



COUNTY OF ALBEMARLE  
Department of Community Development  
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**ALBEMARLE COUNTY BOARD OF ZONING APPEALS  
COUNTY OFFICE BUILDING  
401 MCINTIRE ROAD  
LANE AUDITORIUM, 2:00 P.M  
AGENDA  
TUESDAY, MARCH 5, 2019**

1. Call to Order
2. Establish a Quorum
3. Public Hearing:
  - A. There are no public hearings scheduled.
4. Approval of Minutes
  - A. February 5, 2019
5. Old Business
  - A. Work Session: BZA Rules of Procedure
  - B. Work Session: BZA Legal Representation
6. New Business
  - A. BZA 2018 Annual Report
7. Adjournment

## **BOARD OF ZONING APPEALS 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 Chairman will open the public hearing to comments from the public. At the end of these proceedings the Chairman 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  
RULES OF PROCEDURE**

The Albemarle County Board of Zoning Appeals, under the authority of Virginia Code § 15.2-2308 and Albemarle County Code § 18-34.1, establishes the following rules of procedure:

**1. Officers**

- A. *Chair.* At its annual meeting, the Board of Zoning Appeals (“BZA”) shall elect a Chair who, if present, shall preside at the meeting and at all other meetings during the year for which elected. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- B. *Vice-Chair.* At its annual meeting, the BZA shall elect a Vice-Chair, who, if present, shall preside at meetings in the absence of the Chair and shall discharge the duties of the Chair during his absence or disability.
- C. *Secretary.* At its annual meeting, the BZA shall elect a Secretary. The Secretary may be either a member of the BZA or another person. The duties of the Secretary shall include keeping and maintaining custody of the records of the BZA, drafting and signing all correspondence necessary for the execution of the duties and functions of the BZA, and such other duties as these rules may provide and the BZA may, from time to time, assign.
- D. *Recording Secretary.* The Zoning Administrator, or his or her designee, shall serve the BZA as its Recording Secretary. The duties of the Recording Secretary shall include keeping the minutes of the BZA’s meetings and such other duties as these rules may provide and the BZA may, from time to time, assign.
- E. *Other Offices.* At any of its meetings, the BZA may create and fill any other offices as it deems necessary.
- F. *Term of Office.* The Chair and Vice-Chair shall be elected for one-year terms, and until their respective successors take office. Either or both officers may be re-elected for one or more additional terms.
- G. *Vacancies in Office.* Vacancies in office shall be filled as soon as practicable using the election procedures provided herein.
- H. *Absence of Chair and Vice-Chair.* If the Chair and Vice-Chair are absent from any meeting, a present member shall be chosen to act as Chair.

## 2. Meetings

- A. *Annual Meeting.* The first meeting of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, the Vice-Chair and the Secretary.
- B. *Regular Meetings.* The BZA shall meet in regular session at the time and place and on the day or days established for regular meetings. The BZA may subsequently establish a different day, time, or place to conduct its regular meetings by passing a resolution to that effect.

If the Chair, or the Vice-Chair if the Chair is unable to act, finds and declares that weather or other conditions are such that it is hazardous for BZA members to attend a regular meeting, the meeting shall be continued to the next regular meeting date. This finding shall be communicated to the members of the BZA and to the press as promptly as possible.

Without further public notice, a regular meeting may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the BZA is complete.

- C. *Special Meetings.* The BZA may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the BZA finds necessary and convenient.

A special meeting shall be held when called by the Chair or requested by two or more members of the BZA. The call or request shall be made to the Recording Secretary and shall specify the matters to be considered at the meeting. Upon receipt of the call or request, the Recording Secretary, after consultation with the Chair, shall immediately notify each member of the BZA and the County Attorney's Office. The notice shall be in writing and shall be mailed or delivered to each BZA member or to his or her place of residence or business at least five (5) days prior to the special meeting. The notice shall state the time and place of the special meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at the meeting unless all members are present. The notice may be waived if the time of the special meeting was fixed at a regular meeting, if all members are present at the special meeting, or if all members sign a waiver for the notice.

Whenever state law requires public notice of a special meeting of the BZA, the Recording Secretary shall provide such notice in accordance with *Virginia Code* §15.2-2204.

### 3. Order of Business

- A. Agenda Established by Secretary. The agenda for each regular meeting shall be established by the Secretary in consultation with the Chair.
- B. Organization of the Agenda. The agenda of each regular meeting shall be organized in substantially the following order, subject to change at the request of the Chair and with the consensus of the other members of the BZA:
- (1) Call to order.
  - (2) Establish quorum.
  - (3) Matters deferred from previous meetings.
  - (4) Scheduled matters: hearings on special use permits, variances and appeals.
  - (5) Work sessions.
  - (6) Review and approval of minutes of previous meetings.
  - (7) Old business.
  - (8) New business.
  - (9) Adjournment.
- C. Time Limits for Applicants, Appellants and Other Speakers. The BZA shall offer an equal amount of time in a hearing to the applicant/appellant and County staff. The applicant/appellant and County staff shall each be allowed a total of fifteen (15) minutes to present its respective case at the outset of the hearing, and five (5) additional minutes to present rebuttal or closing remarks at the close of the hearing. Each person other than a party to the case or his/her legal representative(s) shall be allowed one appearance not to exceed three (3) minutes. A speaker may not reserve any initial speaking time for rebuttal or transfer any time to another speaker. The time limits set forth herein shall not include any time during which the applicant or other speaker is responding to questions asked by the BZA. The Recording Secretary shall act as the timekeeper. The BZA may set alternate time limits to those listed herein, provided that they are identified at the BZA meeting prior to the meeting at which these new limits would be used.
- D. Deferrals. The BZA may defer any matter at the request of a member of the BZA, the County staff, or the applicant or appellant. The request may be made either orally at the meeting, or in writing, and may be made at any time prior to the vote on the matter. The person making the request shall state the reasons therefore.

In considering a request for a deferral of a hearing of an appeal or an application for a variance pertaining to a zoning violation, the BZA should consider the reasons for the deferral if the request is submitted by the appellant or applicant, the recommendation of staff, and the comments of any member of the public. In making its decision to grant or deny a request, the BZA should consider the following factors: (1) whether the deferral would promote fairness in the process; (2) whether the deferral would be solely for the convenience or personal benefit of the appellant or applicant; (3) whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood or the public; (4) whether the deferral would allow the appellant or applicant to resolve the underlying issues so that BZA action might be unnecessary; and (5) whether the deferral would allow the BZA to make its decision within ninety days of the filing of the application or appeal, in conformance with *Virginia Code* § 15.2-2312.

A motion to defer shall either specify the date to which the matter is deferred or defer the matter indefinitely. If the motion to defer pertains to a matter for which a noticed public hearing is required and the motion is to defer the matter to a specific date, the Chair shall either close the public hearing or, if the public hearing was not opened, open and then close the public hearing, before the BZA votes on the motion.

#### **4. Quorum**

A majority of the members of the BZA shall constitute a quorum for any meeting of the BZA. A majority of the members of the BZA present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting from day to day or from time to time. A meeting shall not be adjourned to a date and time beyond the date fixed for the next regular meeting.

If, during a meeting, less than a majority of the members of the BZA remains present, no action can be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

If disqualifications under the State and Local Government Conflict of Interests Act (*Virginia Code* § 2.2-3100 *et seq.*) leave less than a quorum, the remaining member or members of the BZA shall have authority to act for the BZA by a unanimous vote.

#### **5. Voting Procedures**

A. *Approval of Motion.* Except as otherwise provided in subparagraphs (1) and (2) and in paragraph (H), each decision of the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a

member and properly seconded by any other member. Any motion that is not seconded shall not be further considered.

1. *Variances, Special Use Permits and Other Matters.* At least three (3) affirmative votes shall be required to grant a variance, to grant a special use permit, or to decide in favor of an applicant on any other matter upon which the BZA is required to act upon under the Zoning Ordinance.
2. *Appeals.* At least three (3) affirmative votes shall be required to reverse any appeal from an order, requirement, decision or determination of an administrative officer.

B. *Time for Vote.* Any matter before the BZA requiring a public hearing shall not be decided by the BZA until the public hearing has been held. The BZA may, however, in its discretion, defer the holding of a public hearing or consideration of such matter, in conformance with paragraph 3(D) above.

C. *Manner of Vote.* The vote on a motion pertaining to any variance, special use permit, appeal, or application for interpretation of the district map shall be by roll call vote. Any other matter may be either by roll call vote or voice vote, in the discretion of the Chair; provided that a roll call vote on such a motion shall be required if requested by a member of the BZA. For each roll call vote, the Recording Secretary shall record the name of each member voting and how the member voted on the motion. For each voice vote, the Recording Secretary shall record the result of the vote.

D. *Tie Vote.* A tie vote shall defeat the motion voted upon.

E. *Effect of Defeat of Motion to Deny.* The defeat of a motion to deny a matter shall not be deemed to be approval of the matter. In such a case, the Chair shall call for another motion.

F. *Abstention.* If any member abstains from voting on any motion, he shall state his abstention. The abstention shall be announced by the Chair and recorded by the Recording Secretary.

G. *Motion to Amend.* A motion to amend a motion before the BZA shall be discussed and voted by the BZA before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the BZA for its consideration. If the motion to amend is not approved, the original motion is again before the BZA for its consideration.

H. *Previous Question.* The discussion of any motion may be terminated by any member moving the “previous question.” Upon a proper second, the Chair shall call for a vote on the motion of the previous question. If approved by a two-thirds majority of those voting, the Chair shall immediately call for a vote on the original

motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

I. *Motion to Reconsider.* Any decision made by the BZA may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.

J. *Motion for Rehearing.* Any decision made by the BZA may be reheard upon the granting of a motion for rehearing approved by at least three affirmative votes. The motion may be made only after consideration of a written application by the person requesting rehearing, which shall be filed within thirty (30) days after the date of the BZA's original final decision. The BZA may grant the motion if it finds that the decision has not already been appealed to the Circuit Court and: (1) new evidence can be presented that, in the opinion of the BZA, is relevant and material to the decision but could not have been presented at the original hearing; or (2) in the opinion of the BZA, one or more relevant and material conditions or situations have changed so as to bear on the BZA's original decision. If the BZA grants the motion, it shall set the date for rehearing. Notice of the rehearing shall be provided as otherwise required for the matter being reheard.

## **6. Final Decision**

A. *Date of final decision.* For the purpose of calculating the time in which an aggrieved party may submit a petition for writ of certiorari in Circuit Court requesting the court to review the decision of the BZA, the date of the BZA's final decision shall be the date on which the BZA took its final vote on the merits of the matter.

B. *Deferral of final decision.* If the BZA elects to defer its final decision, nothing in this rule prevents the BZA from obtaining a consensus of its members on the matter to be decided and requesting one or more of the parties to prepare a proposed written decision to be considered when a final vote is taken.

C. *Effect if written decision adopted after final decision.* The date of the BZA's final decision shall not be extended if the BZA later adopts a written decision.

## **7. Amendment of Rules of Procedure**

Any of these Rules of Procedure may be amended by a majority vote of the BZA at the next regular meeting following a regular meeting at which notice of the motion to amend is given.



**8. Suspension of Rules of Procedure**

These Rules of Procedure may be suspended by the majority vote of the members of the BZA present and voting. The motion to suspend a rule may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the BZA; provided, however, approval of a motion to suspend the rule shall not permit the BZA to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law.

**9. Rules of Procedure not Covered by These Rules of Procedure**

Any rules of procedure not covered by these Rules of Procedure shall be governed by the current Robert's Rules of Order.

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(Adopted: 1-5-2016)

(Last Amended: 02-05-2019)

**ALBEMARLE COUNTY BOARD OF ZONING APPEALS**  
**2018 ANNUAL REPORT**

**I. INTRODUCTION**

*Virginia Code § 15.2-2308* requires that the Board of Zoning Appeals (BZA) submit a report of its activities to the governing body at least once each year. The following report outlines the BZA's activities during 2018.

**II. PERSONNEL**

The BZA consists of five members appointed by the Circuit Court for a term not to exceed five years. The BZA members during the year 2018 were:

<b><u>Member</u></b>	<b><u>Term Expiration</u></b>
<i>Lloyd (L.F.) Wood, Chairman</i>	Deceased – October 11, 2018; seat is currently vacant pending appointment of a new member to complete a term set to expire May 23, 2020
<i>David Bowerman, Vice Chairman</i>	Reappointed May 23, 2018 for a five-year term to expire May 22, 2023.
<i>Randy Rinehart, Secretary</i>	Reappointed May 23, 2016 for a five-year term to expire May 23, 2021
<i>Edgar S. Robb</i>	Reappointed March 23, 2014 for a five-year term to expire May 23, 2019.
<i>John Shepherd</i>	Appointed May 23, 2017 for a five-year term to expire May 22, 2022

**III. OPERATING PROCEDURES**

Regular meetings of the BZA are held the first Tuesday of each month starting at 2:00 p.m. Special meetings may be called when the regular schedule does not provide sufficient hearing time. These special meetings may begin at 1:00 p.m. The BZA operates with Rules of Procedure adopted November 15, 2002 and last revised November 13, 2018.

#### **IV. EXPENSES**

The BZA does not have a separate budget. Compensation and mileage are included within the budget of the Department of Community Development. Funding for BZA salaries in the fiscal year 2018-2019 was consistent with prior years. Expenses during that period totaled \$945.00. BZA members are paid \$45 per meeting.

County staff working with the BZA includes the Director of Zoning (Zoning Administrator), Chief of Zoning (Deputy Zoning Administrator), Deputy County Attorney, Planners and Code Compliance Officers. Support staff includes the Recording Secretary (Community Development Assistant I).

#### **V. ACTION SUMMARY**

The BZA held five meetings in 2018. The number of submittals and actions considered by the BZA in 2018 are shown in the following tables:

##### **Variances**

One variance application was heard in 2018.

<b><u>Application #</u></b>	<b><u>Appellant or Project Name</u></b>	<b><u>Action</u></b>	<b><u>Issue</u></b>
VA2017-004	Burchfiel Renovation/ James & Darlene Burchfiel/Sarah Oates	Approved variance with conditions to reduce rear setbacks (3-1) February 6, 2018	Reduce rear setbacks for an addition

##### **Appeals**

Two appeal applications were heard in 2018.

<b><u>Application #</u></b>	<b><u>Appellant or Project Name</u></b>	<b><u>Action</u></b>	<b><u>Issue</u></b>
AP2017-003	Boyd Tavern Market	Upheld Zoning determination (3-2) January 9, 2018	The requirement of a Special Use Permit due to water consumption
AP2018-002	MESA Associates/John & Trula Wright/Roslyn Farm and Vineyard	Zoning Clearance stands (motion to deny appeal resulted in 2-2 vote) December 4, 2018	The issuance of ZC2018-041

### **Special Use Permits**

One special use application was heard in 2018.

<b><u>Application #</u></b>	<b><u>Appellant or Project Name</u></b>	<b><u>Action</u></b>	<b><u>Issue</u></b>
SP2018-012	Pantops Shopping Center Pylon Sign	Approved with conditions (4-0) November 13, 2018	Electronic Message Sign

### **VI. COURT ACTION**

The Boyd Tavern Market Appellants further appealed the BZA's decision in Appeal No. AP2017-003 to the Albemarle County Circuit Court. Following a hearing on October 22, 2018, the Court dismissed the appeal on procedural grounds, upholding both the BZA's decision and the underlying zoning determination.