

ALBEMARLE COUNTY BOARD OF ZONING APPEALS

LANE AUDITORIUM

TUESDAY, MARCH 12, 2024—2:00 P.M.

Board Members: Edward (Bo) Carrington, Chair
Kurt Burkhardt, Vice-Chair
John Shepherd, Secretary
Marcia Joseph
Ronald Rosenberg

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 Mr. Carrington.

2. Establish a Quorum

Mr. Carrington established a quorum.

The following members were present: Ronald Rosenberg; John Shepherd; Kurt Burkhardt; Marcia Joseph; and Edward Carrington.

Also present were James Bowling, Andy Herrick, Bart Svoboda, Francis MacCall, and Marsha Alley.

3. Public Hearings

A. AP2023-00004 Challenger Way Set Back Determination

Francis MacCall, Deputy Zoning Administrator, stated that the property, TMP 61W-01-0C-1, totaled 3.51 acres zoned C1 and was located at 442 Westfield Road. He stated that staff did not agree with the appellant's claims contained in Attachment D of the staff report. He said that the determination of the Zoning Administrator, LOD2023-00010, Attachment C, was correct, and the Board should affirm the determination.

Andy Herrick, Deputy County Attorney, stated that the applicable code section was County Code § 18-4.28(a), which regulated the setbacks if a neighboring property was zoned residential. He explained that because there was a neighboring property zoned neighborhood model district (NMD), the Board was asked to determine whether a property zoned NMD constituted being zoned residential.

Mr. Herrick stated that, based on past practice and in line with previous applications of the ordinance, NMD zoning constituted residential zoning for the purposes of the setback. He noted that the existing structures on the appellant's property were legally nonconforming and would be able to continue as legally nonconforming uses.

Mr. Rosenberg asked how the NMD was defined in the ordinance.

Mr. MacCall explained that a NMD was a planned development district with traditional neighborhood development as established in the County's Neighborhood Model, which was part of the Comprehensive Plan.

Mr. Herrick clarified that there was not a definition in the ordinance, but there was a statement of purpose and intent. He said that in § 18-28(b), there was a requirement that each district must have two different general use classifications, including residential.

Mr. Shepherd stated that if they wanted to consider the residential characteristics of the NMD zoning, then they had to consider the uses; otherwise, the zoning was just NMD.

The Chair opened the public hearing for comments by the appellant.

Pete Caramanis, counsel for the appellant, stated that the NMD was categorized as a planned development district, not as a residential or commercial zoning. He stated that the section of the ordinance cited by staff applied to property that was "adjacent to residential, rural areas, or the Monticello Historic Districts". He noted that the Monticello District was another of several planned development districts, and it was specifically referenced, but the NMD was not specifically mentioned.

Mr. Caramanis stated that applying the residential classification to the NMD was inappropriate, and had the ordinance intended to include the NMD, it would have been enumerated alongside the Monticello Historic District. He also noted that the zoning ordinance did not state that the NMD was a residential district, and staff had only determined it was residential through consistent and longstanding practice.

Mr. Caramanis stated that in the code of development, Block 1 was completely residential, and Block 2 was labeled for mixed use and residential. He stated that the only permitted types of residential uses were commercial styles, such as assisted living facilities and transient lodging. He stated that they did not need to review the code of development because the task was to review the ordinance, which did not indicate that the NMD was residential, and it did not include the NMD in the districts outlined in the set back requirements.

Mr. Svoboda stated that if the NMD could not be declared residential, it could also not be considered commercial, so the set back requirement was unclear. He said that it may be 20 feet according to the ordinance, which was measured from the district line, but they had not made a determination in this case.

The Chair opened the hearing for comments from the public. Hearing none, the Chair provided staff with five minutes for rebuttal.

Mr. Herrick stated that, regarding Mr. Caramanis' assertion that the NMD was a planned development district, there was a variety of different residential, industrial, and commercial district listings under the structure of the ordinance. He noted that while the NMD was listed under section 20(a), it was not a subsection of the general planned use development district, section 20. He noted that the Monticello Historic District, section 11, was not a planned district.

Mr. Herrick continued that under section 4.20, there was a table that followed the statement: "the following shall apply within the C1, CO, and HC districts." He stated that the side and rear minimum rows of the table listed two alternatives: first, if the abutting lot was zoned residential, rural areas, or Monticello Historic District; and second, if the abutting lot was zoned commercial or industrial. He noted that residential, rural areas, commercial, and industrial were all in lower case in the ordinance, thus referring generally to the zoning categories, not specific zoning districts. He stated that the Zoning

Administrator was only able to choose between applying one of the options, and when faced with the facts and past practices, the NMD was more appropriately judged as residential.

Mr. Carrington asked for clarification regarding the status of the Monticello Historic District. He stated that it was his understanding that there were seven distinct planned development districts outlined in section 8.1, and the Monticello Historic District was listed as the first.

Mr. Herrick agreed that Mr. Carrington was correct, and that section 8.1 included both the NMD and the Monticello Historic District. He stated that he stood corrected but noted that he was previously referring to the structure of the ordinance.

The Chair provided the appellant five minutes for rebuttal.

Mr. Caramanis stated that the capitalization of the word residential was not relevant because the ordinance had to be considered as a whole, and nowhere in it did it state that the NMD was a residential zoning. He noted that if a rezoning would have impacts on a neighboring property, such as requiring additional set backs, then property owners should be informed.

The Chair opened the floor for discussion from the Board.

Mr. Shepherd stated that he was leaning towards supporting that the Zoning Administrator's determination was incorrect because section 420 applied to residential, rural areas, and the Monticello Historic District, and it did not specifically mention the NMD.

Ms. Joseph stated that she agreed with Mr. Shepherd. She stated that due to the opportunities for commercial development and the intent of the NMD, to be flexible and not impose burdens on itself or neighboring properties, she did not agree with the determination of the Zoning Administrator.

Mr. Burkhart stated that ambiguity regarding the NMD definition led him to support the appellant.

Mr. Rosenberg stated that he intended to vote with Mr. Burkhart.

Mr. Carrington stated that section 7.1 established 26 zoning districts. He stated that six of the 26 contained the word residential, and seven of the 26 were defined as planned development districts. He stated that planned development districts were not categorized as residential, and they would require explicit mention for the setback requirements to apply. He noted that an NMD did not require residential uses so long as the Board of Supervisors determined there were residential uses within a quarter of a mile of the site.

MOTION: Ms. Joseph moved that the Board of Zoning Appeals overturn the Zoning Administrator's determination in LOD 2023-00010. Mr. Shepherd seconded the motion, which passed unanimously (5-0).

4. Approval of Minutes

A. January 9, 2024

MOTION: Mr. Rosenberg moved that the Board of Zoning Appeals approve the minutes for the January 9, 2024 meeting. Mr. Burkhart seconded the motion, which passed unanimously (5-0).

5. Old Business

A. Discussion: Possible appointment of alternate BZA member(s)

Mr. Carrington noted that a draft letter had been distributed to the board members for consideration. He stated that Mr. Burkhardt and Ms. Joseph had contributed all of the effort for drafting the letter.

Mr. Shepherd stated that the letter reflected the benefits of appointing alternates and the experiences of other localities, and it should set up the Board of Supervisors for a good discussion.

Mr. Rosenberg stated that he was not originally supportive of alternates, but complicated cases such as the one they addressed at the meeting had changed his opinion.

Ms. Alley noted that the letter should be corrected so that it was addressed to Chair Jim Andrews, not Jim Anderson.

MOTION: Ms. Joseph moved to authorize the Chair to sign and deliver a letter, as amended, to the Board of Supervisors requesting alternate appointments to the Board of Zoning Appeals. Mr. Rosenberg seconded the motion, which passed unanimously (5-0).

6. New Business

Mr. Carrington stated that they should prepare as a Board to discuss the representation agreement with Mr. Bowling. He stated that they would discuss the matter in closed session at the next meeting. He noted that in the past, the agreement was on an hourly basis at \$350/hour with a cap of \$5,000.

Mr. Bowling noted that the payment schedule was largely dependent on the number of and the length of the public hearings. He stated that for many years, he had come in under the cap; however, last year, he had exceeded the cap by about 4 hours. He noted that at the end of February, there was a major change in zoning law in the state, which gave him some concern. He stated that the case revolved around variance law changes in 2015. He stated that once the case became well known in the legal community, there will likely be a substantial increase in variances and the workload. He said he would send out a copy of the opinion to the board members.

Mr. Svoboda noted that the funding for the current contract was already included on the Board of Supervisor's budget; however, increased funding was not. He stated that the earliest the Board of Zoning Appeals would be able to discuss the matter would be at its June meeting, which would be after the budget process had ended.

Mr. Carrington asked whether there was an avenue for additional funding after the budget had been set.

Mr. Svoboda said that there was a process for out-of-budget allocations, but it required significant staff time.

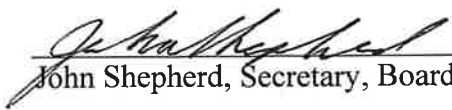
7. Adjournment

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

The meeting adjourned at 3:48 p.m.

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

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "John Shepherd", is written over a horizontal line.

John Shepherd, Secretary, Board of Zoning Appeals