

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD – LANE AUDITORIUM
TUESDAY, MAY 7, 2019 – 2:00 P.M.

Board Members: Randy Rinehart
Ed Robb
David Bowerman
John Shepherd, *absent*

Staff Members: Amelia McCulley, Zoning Administrator
Bart Svoboda, Chief of Zoning
Marsha Alley, BZA Clerk and Recorder

County Attorney: Andy Herrick, Deputy County Attorney

1. Call to Order

The meeting was called to order at 2:00 p.m. by Vice-Chairman Ed Robb, in Mr. Shepherd's absence.

2. Establish a Quorum

The BZA established a quorum, with three members present.

3. Public Hearing

A. AP201900001 Carrboro Limited Partnership, L.L.P.

Mr. Svoboda stated that there had been a request for deferral of the item until August or later, so it could be deferred indefinitely or to the meeting in August. He said they would need a motion to accept that and a vote.

MOTION: Mr. Rinehart moved for indefinite deferral of AP201900001. Mr. Bowerman seconded the motion, which passed unanimously (3-0).

4. Approval of Minutes

A. April 2, 2019

Mr. Robb stated that he had reviewed the April 2, 2019 minutes and found no errors.

MOTION: Mr. Rinehart moved for approval of the April 2, 2019 BZA minutes as presented. Mr. Bowerman seconded the motion, which passed unanimously (3-0).

5. Old Business

Mr. Rinehart expressed concern that they still did not have the fifth position on the BZA appointed. He wondered if there was anything behind the scenes they could do to help. He reminded everyone that he would not be present for the June meeting and noted that they could possibly be a lame duck Board if things didn't progress.

Mr. Svoboda responded that staff could check with the Clerk of Court and follow up, noting that there may be something like a paperwork issue that they are not aware of.

Mr. Bowerman said they could ask informally.

Mr. Rinehart asked about the training for BZA members.

Mr. Svoboda asked the members if they would prefer a two-day training out of town, or if they would like to have one hosted locally.

Mr. Rinehart suggested that they communicate with neighboring localities to see if they have members that could participate, as they could learn more from each other. He added that it would be more efficient to have the trainer come to them.

Mr. Svoboda said they could do that once they determined which dates worked for the BZA.

Mr. Rinehart stated that he would be unavailable from the end of September to the beginning of November.

Mr. Herrick mentioned that the Land Use Program at VCU sponsored a two-day BZA Certified Program on that campus October 3 and 4, 2019. He said that both he and Mr. Kamptner had provided instruction at previous programs.

Mr. Svoboda stated that funding could likely be provided for members to attend the training.

Mr. Bowerman commented that he would rather do it locally.

Mr. Robb suggested that they not make any decision on it until they had four BZA members present.

6. New Business

Mr. Robb stated that the naming of an attorney to represent the BZA had been challenging. He added that Chairman John Shepherd had suggested that they hold a meeting to discuss the matter, possibly in closed session. Mr. Robb said that Mr. Shepherd had also suggested that they hold another meeting today to discuss the matter and offered other alternatives by email, namely that they advertise the job as the two of them had prepared. Mr. Robb stated that his opinion currently, which is subject to the opinion of fellow BZA members, is that there is no need for a closed session at this point unless they would be discussing a specific personnel matter or identifying specific potential candidates for the attorney position.

Mr. Robb commented that he felt the Board should not be hurried in identifying the attorney and go ahead and advertise it. He added that at the same time, they should individually, along with Mr. Shepherd, identify potential candidates for the job. He said that he did not see any reason why they couldn't ask people that they knew who could do a good job, as he did not see that as creating a problem noting that they knew many attorneys. He noted that if they were advertising the position, anyone else who was interested would not think they hadn't been included in the pool of candidates.

Mr. Rinehart stated that because the first candidate was not able to take on the position, they had the option of coming up with a name. He proposed that they take that on or off the table and not go down two different tracks. He said if they were able to come up with a name, that was great. But if it was a dead end, they should let it conclude. He stated that he did not think they should ask someone privately and still be advertising, noting that he did not have a candidate but other BZA members might.

Mr. Robb responded that he did not want to take the advertisement potential off the table, but they should approach people they know. He added that it would be unfortunate to have someone turn it down after making preparations.

Mr. Bowerman said that he liked the idea of looking for someone individually, but if they couldn't then they could advertise.

Mr. Rinehart asked if they had approved the job description.

Mr. Robb responded that they had.

Mr. Svoboda confirmed this.

Mr. Robb asked if the job description they created had anything they needed to address in order to entice someone to take the job.

Mr. Svoboda responded that it was not based on their requirements, but that it wouldn't work with their work schedule or working arrangements.

Mr. Herrick commented that there was nothing in the job description that was problematic, but the Virginia Conflict of Interest Act prevents an attorney in private practice from representing clients before Boards on which the attorney serves, which could be problematic for attorneys who might appear before the BZA. He added that the attorney would have to decide whether to represent clients in front of the Board or decline to do so and serve on the BZA instead. He added that all attorneys in that person's firm would also be disqualified.

Mr. Robb asked if it would be a problem for them to ask someone to be a BZA member.

Mr. Herrick responded that the same rules would pertain, and these issues came up all the time statewide and that the same concept applied to the Board of Supervisors and Planning Commission.

Mr. Bowerman commented that there may be issues that were presented to those bodies, and they would not know if an item were to be brought before the BZA. He asked if they could do any other County business, or if the only conflict was the BZA itself.

Mr. Herrick responded that it would only pertain to an attorney representing the BZA specifically.

Mr. Herrick also clarified that they would only need a motion if they were to go into closed session. He emphasized that between now and the next meeting, there would not be an opportunity for more than two of them to discuss potential candidates, although they could discuss it one on one.

Mr. Rinehart said that if any of them had a potential candidate, they should provide that information to Mr. Robb and Mr. Shepherd. He suggested that if they did not have anyone within two weeks, they would ask staff to go ahead and advertise it. He said that if he were a candidate who the BZA had asked, but the position was still on the web being advertised, that would not be fair.

Mr. Bowerman added that they would have to state positively that they were going to proceed.

Mr. Rinehart said they couldn't make a decision individually as to whether or not they were going to offer the job to someone. He stated that it would have to be the BZA that made that decision. He added that they did not want to be perceived as limiting the candidate pool.

Mr. Rinehart agreed, stating that staff should go ahead and do the advertising, with BZA members encouraging any qualified applicants to apply.

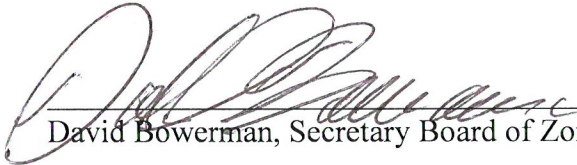
MOTION: Mr. Rinehart moved to have staff to appropriately advertise the position of a BZA attorney, following the proper protocols as described for soliciting candidates. Mr. Bowerman seconded the motion, which passed unanimously (3-0).

7. Adjournment

MOTION: At 2:27 p.m., Mr. Rinehart moved to adjourn the meeting. Mr. Bowerman seconded the motion, which passed unanimously (3-0).

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,



David Bowerman, Secretary Board of Zoning Appeals