



**County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT**

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**ALBEMARLE COUNTY BOARD OF ZONING APPEALS
AGENDA
TUESDAY, NOVEMBER 14, 2023 at 2:00 P.M
LANE AUDITORIUM**

1. Call to Order
2. Establish a Quorum
3. Public Hearings:
 - There are no public hearings scheduled.
4. Approval of Minutes
 - A. [August 1, 2023](#)
5. Old Business
 - A. [Discussion: Possible appointment of alternate BZA member\(s\)](#)
6. New Business
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:

Public comment is welcome during Public Hearings. A sign-up sheet will be available in Lane Auditorium prior to the meeting for anyone who would like to comment on a scheduled public hearing. If you wish to comment on those matters for which comments from the public will be received, please list your name on the appropriate sign-up sheet. When your name is announced for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording clerk. 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 Clerk** (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 Clerk 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
REGULAR MEETING
LANE AUDITORIUM
TUESDAY, AUGUST 1, 2023—2:00 P.M.

Board Members: John Shepherd
Marcia Joseph
Edward (Bo) Carrington – Participated Remotely
Kurt Burkhardt
Ronald Rosenberg

Staff Members: 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 Kurt Burkhardt, John Shepherd, Ronald Rosenberg, and herself.

The following members participated remotely: Edward Carrington.

Ms. Joseph noted that Andy Herrick, James Bowling IV, Marsha Alley, Francis MacCall, and Ethan Busching were also present.

In following the appropriate procedure for remote participation, Mr. Carrington stated that he was traveling with his family in Florida and requested to participate in the meeting remotely.

MOTION: Mr. Burkhardt moved that the Board accept Mr. Carrington's request to participate in the meeting remotely. Mr. Shepherd seconded the motion, which passed 4-0, with Mr. Carrington not yet participating.

3. Public Hearing

A. VA2023-00001 Albemarle Lake Lot [Sign #79]

Mr. Francis MacCall, Deputy Zoning Administrator, stated that the variance application proposed to reduce the sideline setback requirement to allow a dwelling to be located on the property. He stated the property was located in the northwestern portion of the County near Lake Albemarle on Lakeside Drive, and it was zoned RA, Rural Areas. He explained that the requested variance sought to reduce the rural area setback requirements for the sideline from 25 feet to 15 feet to allow the construction of a 30-foot by 50-foot dwelling.

Mr. MacCall explained that to grant a variance, a request must meet all criteria outlined in the variance definition provided in the State Code and in the County Zoning Ordinance. He noted that in terms of the

1 application, not all criteria were met according to the staff analysis resulting in the staff recommendation
2 to deny the variance request.

3
4 Mr. Greg Baldwin, representing the appellant, stated that his client had purchased the property in good
5 faith for its use, and according to the standards, they had met all the criteria except for the setback. He
6 noted that there were only a few small lots which could be utilized around Albemarle Lake, and the
7 subject lot had frontage on a state road. He noted that he would be able to build a 10-foot-wide and 100-
8 foot-long house on the property without the variance.

9
10 Mr. Baldwin said that if the variance were denied, there would not be another avenue for constructing a
11 dwelling on the site. He said that four lots fronted the state route, and the County had appraised the
12 subject lot at \$65,000 and taxed it as if it could be utilized. He said that the lots across the lake with no
13 road access or improvements were appraised at \$3,500. He said that the requested variance would not
14 impact the neighboring properties.

15
16 Ms. Joseph opened the public hearing, and Ms. Alley read the rules for public comment.

17
18 Mr. Stefan Kurtz, neighboring resident, noted that there were processes to appeal the tax assessment for
19 the site. He said that the applicant had not demonstrated they would be unable to build on the lot, only
20 that they could not build a specific size dwelling. He said that the variance would negatively impact the
21 neighboring lots.

22
23 There being no other speakers, Ms. Joseph closed the public hearing.

24
25 Mr. Andy Herrick, Deputy County Attorney, provided a rebuttal to the applicant's presentation and public
26 comment. He stated that not all of the legal requirements for a variance had been met. He stated that there
27 was a separate process for tax assessment appeals; and if the owner believed the property had been over-
28 assessed, there was a process to have the assessment corrected. He stated that there were structures which
29 could be built on the property, and there was an ability to use the property. He stated that the applicant
30 purchased the property aware of its size and aware of the setback requirements. He requested that the
31 Board deny the variance.

32
33 Mr. Baldwin did not offer rebuttal comments.

34
35 Ms. Joseph brought the matter back before the Board.

36
37 Mr. Shepherd stated that he agreed with the criteria that staff identified as being met by the appellant. He
38 noted that for the Board to approve the variance, they would have to find the setback requirements an
39 unreasonable restriction. He stated that he believed the appellant was not under an unreasonable
40 restriction because they had the ability to construct a dwelling, it would just have to be a small dwelling,
41 like a tiny-house.

42
43 Mr. Shepherd said that providing a variance would be contrary to the purpose of Section 6, which related
44 to nonconforming uses. He said that the state code criteria was beyond subjective, and based on that
45 criteria, the Board should deny the request.

46
47 Mr. Rosenberg asked for information about the surrounding lots and residential uses.

48
49 Mr. MacCall stated that the subject lot was along a country road with two houses on the side, and a third
50 house was further back.

1
2 Mr. Shepherd clarified that the lots were wooded.

3
4 Mr. Rosenberg noted that the area was not developed for agricultural purposes and questioned what a
5 reasonable use would be.

6
7 Mr. Burkhart asked whether the appellant knew of any County setback requirements prior to purchasing
8 the property.

9
10 Mr. Baldwin stated that the setback requirements were known at the time of purchase.

11
12 Mr. Burkhart asked whether the proposed dwelling would serve as a primary residence or investment
13 property.

14
15 Mr. Baldwin stated that it would not serve as a primary residence, and it would be an investment property.
16 He clarified that they would be able to build a 10-foot-wide house on the site or fit a trailer on the site if it
17 were permitted. He said that a residential use is the only use that would apply to the lots.

18
19 Mr. Rosenberg asked whether the appellant had considered a smaller reduction in the setback variance.

20
21 Mr. Baldwin responded that they had considered different sizes. He noted that the main issues were the
22 setback requirements, and he noted that a 10-foot-wide house on the property would devalue the
23 neighboring residences.

24
25 Mr. Rosenberg asked whether the appellant had considered splitting the parcel and selling it to the
26 neighboring residents.

27
28 Mr. Baldwin stated that they had considered that option.

29
30 Ms. Joseph stated that she could not support approving the variance request based on the state code and
31 County regulations.

32
33 **MOTION:** Mr. Shepherd moved that the Board deny the variance request, VA2023-00001. Mr. Burkhart
34 seconded the motion, which passed 4-1 (Ayes: Mr. Shepherd, Mr. Burkhart, Mr. Carrington, Ms. Joseph;
35 Nays: Mr. Rosenberg.)

36
37 Ms. Joseph stated that the decision could be appealed to the Circuit Court.

38
39 **4. Approval of Minutes**

40 **A. June 6, 2023**

41 **B. July 11, 2023**

42 Mr. Shepherd noted that his proposed amendments to the June 6, 2023 minutes had been addressed.

43
44 Mr. Burkhart requested that the June 6, 2023 minutes be amended on page 31 to mention he stated the
45 ordinance was imperfect and that he encouraged people to get involved with the ordinance drafting
46 process. He requested that Ms. Alley review the recording to draft a summary of his statement.

47
48 **MOTION:** Mr. Shepherd moved to adopt the June 6, 2023 minutes, as amended by Mr. Burkhart, and the
49 July 11, 2023 minutes. Mr. Rosenberg seconded the motion, which passed unanimously (5-0).

1 **5. Old Business**

2 Ms. Joseph asked whether there was an update from the Circuit Court regarding the appointment of
3 alternate Board members.

4
5 Mr. Bowling stated that they could have up to three alternatives appointed, but the process began with an
6 application from the Board of Supervisors to appoint alternative members.

7
8 Mr. Herrick clarified that the request would have to be made by the Board of Supervisors to the Circuit
9 Court.

10
11 Mr. Bowling stated that the Board could make a direct request of the Board of Supervisors to submit the
12 application.

13
14 Ms. Joseph noted that at the last meeting, they had voted to request staff to consider the matter.

15
16 Mr. Bowling responded that staff had not had time to come to a decision on what to do.

17
18 Mr. MacCall agreed.

19
20 Mr. Bowling stated that the Board could give staff more time or go directly to the Board of Supervisors.

21
22 Mr. Shepherd asked whether the zoning staff would help draft a staff report to present to the Board of
23 Supervisors.

24
25 Mr. MacCall said that he would take note of the questions and suggestions and discuss them with the
26 Zoning Administrator.

27
28 Mr. Bowling suggested that the Board could write a letter signed by the Chair to the Board of Supervisors
29 requesting alternates to be appointed.

30
31 Mr. Rosenberg noted that the request could create doubt about the Board members' commitment to the
32 position, so he suggested waiting for more information from staff regarding the merits of appointing
33 alternate members.

34
35 Mr. Burkhardt asked when the last time a Board member was removed for failing to attend meetings.

36
37 Mr. Herrick responded that the Board had never failed to have a quorum, though there had been
38 occasional absences. He noted that applicants could request a deferral if Board members were absent, and
39 there were sections in state code to address tie votes. He stated that he was not aware of a prior Board
40 member whose attendance was so low to warrant removal. He clarified that any removal would be at the
41 discretion of the Circuit Court.

42
43 Ms. Joseph noted that the intent of the alternates was to maintain a quorum. She said that the appointment
44 process took a long time, and there were times when the Board had to sit with four members because it
45 was waiting for new appointments.

46
47 Mr. Rosenberg noted that as long as there was a quorum, the actions of the Board were legal and
48 legitimate, even if the full Board was not present. He cautioned against the secondary implications of the
49 request for alternate members.

Mr. Shepherd said that they should wait for staff to present a proposal and make a decision by vote as to whether to proceed.

Mr. MacCall suggested that a written proposal from the Board be presented at the Chair/Vice-Chair meeting.

Mr. Carrington said he was happy to continue the discussion through that venue.

6. New Business

Mr. MacCall stated that there were two variance applications scheduled for the next meeting on September 12, 2023. He added that at the end of August, the 45th Certified Board of Zoning Appeals Program was being held, sponsored by VCU. He noted that Ms. Alley could send the information to Board members who were interested.

Ms. Alley stated that in the past, a virtual training opportunity was held in the spring, and they anticipated it would continue next year.

Mr. MacCall stated that there was a registration cost, and the Zoning Division would be able to cover the cost for Board members.

Ms. Alley stated that the Daily Progress had recently changed the submittal deadlines for legal ads which had thrown off the Zoning deadlines by four days for legal ads and impacted other internal deadlines. She said that they were still working on the internal processes to get the materials to the Board in a timely manner.

Mr. MacCall stated that in the matter of a previous appeal, the adjacent property owners had filed an appeal with the Circuit Court, and it was in process.

Ms. Joseph clarified that the appeal was regarding the case involving firearms.

Mr. Shepherd stated he would be participating remotely during the September meeting because of travel.

7. Adjournment

MOTION: Mr. Burkhardt moved to adjourn the meeting. Mr. Shepherd seconded the motion, which passed unanimously (5-0).

The meeting adjourned at approximately 3:22 p.m.

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

Respectfully Submitted,

John Shepherd, Secretary Board of Zoning Appeals

Marsha Alley

From: Marcia Joseph <marcia.joseph@gmail.com>
Sent: Tuesday, October 3, 2023 3:08 PM
To: Bart Svoboda; Marsha Alley; Francis MacCall; edward@sevendevdevelopment.com; Jim Bowling
Subject: BZA Alternates
Attachments: Reasons for requesting an alternate BZA member 10323.docx

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.

Greetings,

I have attached a revision to the document we reviewed in September. Please take a look and let me know if there are other revisions that should be made before we share this to the rest of the BZA for our discussion in November.

I spoke to Jim Bowling about requesting the BOS to contact the courts to allow them to appoint an alternate to serve on the BZA. He suggested that a letter requesting an alternate that is written to the BOS from the BZA would be sufficient.

Enjoy the rest of your day.

Take care,
Marcia

--

Marcia Joseph

Cell 434-996-1572

Reasons for requesting an alternate BZA member
September 7, 2023
Revised October 3, 2023

The Code of Virginia allows for the appointment of from one to three alternates to serve on the Board of Zoning Appeals. See citation attached.

1. Succession. The process of applying and review often takes several months to complete. This leaves the BZA short a member leaving a board that may be evenly divided in its final decision or if another BZA member becomes ill or is absent for any other reason it leaves the BZA with only 3 members.
2. BZA Alternates are not unusual. As Mr. Svoboda can attest, the BZA members serving Greene County includes an appointed alternate. His first-hand experience with BZA alternates did not experience the potential negative perception raised as a concern by some board members and, in general it was a positive move for that board. Loudoun County, Virginia Beach, Fairfax County, Richmond, have appointed alternates. And as the statute states, Chesapeake and Hampton are required to have alternates.
3. Vacations. One BZA member recently carved out time from his family vacation to join the BZA digitally. Although this was really appreciated by the BZA members and staff it should not be something that is a necessity to achieve a full board review, something that all that applicants deserve.
4. Illness. This does happen from time to time and is again a situation that does not allow the applicant to have a review by a fully present 5 member BZA.
5. Tie vote. A 2 to 2 vote can often leave staff and the applicant wondering if the vote might have gone another way if the fifth BZA member had been present.
6. Experience. This would allow the alternate to have experience to step into the role of a fully appointed BZA member when and if a BZA member resigns. It would give consistency and continuity to the BZA.

Attachment

Code of Virginia Citation

§ 15.2-2308. Boards of zoning appeals to be created; membership, organization, etc.

A. Every locality that has enacted or enacts a zoning ordinance pursuant to this chapter or prior enabling laws shall establish a board of zoning appeals that shall consist of either five or seven residents of the locality, or in a town with a population of 3,500 or less, either three, five, or seven residents of the locality, appointed by the circuit court for the locality. Boards of zoning appeals for a locality within the fifteenth or nineteenth judicial circuit may be appointed by the chief judge or his designated judge or judges in their respective circuit, upon concurrence of such locality. Their terms of office shall be for five years each, except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least 30 days in advance of the expiration of any term of office and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the locality, except that one may be a member of the local planning commission, any member may be appointed to serve as an officer of election as defined in § [24.2-101](#), and any elected official of an incorporated town may serve on the board of the county in which the member also resides. A member whose term expires shall continue to serve until his successor is appointed and qualifies. **The circuit court for the City of Chesapeake and the Circuit Court for the City of Hampton shall appoint at least one but not more than three alternates to the board of zoning appeals. At the request of the local governing body, the circuit court for any other locality may appoint not more than three alternates to the board of zoning appeals.** The qualifications, terms and compensation of alternate members shall be the same as those of regular members. A regular member when he knows he will be absent from or will have to abstain from any application at a meeting shall notify the chairman 24 hours prior to the meeting of such fact. The chairman shall select an

alternate to serve in the absent or abstaining member's place and the records of the board shall so note. Such alternate member may vote on any application in which a regular member abstains.