (4-0).

C. Review and Adopt 2023 Meeting Schedule

Ms. Joseph asked if there were any scheduled meetings that conflicted with a Board member's schedule.

Mr. Shepherd stated that the schedule did not conflict with any scheduled elections.

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Mr. Carrington moved to adopt the 2023 meeting schedule as submitted. Mr. Burkhart seconded the motion, which passed unanimously (4-0).

4. Public Hearings
A. AP2022-00003 Berkmar Flats (Signs #79 & 80)

Ms. Joseph introduced the request noting that the property owner was Third Mesa, LLC, the appellant was Third Mesa, LLC and J.T. Maxwell, and the staff presenting this item was Mr. Francis MacCall.

Mr. Francis MacCall, Deputy Zoning Administrator, stated that he was present to review the appeal with the Board and the determination done for LOD2022-00005. He said that the 3.5-acre property had frontage on Woodburn Road and Berkmar Drive, was composed of Tax Map Parcel 45-81, 45-82, and 45-82A, which were currently zoned R6 Residential, and was recommended in the Comprehensive Plan for what was identified as Office R&D Flex Light Industrial use.

Mr. MacCall said the considerations today by the Board of Zoning Appeals were whether or not the Zoning Administrator's decision was correct and whether the zoning ordinance was applied correctly. He said that the appeal did not consider whether the proposed use was appropriate, whether it was a public interest, or whether a zoning regulation was invalid or needed to be amended.

Mr. MacCall said that the brief history was outlined in the staff report and included all the different actions taken by the applicant and staff. He said that the grounds that the Zoning Administrator utilized in determining this were based on the bonus factors for density increases not permitted in the County code, and the Comprehensive Plan did not recommend the density increase be allowed by right.

Mr. MacCall said that the applicant responded to the determination, and staff did not agree with the appellant's arguments and claims, which were identified in Attachment E of the staff report.

Mr. MacCall said that because the Zoning Administrator's letter of determination was correct, the Board of Zoning Appeals should affirm the determination. He said that the motion could be to affirm, modify, or overturn the Zoning Administrator's determination, but the proposed motion was to affirm the determination.

Ms. Joseph asked to hear from the appellant.

Mr. J. T. Maxwell addressed the BZA noting that he was with Third Mesa, LLC, the entity that owned the property. He said that the LLC originally intended the property to be used as part of his expanding business, but the pandemic affected the need for this property, so they had been trying to find a different use for it. He said that they had asked for the bonus density because some of the uses in the Comprehensive Plan had specific densities, but other uses such as industrial and open space did not permit and therefore did not have any density. He said that the office and R&D did allow for residential as a secondary use but did not list a density, so if they could allow residential, then there was a question about what density was allowed.

Mr. Maxwell said that § 2.4.1 stated that the resulting density shall not exceed the recommended density shown in the Comprehensive Plan, and the cumulative effect of all density factors may not exceed 50%. He said that because residential was allowed, the number could not be zero in asking for the bonus density. He said that the Comprehensive Plan was silent on the recommended density for office, R&D, and flex, but it did allow for residential. He said that his point was that a recommendation that was not provided could not be exceeded.

Mr. Maxwell said that staff incorrectly stated that because the Comprehensive Plan did not recommend any particular number above zero for the area, applying a bonus factor would exceed zero and thus not be permitted. He said that in fact, residential was allowed, and nowhere in the Comprehensive Plan did it state that the density was not permitted to be zero, so there was a conflict there. He said that they asked for the bonus density to allow for what they felt was within the right, given the information provided.

Mr. Herrick said that he concurred with the Zoning Administrator's determination. He said that the issue was that, on pages 107 and 108 of the Board's materials, the appeal repeatedly referred to exceeding the maximum density, but that did not correspond to the language in the ordinance, found on page 109. Underlined near the top of the page, § 2.4.1 stated that the resulting density should not exceed the recommended density shown in the Comprehensive Plan. He said that because the recommended density was for a secondary use, it was the determination of the Zoning Administrator that with the density recommended to be secondary, density bonuses were not appropriate in this development.

Mr. Herrick said that the appellants indicated that they were interested in redeveloping this as residential, and certainly they had that ability, but it would be through a zoning amendment, which was suggested in the preapplication meeting as part of the discussion of the process. He said that other rezonings in the area had achieved higher density in such a manner, and that was a more appropriate avenue than using the bonus density recommended in the Comprehensive Plan.

Mr. Burkhart said that the staff report for the public hearing stated on page 2, in the last paragraph, that each approval of the zoning map amendment was a separate action, each with different considerations before approving the proposal. He asked if Mr. Herrick could share some of the major considerations that the Zoning Administrator and staff considered before making staff recommendations to propose zoning map amendments when an applicant had requested such from their office.

Mr. Herrick said that it was more of a holistic consideration. As the Comprehensive Plan stated, one would look at the scope of the entire proposal, which was why it should be brought in as a rezoning proposal rather than as a determination of the Zoning Administrator.

Mr. MacCall asked if Mr. Burkhart was asking what they would be considering.

Mr. Burkhart said yes.

Mr. MacCall said that they did not really know each time, so each project would be different, and they had to see the proposal to make that recommendation as to whether something would be a secondary use. He said that personnel from planning, zoning, and engineering were making the bottom level of review when it came to zoning map amendments and change in use of the property, and their recommendations were then reviewed by the Planning Commission and approved by the Board of Supervisors.

Mr. Burkhart said that other high-density projects were underway in the area near this property. He asked why there was such differentiation in the zoning designations in the master plan.

Mr. MacCall said that the Board of Supervisors adopted that master plan and the Comprehensive Plan, and they were currently reevaluating the master plans with the AC44 Comprehensive Plan process.

Mr. Herrick said that the question was not what the zoning classifications or Comprehensive Plan designations should have been. The question was really if a development could have a bonus density by

right, or if it required an additional submission and more case-specific consideration by the Planning Commission and Board of Supervisors.

Ms. Joseph asked if the appellant had any further remarks.

Mr. Maxwell said that he understood that they could ask for a rezoning, but whether or not a bonus density was allowed with the Comprehensive Plan. He said that there was no density, so it was unclear what bonus density was allowed if residential was also allowed.

Mr. Burkhart said that the rezoning process could be an enormous cost of time and money for the applicant if there continued to be an untamed economy with high interest rates.

Mr. Maxwell said that those were all factors considered and could be considered in the future. He said that they felt it was appropriate to begin with the R6 and ask for the bonus density.

Mr. Shepherd shared his thoughts from a prepared statement noting that he began with the presumption that the Zoning Administrator was correct, and his starting point with the ordinance was § 2.4, which provided that bonus factors were intended to encourage development that reflected the goals and objectives of the Comprehensive Plan, and § 2.4.1, which provided that the bonus factors shall not result in a density that exceeded the recommended density shown in the Comprehensive Plan.

Mr. Shepherd said that his understanding of the basis of the determination of the Zoning Administrator was that the land use table did not establish a recommended bonus density for office, R&D, flex, and light industrial, therefore, the property may only be developed at the gross density standard level. He said that the table provided certain, specific densities for urban mixed use, urban density residential, and neighborhood density residential. He said that the plan did not recommend any limits or changes in density for office, R&D, or light industrial land use. He said that they allowed residential, but no density was recommended on the table. He said that the plan did not recommend any limits or changes in density for office, R&D, and light industrial land use designation.

Mr. Shepherd said that it was reasonable to assume the Board considered and rejected the addition of density recommendations for this designation, and approve the plan with no limitation to the underlying R6 zoning, which included provisions for bonus density. He said that he was making the assumption that because the Board was conscious of limiting certain densities, to leave the underlying zoning with no comment, R6 zoning had bonus density factors as a part of it.

Mr. Shepherd said that in § 2.4, the proposal was in accord with the intent of the Comprehensive Plan, which was required for any review like this. He said that he was leaning toward support of the appellant's position. He said that the density of the housing did not need to be secondary to the other use on the parcel, and the idea of secondary housing was to be applied throughout this entire district and not meant to be parcel specific.

Mr. Burkhart said that he agreed with those comments.

Mr. Carrington said that this appeal had an equation that should have a number associated, but instead there was a blank space. He said that he found it difficult to believe that the Comprehensive Plan recommended a density of zero. He said that he concurred that the R6 zoning had a by-right bonus factor included in it, and as they calculated constraints, it was inappropriate to use zero in a scenario where the Comprehensive Plan recommended residential use as a secondary use.

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Ms. Joseph said that she would not say anything about the site plan because she lived on Woodburn Road and would have to recuse herself. She said that she agreed with Mr. Shepherd's analysis, and as she read through this, it became complicated with trying to comply with what the Comprehensive Plan asked for and what the zoning ordinance discussed. She said that she agreed with Mr. Carrington that it allowed for residential, and she had initially read that because no number was given, there was no limit. She said that she agreed with the more constrained argument that Mr. Shepherd made.

MOTION: Mr. Shepherd moved to grant the appeal for AP2022-00003 Berkmar Flats and find that the Zoning Administrator's determination was incorrect on the basis of ordinance § 2.4 and § 2.4.1, and the comprehensive plans for this proposed district, particularly the land use table, LU2 Land Use Designations, provided for this zoning. Mr. Burkhart seconded the motion.

Mr. Carrington asked if Mr. Shepherd's motion were to pass, whether staff felt equipped to evaluate the proposal from the appellant without any guidance from the Board on a specific density that was an appropriate interpretation of the constraining factor in § 2.4.1(A).

Mr. Svoboda said that if the Board of Supervisors were not designating a number, it would be difficult to calculate what that number should be.

Ms. Joseph said that the existing zoning was R6, which allowed for the density that the appellant was requesting based on affordable housing and preservation.

Mr. Carrington said that he did not disagree, but their purview was fairly narrow, so in § 2.4.1(A), they were narrowly asked to determine what the recommended density shown in the Comprehensive Plan was. He said that as a Board, they should make their opinion known that it should be calculated with an undetermined number that should be infinite, and only B was applicable in this case, or something alternative.

Mr. Shepherd said that the number was specifically defined based on acreage. He said that bonus densities were applied on the basis of the percentage of the allowed density. He said that when the bonus densities were applied to the project before the Board, it would increase from 20 to 26. He said that the Board of Supervisors was accepting and approving of the underlying R6 zoning.

Mr. Carrington said that he wanted to improve the motion to provide staff with a sense of how to evaluate the constraining factor in § 2.4.1 (A).

Mr. MacCall clarified that the allowed cumulative bonus factors could not exceed 50%. He said that it was up to the Board to determine if the bonus density could be utilized for the project.

Mr. Carrington said that they should discuss how staff should evaluate the limiting factor in § 2.4.1 (A). He said that the motion should include how to calculate the constraining factor in § 2.4.1 (A).

Mr. Svoboda said that the calculation would be based on what was recommended in the Comprehensive Plan, but there was not a recommended number. He said that other sections of the Comprehensive Plan had a recommended number.

Mr. Bowling clarified that the zoning ordinance recommended an R6 density. He clarified that the density was known and designated by the Board of Supervisors.

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Mr. Carrington clarified that the position referencing the recommended density shown in the Comprehensive Plan was a reference to the zoning map rather than the Future Land Use Map.

Mr. Bowling responded that the current zoning was R6. He recommended that if the Board did not find density, then they should take the recommendation of the Zoning Administrator.

Mr. Carrington said that was a challenge.

Mr. Bowling said that the Zoning Administrator was entitled to a presumption of correctness.

Mr. Carrington said that the recommended density in the Comprehensive Plan was greater than zero. He said that he did not want further disagreement about how § 2.4.1 (A) should be calculated. He said that the Board had suggested that the appellant should only be constrained by § 2.4.1 (B) with the presumption that the recommended density was a recommended use, and there was no specific density. He said that he did not want to set up another appeal. He said that staff should be equipped with the Board's opinion about how they should evaluate the application.

Mr. Bowling said that the Board's opinion was not at issue. He said that the Board had to make findings of fact, and it was not their role to provide opinions.

Ms. Joseph responded that the findings of fact were that there was not a zero designated within the land use map. She said that it allowed residential use, but it did not discuss density. She clarified that the existing zoning was R6. She said that if it was not designated in the Comprehensive Plan, then it fell back to the zoning ordinance, and the ordinance allows for the requested density.

Mr. Bowling clarified that was a finding of fact determined by Ms. Joseph, and the majority of the quorum of the Board had to make a decision on the fact-finding.

Mr. Shepherd said he considered the application as a regular development application in an R6 district with some trees. He noted that the request would add affordable housing, and absent the Comprehensive Plan, staff could calculate the number of units allowed based on six dwelling units per acre with a percentage of additional units allowed for affordable housing and environmental preservation.

Mr. MacCall said that was correct as far as how it was calculated. He said if six dwelling units were allowed per acre, then 10% more units were allowed.

Mr. Shepherd said that there was a definite way to calculate the number of dwelling units based on zoning and parcel size. He said that if the Comprehensive Plan had recommendations on zoning, they must be accounted for. He said that in three of the designations, the Comprehensive Plan did not have zoning recommendations. He said that the absence of a requirement in the Comprehensive Plan implied the acceptance of the underlying R6 zoning and the associated factors. He said that it was not an unknowable number when making the calculation. He asked whether the Board forgot to add the item to the chart, or did they intentionally not change the underlying zoning.

Ms. Joseph noted that the density did not state zero, so it relied on the existing zoning to determine the allowed density. She said that the applicant was not open to developing the site to an infinite density.

Mr. Bowling said that if an infinite number of residential units were allowed, it would make the decision indefensible.

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Mr. Carrington responded that there were two constraining factors, and they worked together.

Mr. Bowling noted that the ordinance had gaps, and that was an issue. He noted that the property was zoned R6.

Mr. Carrington said that he was satisfied to close his decision.

Mr. Bowling said that they were dealing with a presumption of correctness, and the Zoning Administrator was entitled to a presumption of correctness, and it was the applicant's burden to meet it. He said that the question before the Board was whether the Zoning Administrator correctly interpreted the zoning ordinance.

Ms. Joseph said that the Zoning Administrator did the best they could with the information available in the ordinance and the Comprehensive Plan. She said that the motion and second indicated that the Board did not agree with the interpretation.

Mr. Bowling said that it was not a reading of the ordinance, it was a finding of fact. He said that the facts were the ordinances before the Board.

Ms. Joseph stated that Mr. Shepherd's findings of fact in his presentation would be included in the motion and forwarded to staff. {See Attachment A}

Mr. Shepherd said he would sign the statement.

Mr. Bowling clarified whether the Board made a finding of fact that the density on the property was R6.

Mr. Shepherd said that it was reasonable to assume that the Board considered and rejected the additional density recommendations for the designation and approved the plan with no limitation on the underlying R6 zoning which included provisions for bonus density. He said that he believed the property was zoned R6 and included the bonus density.

Mr. Bowling clarified that the Board had to make a difficult decision in a quasi-judicial role.

MOTION: Mr. Carrington motioned to amend Mr. Shepherd's motion, to amend that the Zoning Administrator's decision in AP 2022-00003 was incorrect and make a finding of fact that SDP 2022-00023, showing 26 dwelling units, was in compliance with Chapter 18 § 2.4.1.

Mr. Shepherd clarified that Mr. Carrington referenced the site plan.

Mr. Carrington said that was correct, SDP 2022-00023.

Mr. Shepherd clarified that the density shown on the site plan would be permitted. He said he accepted the concept of the amendment and that it was clarifying. He asked if Mr. Carrington was referencing § 2.4.1 and the land use table.

Ms. Joseph said that it would still be part of the motion, and Mr. Carrington's amendment would be in addition to the motion that was already made.

Mr. Shepherd asked if the amendment was a replacement for the motion.

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Mr. Carrington said that it was an amendment.

Mr. Bowling clarified that Mr. Carrington's motion would amend the whole motion.

Mr. Carrington proposed that the amendment replace the motion. He said he agreed with Mr. Shepherd that the land use chart table should be referenced.

Mr. Bowling said that the Board had to make specific findings of fact, and the facts were the sections of the zoning ordinance that supported the Board's finding that the Zoning Administrator's decision was incorrect.

Ms. Joseph requested that a keyboard be provided so that the motions could be typed and the public could see what the Board was drafting and what the conditions were. She requested Mr. Carrington restate the amended motion.

MOTION: Mr. Carrington moved to amend the motion to determine that the Zoning Administrator's decision AP 2022-00003 was incorrect and to make a finding of fact that SDP 2022-00023, showing 26 dwelling units, was in compliance with Chapter 18 § 2.4.1 and LU-2.

Mr. Svoboda asked for clarification on whether Mr. Carrington was referring to 26 dwelling units per acre. He said that the plan was approved for 26 dwelling units per acre.

Mr. Joseph said that it was approved for only 26 total units.

Mr. MacCall said that was correct and that the staff report was listed incorrectly. He said that 21 to 26 units exceeded the density for R6 zoning.

Mr. Shepherd said that he accepted the amendment.

MOTION: Mr. Burkhart seconded the amended motion.

Mr. Bowling clarified that Mr. Shepherd was withdrawing his motion.

Mr. Shepherd responded yes.

MOTION: The motion carried unanimously (4-0).

4. Approval of Minutes
A. August 2, 2022
Mr. Burkhart requested that a reference be included on page 129, page 5 of the minutes in the area of lines 30-32, to reflect his mention of a deferral and counsel's response that the appellant must request the deferral.

MOTION: Mr. Shepherd moved to approve the August 2, 2022 minutes with the revisions as requested by Mr. Burkhart. Mr. Carrington seconded the motion, which passed unanimously (4-0).

Ms. Joseph requested that the Board's Secretary be notified when approval letters were distributed. She said that there was a conditional letter and requested a copy.

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Ms. Alley said that could be provided. She said that it was called a decision letter, and it reflected the decision, any conditions, and any stipulations.

Mr. Svoboda said that the BZA Secretary could be cc'd on the email list.

Mr. Svoboda said that it was different from the Board's meeting where they issued an action letter. He asked if the letter should be sent to all the members.

Ms. Joseph said yes.

5. Old Business

Mr. Burkhart requested the earliest to most recent correspondence be included in the Board packets. He asked if there was a reason the packet was compiled in the way it was rather than going in chronological order.

Ms. Alley responded that if there was a County Attorney Memo, it followed the agenda, and the staff report and any attachments followed. She continued that generally, one of the attachments would be the applicant's submittal. She said that she was not opposed if the Board had a preference as to how the packet was compiled, but the Board had to provide a decision.

Mr. Burkhart said that he did not want to disrupt the process. He said that at times, he found things confusing and would pull items out.

Ms. Joseph suggested that they hold a workshop to discuss the order of the packet.

Ms. Alley asked if they were referring to the entire packet or just the public hearing packets.

Mr. Burkhart clarified that it was the packet that was delivered to him by mail.

Ms. Alley responded that generally, she followed the agenda so that the first item was at the top. She noted that the packet was stapled as one document, so moving forward, she would staple each item together individually.

Ms. Joseph said that they could look at it and discuss improvements.

Mr. Shepherd recalled that it was confusing when the minutes were almost verbatim, and the number of words in the minutes created confusion. He suggested that they should determine what was necessary to include in a staff report. He said that it was hard to follow the meeting agenda packets.

Ms. Alley said that she was open to suggestions.

Mr. Shepherd said that if it was in the report, he was responsible for reading the whole report. He said that improvements could be made if staff understood what the Board wanted and if the Board understood what staff has to include.

Ms. Alley said that they discussed it in-house, and the document was submitted by the appellant.

Mr. Svoboda said that they would not remove information submitted by the appellant. He said that if the appellant submitted lengthy documentation, then they would provide it in the staff report. He said that a

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good start would be Mr. Burkhart's suggestion to break up the agenda items. He said that they would discuss with the Chair changes to the layout of the packet and staff report.

Ms. Joseph recommended clarification be provided when documents were submitted by the appellant.

6. New Business

A. Discuss Contract Renewal for Legal Counsel for FY2023-24

Ms. Joseph indicated that Mr. Bowling would like the contract to remain the same with the amended date to be from July 2023 to June 30, 2024.

Mr. Bowling requested one provision which was to await the Board of Supervisors to add funding for the budget.

Ms. Joseph noted that Mr. Svoboda had indicated that the funding was included in the budget request to the Board of Supervisors.

Mr. Svoboda said that was correct, and in the current proposed budget, the same amount was requested as the prior year. He requested that the Board make a motion that once the amendments were complete, the Chair be allowed to sign the contract.

MOTION: Mr. Shepherd moved that the Board authorize the Chair to sign a contract with Mr. Bowling that reflects the present year and is the same as the prior year. Mr. Carrington seconded the motion. The motion carried unanimously (4-0).

B. Discuss Ed Robb's Resignation

Ms. Joseph will draft an appreciation letter to be sent around to everyone. She asked that Ms. Alley make a certificate offering the Board's appreciation to Mr. Robb.

C. Discuss Potential Work Sessions

Mr. Burkhart noted that the appeal covered a lot of material, and the proposed motion was a one-liner. He said that the Board of Supervisors and the School Board held work sessions. He said that it would be helpful to have work sessions to discuss applications and discuss the proposed motion.

Mr. Svoboda said that they could hold a training session or work session where they considered prior applications. He said that they could not hold a work session on an upcoming application or case because of the appeals process.

Mr. Carrington noted that the infrequency of the BZA meetings is a compliment to staff as there are a lot of applications being submitted and the work of staff is appreciated. Other members agreed.
Mr. Svoboda gave an update regarding the vacancy on the BZA noting that the position would be filled by the Circuit Court. He said that he hopes to receive an update by next week.

Mr. Svoboda mentioned that there was a potential appeal in March. He said that they believed that the applicant meant to apply for a different item as opposed to an appeal, so they may not have the item in March. He said that they would look to March or April for a training session.

Mr. Shepherd said he may have a conflict with the March meeting.

*The recording was inadequate at various times beginning at 01:38:04 to the end.

7. Adjournment

MOTION: Mr. Carrington moved to adjourn the meeting. Mr. Shepherd seconded the motion, which carried unanimously (4-0).

The meeting adjourned at 3:41 p.m.

(Recorded by Marsha Alley and transcribed by Golden Transcription Services)

Respectfully Submitted,

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John Shepherd, Secretary Board of Zoning Appeals

DRAFT

Here are my thoughts. I begin with the presumption that the zoning administrator is correct and Ordinance sections 2.4 and 2.4.1.

Section 2.4 provides that bonus factors are intended to encourage development which reflects the goals and objectives of the comp. plan.

Section 2.4.1 provides that bonus factors shall not result in density that exceeds the recommended density shown in the comp. plan.

My understanding of the basis of the determination is that the Land Use Table LU2 (See page 46) does not establish a recommended bonus density for Office/R&D/Flex/ Light Industrial. Therefore, the property may only be developed at the gross density- standard level.

That Table LU2 Land Use Designations provides certain densities for Urban Mixed Use (3 -34 DU / Ac), Urban Density Residential (6.01 – 34 DU / Ac) and Neighborhood Density Residential (3 – 6 DU / Ac). The plan does not recommend any limits or changes in density for this Office/R&D/Flex/ Light Industrial land use designation. I think it is reasonable to assume the board considered and rejected the addition of density recommendations for this designation and approved the plan with no limitation to the underlying R-6 zoning which includes provisions for bonus density.

And, as required by Section 2.4, I think this proposal is in accord with the intent of the comp. plan which includes provisions for the protection of the environment, affordable housing and driving development to the growth areas to relieve pressure on the rural areas.

I want to hear from my fellow members before reaching a final decision, but I am leaning towards support of the appellant's position.

1-3-2023

AP-2022-00003