

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, MAY 2, 2023—2:00 P.M.

Board Members: John Shepherd
Marcia Joseph
Edward (Bo) Carrington
Kurt Burkhart
Ronald Rosenberg – arrived later in the meeting

Staff Members: Bart Svoboda, Director of Zoning
Francis MacCall, Deputy Zoning Administrator
Marsha Alley, BZA Recording Clerk

County Attorney: Andy Herrick, Deputy County Attorney

BZA Attorney: James Bowling, IV

1. Call to Order

The meeting was called to order at 2:00 p.m. by Marcia Joseph

2. Establish a Quorum

Ms. Joseph established a quorum and recognized that the BZA members present at the dais were John Shepherd, Kurt Burkhart, and Edward Carrington, and herself. She stated that the agenda would be revised to move Old Business ahead of the Approval of the Minutes.

She stated that also present were Andy Herrick, James Bowling, IV, Francis MacCall, Marsha Alley, and Bart Svoboda.

3. Old Business

A. Recognition of Service for Edgar Robb

Ms. Joseph recognized Mr. Edgar Robb for his service on the Albemarle County Board of Zoning Appeals. She commented on his service history and his value to the BZA. She presented a certificate of appreciation to Mr. Robb. Other members shared well wishes and thanked him for his service.

Mr. Robb offered comments of gratitude and encouragement.

4. Approval of Minutes

A. January 3, 2023

Mr. Burkhart brought up a discussion about the length of the meeting minutes and suggested that they be condensed.

Ms. Alley explained that while minutes are not taken during the meeting, a recording is sent to the transcriptionist contracted by the county. She said that she could pass along any feedback or requests to the transcriptionist regarding the BZA's preference as to how the meetings are transcribed.

Mr. Shepherd requested a review of his statement on page 7, line 43 and 44 in the minutes, noting that he believed the statement as transcribed was the opposite of his intent and would like it corrected if so, but he noted he may have misspoken. He also requested a reconsideration of how Board-submitted materials

1 were included in the minutes. He noted that he had submitted a statement to serve as a template for his
2 own comments, but he did not intend for the document to be included in the minutes as Attachment A or
3 in such an official capacity. He suggested that future documents could be included in the agenda packet,
4 but not as part of the minutes.

5
6 Ms. Joseph asked for clarification as to whether documents submitted to the Clerk became part of the
7 public record.

8
9 Mr. Herrick responded that the documents became part of the public record, but they did not need to be
10 included in the minutes. He suggested that in Mr. Shepherd's instance, an alternative option would be to
11 take extended excerpts from his prepared comments and have those inserted into the minutes directly.

12
13 Ms. Alley clarified that Mr. Shepherd's notes were included because the Chair made a specific reference
14 in the motion, so they were included as part of the motion. She said that the minutes could be revised to
15 the Board's requests, and they could be reviewed for approval at the next meeting.

16
17 Mr. Svoboda stated that staff was charged with amending the minutes and noted for clarification that part
18 of the documents included with the minutes, in this case Attachment A, should be included with the case
19 file and not the minutes.

20
21 Mr. Bowling stated that the Board operated in a quasi-judicial fashion, so when the Board issued opinions
22 which differed from the staff recommendation, staff and legal counsel were required to defend the
23 decision during potential appeals. He said that the BZA should ensure that the reasons for their decisions
24 were included in the record.

25
26 Mr. Shepherd stated that after the discussion, he understood why the notes were included with the
27 minutes, and he supported keeping the format as it was.

28
29 **MOTION:** Mr. Burkhart moved to approve the minutes with the proposed verification of Mr. Shepherd's
30 statement on page 7, line 43. Mr. Shepherd seconded the motion, which carried unanimously (4-0). (Mr.
31 Rosenberg was absent)

32
33 **5. New Business**

34 **A. Review and discuss:**

- 35 i. **Documenting official decisions made by the BZA and the information to be included in**
36 **the official decision of the BZA**
37 ii. **Information included in the meeting materials provided to the BZAs**

38 Ms. Joseph asked for clarification from Mr. Bowling regarding what would be an adequate finding of fact
39 for motions.

40
41 Mr. Bowling said that the Board could move to approve the staff recommendations because staff typically
42 presented the facts which supported the recommendation. He continued that if the Board differed from the
43 staff recommendation, then they would have to make findings of fact based on the particular
44 circumstances of the petition.

45
46 There was discussion regarding the role of the BZA in hearing both sides being presented and making a
47 decision based on the facts that they find applicable to the issue. They referred to previous cases and how
48 they arrived at those decisions.

1 Ms. Joseph noted that the Zoning Ordinance is currently under review and asked whether it would be
2 condensed and clarified during the review and update.

3
4 Mr. Herrick responded that staff had prepared a draft order template. He noted that the Chair had
5 suggested a live-edit session, and he stated he agreed with the suggestion. He said that the staff was
6 always looking for ways to improve the process. He said that the template would provide the Board a
7 format to make determinations of fact and document its decisions. He said that the format would allow the
8 Secretary to record the Board's motions so that they were well documented for future proceedings.

9
10 There was discussion regarding live-editing of the order with Mr. Bowling pointing out that it would
11 likely not be appropriate for the BZA to request staff to compose a motion for the BZA that is in
12 disagreement with staff's recommendation. Mr. Herrick agreed and added that the Recording Secretary
13 could document the words of the BZA.

14
15 Mr. Shepherd said he agreed that the template was a good starting point. He suggested that the motions
16 should be able to be live-edited during the meetings to account for any changes or amendments. He said
17 that it would be helpful to have the most up-to-date draft of the motion in writing before the Board when
18 they made their decisions.

19
20 Mr. Herrick said that he recalled that to be technically possible and that staff could look to implement
21 live-editing of the motions at future meetings.

22
23 Mr. Svoboda noted that the task of scribing the BZA's justifications for appeals is a different task than
24 scribing the conditions for variances and special permits. He noted that the justification is not a part of the
25 motion for an appeal unless there is a modification. He said that staff would likely be able to live-edit
26 motions, but it may be difficult for staff during the meetings as they tried to account for all of the debate
27 and suggestions. He noted that the justification and reasoning for some items was not included in the
28 motions because they were not salient to the decision.

29
30 Mr. Shepherd said that live-editing would help provide clarification on the motion once the Board had
31 gained consensus, and it would allow staff to clarify ambiguities and correct errors.

32
33 It was agreed that the burden to compose a motion would be on the BZA with the motion being the most
34 important point for live-editing. It was also noted that the BZA should be prepared to cite findings of
35 facts.

36
37 Mr. Svoboda introduced Ronald Rosenberg as the newest member of the BZA. He arrived at
38 approximately 3:00 p.m. and apologized for his tardiness. Mr. Rosenberg said that a coherent and clear
39 record of the proceedings was helpful if the decision of the Board was challenged.

40
41 Mr. Herrick said that if staff were to provide a template, it would still be up to the Board to make findings
42 of fact and to state those findings when making the motion. He said that staff would not paraphrase the
43 Board's intent while drafting the Board's decision.

44
45 Mr. Svoboda informed the BZA that there are currently three (3) appeals scheduled for June.

46
47 Mr. Rosenberg asked if there had been a consideration to move the meeting time to later in the day to
48 enable people who worked fulltime to attend the meetings.

49
50 Mr. Svoboda said that they had not received feedback on requests for the Board to meet later in the day.

1
2 Mr. Shepherd said that it would be difficult to change the meeting time due to scheduling of the
3 chambers.

4
5 Ms. Joseph noted that staff would notify the Board if there were complaints.

6
7 Mr. Burkhardt asked when the materials packet for the upcoming appeals would be distributed to the Board
8 members.

9
10 Ms. Alley said that the materials could be distributed as early as May 18th, although they would likely be
11 distributed the following Tuesday.

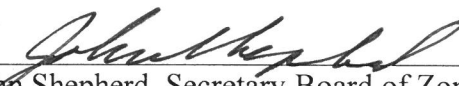
12
13 **7. Adjournment**

14 **MOTION:** Mr. Carrington moved to adjourn the meeting. Mr. Shepherd seconded the motion, which
15 carried unanimously (5-0).

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17 The meeting adjourned at 3:25 p.m.

18
19 (Recorded by Marsha Alley and transcribed by Golden Transcription Services)

20
21 Respectfully Submitted,

22
23
24 
25 _____
26 John Shepherd, Secretary Board of Zoning Appeals

6-6-2023