

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, FEBRUARY 4, 2025—2:00 P.M.

Board Members: Edward (Bo) Carrington
Marcia Joseph
John Shepherd
Kurt Burkhart
Ronald Rosenberg

Staff Members: Bart Svoboda, Zoning Administrator
Francis MacCall, Deputy Zoning Administrator
Marsha Alley, BZA Clerk and Recorder

County Attorney: Andy Herrick, County Attorney

BZA Attorney: James Bowling, IV

1. Call to Order

The meeting was called to order at 2:00 p.m. by Deputy Zoning Administrator Francis MacCall.

2. Establish a Quorum

Mr. MacCall established a quorum.

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

The following members were absent: None.

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

3. Annual Organizational Meeting

A. Election of Officers

Ms. Joseph nominated Mr. Carrington as Chair, Mr. Burkhart as Vice Chair, and Mr. Shepherd as Secretary.

Mr. MacCall closed the floor to nominations.

MOTION: Ms. Joseph motioned to re-elect Mr. Carrington as Chair, Mr. Burkhart as Vice Chair, and Mr. Shepherd as Secretary. Mr. Rosenberg seconded the motion, which passed unanimously (5-0).

Mr. Carrington requested to amend the agenda to consider the public hearing, Item 4(A), next because Mr. Rosenberg had to leave early.

MOTION: Mr. Rosenberg motioned to amend the agenda to consider Item 4(A) before Item 3(B). Mr. Shepherd seconded the motion, which passed unanimously (5-0).

4. Public Hearings

A. VA2024-00003 654 Clarks Tract Lot Size Reduction {Sign #15}

Francis MacCall, Deputy Zoning Administrator, presented the staff report. He stated that the applicant was requesting a variance from the rural area minimum lot size, reducing the lot from 7.01 acres to 1.3867 acres, resulting in a variance of 0.6133 acres from the 2.00-acre minimum. He noted that the remainder would be added to the adjacent lot under the same ownership. He explained that all criteria had to be met in order to grant a variance. He stated that, as outlined in the staff report, the request did not meet all of the criteria, and it was staff's recommendation to deny the request for a variance.

The Chair provided the applicant with the opportunity to make a presentation.

Andrew Lynn, applicant and property owner, addressed the Board. He explained that his motivation for the request was to preserve the viewshed and horse grazing lands on the property. He noted that there were several nearby lots that were under the 2-acre minimum.

Mr. Shepherd suggested that the applicant could consider an easement to accomplish the preservation of the viewshed and grazing lands.

Mr. Carrington asked if the applicant had considered increasing the subject parcel's frontage along the road in order to meet the 2-acre minimum.

Mr. Lynn stated that staff had informed him he could not increase the frontage.

The Chair opened the public hearing for comments from the public. There was no one wishing to speak, so the Chair closed the public hearing and opened the floor for rebuttal.

The Chair provided the County five minutes for rebuttal.

Andy Herrick, County Attorney, explained that the Board was being asked to determine whether the 2-acre minimum unreasonably restricted the utilization of the parcel. He noted that the applicant could seek alternative methods to achieve his stated goals, such as through a scenic easement or a zoning amendment. He said that because the applicant could still achieve a reasonable utilization of the property with the 2-acre lot minimum, the Board should deny the variance request.

The Chair provided the applicant five minutes for rebuttal.

Mr. Lynn, applicant, deferred his time for rebuttal.

The Chair opened the matter to the Board for deliberation.

Ms. Joseph stated there were other means of preserving the viewshed on the property, and she could not support the variance request.

Mr. Shepherd stated that he did not support the request. He said that the 2-acre minimum did not impose an unreasonable restriction, and a hardship was not demonstrated.

Mr. Burkhardt said he supported the staff recommendation. He said that denying the variance did not unreasonably restrict the use of the property, and granting a variance would not alleviate a hardship.

Mr. Rosenberg said that the 2-acre minimum did not impose an unreasonable hardship. He supported the staff recommendation.

Mr. Carrington said he did not find that the request met the criteria for a variance.

MOTION: Mr. Shepherd moved to deny the variance application VA2024-00003 654 Clarks Tract Lot for the reasons stated in the staff report and in the discussion. Mr. Burkhart seconded the motion, which passed unanimously (5-0).

3. Annual Organizational Meeting (continued)

B. Review and Re-Adopt Rules of Procedures

Mr. Carrington explained that if there were any proposed amendments to be made, they would be formally adopted at the next meeting.

Mr. Burkhart said he had four proposed amendments. Regarding Section 1(A), he proposed amending "the Chair may administer oaths" to "the Chair shall administer oaths". He said that speakers before the Board should be required to take an oath that their statements are true.

Mr. Carrington expressed concerns that the amended language would require the Chair to take an oath from everyone wishing to speak before the Board and compel all witnesses to attend the hearing. He said he agreed that they should be more consistent with taking oaths, but it should not be mandatory.

Ms. Joseph noted that applications typically required an assertion that the information was accurate, true, and correct.

Mr. Rosenberg argued against the proposal and suggested that they should maintain the current language to be consistent with the language in the state code.

Based on the discussion, Mr. Burkhart withdrew the proposed amendment.

Mr. Burkhart proposed amending Section 1(D), adding language to the end of the minutes that would direct readers to a url link to the meeting recording posted on YouTube. He said that it was important that the public be able to easily access the meeting recordings, and multiple access points would be helpful.

Mr. Carrington said that he agreed with the idea of adding the link reference to the minutes but did not find it necessary to amend the rules of procedure. After much discussion by the Board, he said that they could request staff to include the proposed link reference in the minutes.

Based on the discussion, Mr. Burkhart withdrew the proposed amendment.

Mr. Burkhart proposed amending Section 3(B), adding an item related to ex parte communications. He explained that the Chair would be required to ask each board member about any ex parte communication with staff, the Board of Supervisors, or the appellant related to any matter before the BZA.

Mr. Rosenberg suggested that best practice would be to avoid all ex parte communications regarding BZA matters. He expressed concerns regarding the appearance of impropriety and added that reporting on ex parte communications could slow down the meeting.

There was discussion regarding ex parte communications.

Mr. Bowling advised that the proposed amendment could create due process issues with regards to notifying the appellant about communications prior to the meeting. He said that if any board member did have communications with staff, they should notify staff and the other board members so that the appellant/applicant can be informed of the contact before the meeting.

Mr. Rosenberg left the meeting at 3:20 p.m.

Mr. Burkhart withdrew his amendment regarding the ex parte communication because he was pleased in discussing the existing regulations.

Mr. Burkhart proposed amending Section 5(D) to add the following provision from Code of Virginia § 15.2-2311(D): “In any appeal taken pursuant to this section, if the board’s attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.” He proposed this additional language be included in the Board of Zoning Appeals In-Person Meeting Guidelines. He said that on June 6, 2023, the appellant was not informed that the matter could be carried over to the next meeting because of a tie vote. He said that he wanted to ensure appellants received this information.

Mr. Shepherd and Ms. Joseph indicated their agreement.

Mr. Bowling stated that the proposed language mirrors the statutory language.

There was discussion regarding where in the rules of procedure the language should be included.

Mr. Burkhart proposed that the language also be included in the Board of Zoning Appeals In-Person Meeting Guidelines.

Mr. Bowling stated that the guidelines have nothing to do with tie votes.

Mr. Burkhart rescinded that portion of the proposal.

There was discussion regarding advising an appellant about the right to request an appeal. Mr. Bowling advised the BZA to reference their Rules of Procedures.

Mr. Svoboda noted that the statute only applied to appeals, and it did not apply to other decisions of the BZA.

There was discussion regarding the possible procedural requirements that may be involved in an appeal resulting in a tie vote being carried over to the next scheduled meeting.

The Chair noted there was consensus to add the amended language to Section 5(A)(2) and 5(D).

The Chair stated that the Rules of Procedure would be voted on for adoption at the next meeting.

C. Review and Adopt 2025 Meeting Schedule

Mr. Carrington noted that he had conflicts for the April 1st and August 5th scheduled meetings. He said that he may be able to participate in the meetings remotely, so he did not want to reschedule or cancel them.

MOTION: Mr. Burkhart moved to adopt the 2025 Meeting Schedule. Ms. Joseph seconded the motion, which passed unanimously (4-0). (Mr. Rosenberg was absent)

5. Approval of Minutes

A. December 3, 2024

Mr. Shepherd requested that Mr. DeLoria's name be added to the list of staff mentioned as also present.

MOTION: Mr. Shepherd moved to approve the minutes as amended. Mr. Burkhart seconded the motion, which passed unanimously (3-0). (Ms. Joseph abstained; Mr. Rosenberg was absent)

6. Old Business

Ms. Joseph reported that she had sent an email indicating that she would not seek reappointment, but the Board of Supervisors had not taken action on the letter requesting an alternate member. She said that she would be seeking reappointment.

Mr. Svoboda said they may have already started the process with the Circuit Court for a replacement. He said that they would look into the replacement process.

Mr. Burkhart asked for an update on alternate appointments and the budget process to include the funding for the alternate position. He suggested that the BZA Chair address the Board of Supervisors during public comment to address the need for alternate appointments.

Mr. Carrington stated that a letter was sent last year asking if the original letter requesting the alternate position had been received and that confirmation of receipt was provided at that time. He added that it may be that not all board members received it or recall receiving it. He said he was willing to address the Board of Supervisors on behalf of the BZA if that is the preference.

Ms. Joseph suggested that she and Mr. Burkhart address the Board since they were the members who performed the research and spoke with other localities regarding this topic.

Mr. Carrington agreed and offered to assist if needed.

7. New Business

A. Budget Discussion

Mr. Svoboda stated that the Board of Supervisors was beginning the budget process, and he would provide a schedule. He said that departments had been instructed by the Finance Department to not submit budget increases. He said that the legal counsel compensation and alternate cost requests had been submitted, but he could not provide any more information about the status of the requests. He said that staff would review the current budget for any available funds that could be carried over to be used for the requests.

B. Upcoming Meeting Information

Mr. MacCall said that appeals had been filed but have not been scheduled for a hearing at this time. He explained that the appellants may consider withdrawing the appeals. He added that currently there are no other applications so the March meeting may be cancelled.

Ms. Joseph asked for an update on the gun appeal.

Mr. Herrick replied that the case was pending before the court, but the appellant had not requested a court date.

Mr. Burkhart asked for an update on the Kostelac hearing from December.

Mr. Herrick stated that Mr. Kostelac had filed an appeal with the Circuit Court.

8. Adjournment

MOTION: Mr. Shepherd moved to adjourn the meeting. Ms. Joseph seconded the motion, which passed unanimously (4-0). (Mr. Rosenberg was absent)

The meeting adjourned at 4:04 p.m.

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

Respectfully Submitted,


John Shepherd, Secretary Board of Zoning Appeals

6-3-2025

*This meeting may be viewed at https://www.youtube.com/watch?v=8o_hXWufAx0