

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD – LANE AUDITORIUM
TUESDAY, OCTOBER 29, 2019 – 10:00 A.M.

Board Members: Marcia Joseph
Ed Robb
John Shepherd
Randy Rinehart
David Bowerman (absent)

Staff Members: Bart Svoboda, Zoning Administrator
Marsha Alley, BZA Clerk and Recorder
Kevin McCollum

County Attorney: Andy Herrick, Deputy County Attorney

BZA Attorney: James Bowling, IV

1. Call to Order

The meeting was called to order at 10:02 a.m. by Chairman John Shepherd.

2. Establish a Quorum

The BZA established a quorum with four members present.

3. Motion for Rehearing: AP201900004 Bufton & Maus, PLC

MR. HERRICK: Thank you, Mr. Chair, members of the Board. First of all, I want to thank the Chair for calling the special meeting. Pursuant to the rules of the BZA, a special meeting has been called, and I would like to echo the Chair's thanks to the members of the Board for having scheduled this on somewhat short notice. The reason for the short notice is, as I think I've laid out in the County's motion for rehearing, is that the deadline for appeal to the Circuit Court is 30 days. So, if the Board of Supervisors were to appeal the October 1 decision of the BZA, it would need to do so by October 31. So, that was the time sensitivity of entertaining a motion for rehearing on such short notice.

As the agenda for today's meeting spells out, there would potentially be up to three items on the agenda today, and so, we'll take them one at a time. The first of which is the motion for the rehearing. And if that motion for rehearing is granted, then the BZA would need to decide when to schedule that rehearing, again, keeping in mind the fact that the deadline for any appeal to the Circuit Court would be October 31 (day after tomorrow). And then, if the Board were to choose to schedule that rehearing for the special meeting, it has the ability to do so because the notice requirements have been met.

With that, the County had filed a motion for rehearing pursuant to Rule 5-J of the BZA's Rules of Procedure, which allow for a rehearing to be made on motion of any party. And it provides that the standard for granting a rehearing is that the decision has not already been appealed to the Circuit Court (which it has not), and either (1) new evidence can be presented that, in the opinion of the BZA, is relevant in 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.

Now, I had filed with the Secretary of the BZA, and I trust you all have seen it by now, a motion for rehearing that outlines the substantive grounds for why the County is seeking a rehearing. We believe that there were a couple elements of the October 1 decision that were problematic, namely, the shifting of the burden of proof in that case, or at that hearing, and the lack of a written order, requirement, decision, or determination that was subject to change.

For purposes of strictly the motion for rehearing, again, and focusing on Rule 5-J of the BZA's Rules of Procedure, we think that there has been a material change that justifies a rehearing and that the Board of Supervisors has alerted staff that it does intend to appeal the October 1 decision, if it's not corrected. I know that past Boards have asked that, or past BZAs have asked that, staff alert the BZA if, in fact, the Board intends to appeal a BZA decision. And that's what we've done in this case.

I do think that's a material change in circumstances that was unknown at the time of the October 1 deliberations. And again, we also believe that the arguments that are laid out elsewhere in the motion for rehearing justify the granting of a rehearing and, in fact, a reversal of the October 1 decision. But again, I may be getting ahead of myself there, and I will reserve further argument for if and when a rehearing is granted. But for purposes of granting the rehearing in the first place, again, we think we come within the requirements of Section 5-J of the Rules of Procedure and would ask that the Board grant a rehearing and schedule it for today in time for it to be reheard before the appeal deadline.

With that, I'd be happy to answer any questions that any of you might have.

MS. JOSEPH: Mr. Shepherd, I'd like to ask a question. Mr. Herrick, what I've always been confused about is why wasn't this a variance request.

MR. HERRICK: Because there's no such thing as a use variance. Variances are allowed, for example –

MS. JOSEPH: But there is a setback variance, and this is what this use is predicated on what the setback is. So, why was there not a variance request for the setback?

MR. HERRICK: That would have been up to the applicant. As I'm sure you're aware, the BZA is a creature of statute. It can only do what the Code of Virginia allows it to do, and so the BZA can't rule on applications that aren't before it. The –

MS. JOSEPH: That part, I understand. I just wonder why this wasn't considered as a variance.

MR. HERRICK: Because the applicant didn't apply for a variance.

MS. JOSEPH: Mr. Svoboda, when you talked to the applicant, did you ever talk about a variance?

MR. SVOBODA: I'd have to – I don't recall. I think we did have discussions about what different options would be, and possibilities.

MS. JOSEPH: Okay. Can I ask Mr. Maus, then?

MR. SHEPHERD: Sure.

MR. MAUS: [Away from the microphone] Ms. Joseph, the board, thank you for --

MS. JOSEPH: Get over here.

MR. MAUS: Sorry.

MS. JOSEPH: Thank you.

MR. MAUS: Thank you, Ms. Joseph. That's a good question. In fact, we did talk with them, and I don't know if it was Bart, maybe it was Kevin, but we were told that a variance was not available. It could not be used to fix the problem, so that's why we didn't apply for it.

MS. JOSEPH: So, you were told by staff that a variance would not fix the problem.

MR. MAUS: That's correct, ma'am.

MS. JOSEPH: Okay. Kevin?

MR. McCOLLUM: I don't recall mentioning anything about a variance to Mr. Maus.

MS. JOSEPH: So, you all never talked about a variance.

MR. McCOLLUM: I remember talking about it with staff, but I do not remember.

MS. JOSEPH: What was the conclusion that staff came to about the variance, then?

MR. McCOLLUM: I'm not sure.

MR. HERRICK: Ms. Joseph, I could attempt to answer your question. I think that even if a variance were applied for, my suspicion is that staff would recommend against it because, in fact, a variance, at least, in my opinion, would not be justified under the standards for variance. For there to be a variance, the applicant would have to show that there is an unreasonable restriction on the utilization of the property, and I would say to you that I don't think that there is an unreasonable restriction on the utilization of the property; that the applicant is currently using the property as his dwelling, has the ability to have accessory structures on the property. So, I don't think that, if a variance had been applied for, that it would be justified, and I think that staff's, consulting with staff, I suspect staff would be recommending against a variance, if a variance had been applied for.

MS. JOSEPH: Well, you're already recommending against this application, so –

MR. HERRICK: That's correct.

MS. JOSEPH: I'm just very confused as to what's the difference. An applicant comes before the BZA for the BZA to make those sorts of decisions and determinations.

MR. HERRICK: Correct.

MS. JOSEPH: So, that's where I'm really confused about how this whole process went down.

MR. HERRICK: Well, again, what's before the BZA –

MS. JOSEPH: I totally understand what's before me right now. What I would like to reiterate is, it's this whole process that is disturbing to me. That, in the one case, the applicant has been told, "Oh yeah, you can go, even though we disagree with you on this determination, you can go before the BZA. But don't go before the BZA for a variance." I guess that's what I'm hearing, and that's the part that I really don't like to hear.

MR. SVOBODA: As staff, we try to lay out all the options before the applicant, and what we understand and the legislation, the guidelines, and the law to say. And so, whether it's something that the applicant would like to hear, and we've had this discussion with this particular applicant probably many times, versus what we look at within the ordinance, and what their options are and what they feel like they have a better shot at getting.

When you look at some of the variance criteria, and if we talk about variances specifically, not this case, but variances specifically talk about different criteria that you have to do or not do to qualify, and they're generally land-specific. They're not use-specific. They're generally not building-specific, meaning if the lot is such that it doesn't allow for this building to be located somewhere else, for a setback variance. For instance, if I don't have enough room to have it somewhere else due to the shape of the lot, and the regulation and the setback makes me put it in a place where it'll only be 6 feet wide and 6 feet long, and it won't work.

So, this particular lot, as is, or any lot that has enough room to locate structures somewhere other than in the setback, it would be difficult. This is how we would explain it to an applicant. It would be difficult to receive a variance if you had built a building into a setback where you have another location on your lot where that building would be located.

MS. JOSEPH: Okay, you just said it would be difficult to receive a variance, but if Mr. Maus had come in and asked for a variance hearing, would you have accepted that application?

MR. SVOBODA: We have to accept the application. So, that's different than whether or not it meets the criteria to receive a variance. Accepting an application is what we have to do. Same thing with a building permit. I can apply for anything. That doesn't mean if it doesn't meet the regulation or the rules that we have to approve it, but we have to accept the application.

MS. JOSEPH: Okay, thank you.

MR. HERRICK: Staff doesn't refuse or reject any applications. Now, that doesn't mean that staff is required to approve any of the applications that are brought.

MS. JOSEPH: I totally understand.

MR. HERRICK: And I think that staff, again, I wasn't present for the conversations, but I imagine that staff was just counseling the applicant that staff would not be recommending a variance, if it were applied for.

MR. SHEPHERD: I might be putting too small a point on it, but I think it's, that staff should preserve the role of the BZA and the decision-making process about a variance, that certainly, it's proper to point out the criteria. It's proper to point out, and if you wanted to go so far as to say you were going to recommend against it, is proper, but I think the applicant should always, the citizens should be just given the process and make a judgment about that. Just the fact that you're going to recommend against it shouldn't be completely persuasive.

MR. HERRICK: Again, I wasn't present for the conversations, but again, staff does not reject or refuse applications. If an application is filed and the filing fee is paid, it gets brought to the BZA regardless of what merit staff thinks it has or lacks.

MR. SHEPHERD: Okay, it's – thank you.

MR. ROBB: Mr. Chairman, can I just make an observation? It would seem to me that everybody that's involved in this picture, whether it's the appellant, the staff, the County, the County Attorney, all of us are here to do what's fair and what's right, and it seems to me we ought to be able to come up, meaning, before it becomes a question for BZA, it seems to me that there should be a solution to this issue without us being involved in that particular process. I submit that because that we're all honest and decent people trying to help and look after one another, that we could do that. I'm just wondering if there isn't –

MR. BOWLING: Mr. Chairman, do you have any thoughts on that matter?

MR. SHEPHERD: Yes. We've been talking about the variance. The difference between the determination and the appeal, which was before us originally which, I think in the meeting I expressed, and I think others expressed as well that it was a difficult set of facts to deal with as an appeal, that I would have preferred that to be a variance. I had made the effort, made a call to Bart asking if things could, this could be shifted over into a variance but at that point, it was too late. And so, what was before us was a, the appeal of the determination. And I understand that there was, and faced with that situation, I feel like our approach to it, and our decision, was valid, was a rational choice, under the circumstances, to deal with it, citing 5.2-2311, a remedial statute to take care of situations like this.

That said, I would still like to be able to deal with this as a variance. I think that would meet the concerns of the County to not make 5.1-2311 a precedent, which I imagine is a concern. It's something, in the criteria for a variance, to me, was much clearer, and it might have fit the case much better and directly in ways that we are all familiar with. It seemed like the right, the best way to take this thing on. It's clearly, at some point, I just have to step back and say, "This is a mess, and we're trying to fix it as best we can."

With that, I would like to think about the possibility of deferring this matter so that a variance could be heard, analyzed, and decided upon in lieu of letting it end on this appeal.

MR. BOWLING: Chairman, is that a motion to defer the matter until such time as, reasonable time for allowing the applicant to make a variance request to the County so that it could come before you?

MS. ALLEY: Excuse me, Mr. Bowling, could you speak into the mic?

MR. BOWLING: Is that a motion, Mr. Chairman?

MR. SHEPHERD: Yes, I will make that motion, but I certainly entertain a lot of discussion on that. Is there a second?

MR. ROBB: I second.

MR. SHEPHERD: But, discussion.

MR. MAUS: Okay, Mr. Chairman. At this point, sorry, procedurally, the County has made a motion to rehear. I've not had an opportunity to respond to that motion before the Board before you get into, do we want to rehear this, what's the best way to do this?

MR. BOWLING: What's before, what the Chairman has just made a motion on is to defer the matter to give you an opportunity to pursue a variance, if that's what you decide you want to do, and that's the Chair, that's a Board member's prerogative. It has to be voted on. The deferral has to be voted on by the BZA members and pass, of course, but that's his prerogative at this point.

The weakness that is before the BZA and the dilemma they have is that there is a, their decision on October 1. The application was for a building permit, and the building permit, to the Building Official, does not, on its face, state that the home office is for a major home occupation. It's only when you look at the materials submitted with the applications, the plan showing a large conference room, etc. that one can assume that the applicant wanted more than a home office. This case, as I think I said at the last meeting, is a mess, procedurally. It should, as the Chairman has said and as one of the other Board members just said, they wish that it would come before them as a variance so that they could deal with everything at once.

MR. MAUS: I understand, Mr. –

MR. BOWLING: What could happen in this case is that the Board could decide to hear the request of the County, or they could not. They could hear the request and keep their decision or change their decision. Assuming that the Board decides to keep their decision, the County will then appeal. Then, we could have a hearing before the Circuit Court. Then, it's certainly possible that the BZA's decision will be overturned by the Circuit Court, and then, the BZA could find itself back, at some considerable time in the future, addressing a variance that you then applied for as an afterthought, after going through this whole process.

MR. MAUS: Okay, Mr. Bowling. I understand what you're saying. A variance was not an afterthought on our part. The County staff initially has said today, "We don't remember talking to the applicant about it, or maybe we did advise the applicant of all the options." It's not really clear, but the Board's own rules, the Board's own rules, say that before it can reconsider, or consider the County's application for rehearing, that three of its members have to find, number one, that facts that are available today were not available back when the original hearing was held, or the Board has to find that there's been a change in circumstances between the last hearing and now that justify the rehearing. Excuse me. If the Board cannot find either of those, then it has no authority, by its own rules, to rehear this matter.

MS. JOSEPH: Mr. Maus, we do understand that. We do. We do understand that.

MR. BOWLING: You are absolutely correct, Sir, but you're ignoring Rule 3, which gives the Board the power to defer any matter.

MR. MAUS: Certainly, the Board can defer it, Mr. Bowling. Mr. Herrick has told the Board that if the County loses on the rehearing, they're going to appeal. If we lose, we're probably going to appeal to Circuit Court, too. So, that's where it's going in either regard. The question is, at this point, whether or not in accordance with the Board's rules that it has the power, the authority, to rehear this and make a decision to do something else.

MR. BOWLING: You're misunderstanding. There's been a motion before the Board, and it's been seconded to defer the matter to allow you to apply for a variance. If you don't want to apply for the variance, that's your prerogative. The Board can't apply for a variance.

MR. MAUS: I understand that.

MR. BOWLING: You can bring it back. But they would like a reasonable period of time for you to have that choice, having heard from you that you asked about a variance and were under the understanding from the staff.

Again, it seems to me that there's been a big mix-up. You were understanding you could not apply for a variance, and then you've also heard from two Board members that the proper posture, what they'd like to see in this case before them, is a request for variance for the setbacks. You then, of course, can decide not to do a variance, and then we can come back here and address the Board's issue, which is before it today, whether they want to reconsider the matter of its decision on October 1.

MR. MAUS: Alright, thank you.

MR. SHEPHERD: Thoughts?

MR. HERRICK: Mr. Chair, if I might be heard, just briefly. I would point out that if this matter is deferred past October 31 that the Board of Supervisors would have no choice but to go ahead and file its appeal with the Circuit Court.

MR. BOWLING: That may well be so, but the statute only requires that the BZA make its decision within 90 days. The Board has made a decision on October 1, 2019 and they're here today solely at the motion of the County of Albemarle. You'll have to let the Circuit Court and maybe the Supreme Court work out this knotty little procedural problem.

MR. HERRICK: And I'm not questioning the ability of the BZA to grant a deferral. I'm just alerting the BZA as to what the County's procedural posture would be if a deferral is granted.

MR. BOWLING: We understand.

MS. ALLEY: Mr. Bowling, if you could just speak into your mic. It's so far, so good, but...

MR. BOWLING: You're going to have to change the design of these mics, ma'am.

[Laughter]

MR. BOWLING: The mic has control of me. I guess I can pull it closer, can't I. Does that do it?

MS. ALLEY: That's good, thank you.

MR. BOWLING: Alright.

MR. SHEPHERD: Part of my thinking about the deferring and bringing this, revisiting this as a variance is, for me, it's an offer, I see it as an offer to all sides to regroup and take this on with a better process. And to me, it's a reasonable compromise and puts things on a stronger, to me, it puts all sides on a stronger footing, and I hope it would also be a more efficient way of dealing with this time-wise. I would ask both sides to consider that as we, would endorse the idea.

I think the variance criteria can wrap its arms around the issues provided here. I think, in a way that is similar to many variances that have, I know about from the past, and some have been approved, and some have not been approved. But they didn't cause the sort of controversy that we find ourselves in now.

MR. RINEHART: Mr. Chairman, I just want to ask this technical, if this motion should pass, the likelihood the appellant would ask for a variance of simply the setback. Is that correct?

MR. SHEPHERD: Yes.

MR. RINEHART: Thank you.

MR. SHEPHERD: But I do not think that this is a use, a variance of the use. A home occupation is permitted in the Rural Areas. The use, however, it has to meet certain criteria, including a 25-foot side setback.

MR. MAUS: Mr. Chairman, if I could respond. That's exactly what the County is saying is not the case, that 25-foot setback applies to the location to the building, does not apply to the use. Their position has constantly been that even though the building permit allowed us to put that property within 6 feet of the side setback, we actually put it near 14 feet. What the County is saying is that the building permit deals with the construction of the building; it does not deal with the use. And that, that's one of the reasons why they think that this is kind of a mess because the building permit was applied for with the understanding there's going to be a home occupation in which clients, other lawyers, were going to come in the conference room that Mr. Bowling has talked about that, in the County's mind, use is different from the building permit.

MR. SHEPHERD: Well, I believe that this is, that taking the variance approach fixes that problem. That was my open remarks in the hearing at the beginning of the month, that we were looking at a building permit, at the building, but we weren't dealing with the use of the building. But that's not, what the prohibition against a variance being used to change a use is, that has to do with going to the, saying you can do something in a zoning district that's not provided in the ordinance. That would be a use variance. Marcia, do you agree with that?

MS. JOSEPH: Yes, I do.

MR. SHEPHERD: That we are not, that having a home occupation in the Rural Area, in an accessory building, does not require a variance from the use. That is a permitted use, so that's why the fact that that issue has vexed us up until now is why I am suggesting, as others here are, the approach with the, of going after a variance, accommodates that.

MR. MAUS: I understand entirely, Mr. Shepherd. Unfortunately, Mr. Svoboda has just said to you within the last 15 or 20 minutes, variances don't apply to uses.

MS. JOSEPH: This could be another conversation if you decide that you'd like to apply for a variance.

MR. MAUS: I understand.

MS. JOSEPH: We can't really do this here. It's not before us, but we want you to know that that is an option for you.

MR. MAUS: I understand, Ms. Joseph. Thank you.

MR. RINEHART: A call for the question.

MR. BOWLING: Can you state the motion, please?

MR. SHEPHERD: I move – I can't do this. Someone else has to make the motion. But the motion is, what I'm looking for is to defer to the, to a date when a variance could be heard on the same day.

MR. BOWLING: Well, you can't really say that because the applicant has to file the variance, not the Board. So, you need to defer the matter to a certain date to give the time for the applicant, if the applicant so desires, to apply for a variance and start the variance process.

MR. SHEPHERD: Can we determine, from the schedule, what that would be? What meeting? I think at one point, I thought –

MS. JOSEPH: Do either staff members have a schedule before them? Do you have a schedule for submission and –

MR. SVOBODA: Submission schedule is the month prior.

MS. JOSEPH: Say that again?

MR. SVOBODA: Excuse me, two months prior.

MS. JOSEPH: Two months prior.

MR. SVOBODA: Yes ma'am.

MS. JOSEPH: Okay.

MR. BOWLING: When would he have to submit, and when could the matter be heard at the earliest, giving the applicant a reasonable period of time, if the applicant so desires, to request, submit an application for a variance?

MR. HERRICK: We currently have scheduled meetings on December 3, January 7, February 4, are the next, well, there's one, I guess there's a date reserved in the first week of November. Obviously, that wouldn't be heard then, but in terms of the next three after that, again, the dates would be December 3, January 7, and February 4.

MS. ALLEY: We cannot make legal deadlines for November 2019.

MR. BOWLING: When's the earliest you could meet the legal deadline?

MS. ALLEY: That would be December.

MR. BOWLING: The December meeting.

MS. ALLEY: Yes sir.

MR. BOWLING: And what's that date, again?

MS. ALLEY: The third.

MR. HERRICK: December 3.

MR. BOWLING: Does that help, Board members?

MR. SHEPHERD: And that's, okay. There's, deferring to December 3 gives time to apply and advertise, so it could be heard on that date.

MR. BOWLING: And at that point, if the applicant applies for a variance, you could hear the variance, but you could also hear the County's motion. If the applicant doesn't apply for the variance, then you can take up the County's motion. And if you decide to reconsider, then you can reconsider the action that you took on October 1.

MR. SHEPHERD: Preserves everyone's options.

MR. BOWLING: Well, it's been murkied up because, as Mr. Herrick says, he'll go ahead and appeal. This all creates an interesting little procedural issue, which is Mr. Herrick's realm because the Board doesn't participate in the hearing before the Circuit Court. I think the Board, as the BZA, can proceed as it's outlined in the motion, if that's what it wants to do. Does that meet the intent of your motion, Mr. Chairman?

MR. SHEPHERD: Yes, it does.

MS. ALLEY: Can I clarify the schedule? The application would need to be submitted by November 4 to be heard in January 7. It would have to be submitted by December 2 to be heard February 4 of 2020.

MR. BOWLING: So, what you've just said is not December, it's January. That's what I thought.

MS. ALLEY: The January, we could meet legal deadlines for, to hold the meeting, but the submission for December would have been October 7.

MR. BOWLING: So, he's already past that deadline.

MS. ALLEY: Yes, sir.

MR. BOWLING: So, he would have to meet –

MS. ALLEY: That's why I wanted to clarify that submittal date.

MR. SHEPHERD: So that date would be January 7?

MR. BOWLING: January 7 for the hearing, but the applicant would have to, if the applicant deems it's appropriate, it's up to the applicant. He would have to make application for a variance by –

MS. ALLEY: November 4.

MR. BOWLING: November 4.

MR. MAUS: Mr. Shepherd, if it please the Board, I am in the middle of a one-week, week-long jury trial in Greene County starting January 5, that Monday. I'm not available on January 7.

MR. SHEPHERD: Could a representative stand in for you? Perhaps your wife?

MR. MAUS: I did not bring her calendar. I do not know if she's available that day, Sir.

MR. BOWLING: So, what's the next date that's available?

MR. SHEPHERD: Well, can we –

MS. JOSEPH: Well, couldn't we have a special meeting? Couldn't we have it not necessarily on the 7th, but declare that we're going to have one on the 14th of January? Can we do that? Is this all set in stone, the dates, because we haven't even determined the dates that we can have meetings, I don't think, in 2020.

MS. ALLEY: We have not set our schedule for 2020. Policy though, as far as room reservations, they are generally scheduled for the first Tuesday of the month. If we alter that schedule significantly, I'd have to check with them to make sure that we would have room availability.

MS. JOSEPH: Well, we got this room today.

MS. ALLEY: We did. We did.

MS. JOSEPH: We got this room today, and there are other rooms in the County Office Building.

MS. ALLEY: I just mean if you decide today that it's January 14, I can't guarantee that Lane will be available. I will do my best to see what dates we could, we'd be able to get Lane.

MR. SHEPHERD: I'm not sure that there's an, I don't have a sense of urgency. I wanted to schedule this as soon as possible, primarily for the benefit of the appellant. It can, if it wants to wait until February, I don't think that changes our position or the concept behind any of this.

MS. JOSEPH: I guess what I'm thinking of, John, is that we have these two things going in tandem here. We have the County that is requesting a hearing by the Circuit Court, and I don't know how long it takes to get on their docket.

MR. BOWLING: It would be a miracle if it could get that heard by February.

MS. JOSEPH: Okie doke. Then, I think -

MR. BOWLING: You're talking probably in the summer, maybe.

MR. MAUS: I'd agree with Mr. Bowling on that.

MS. JOSEPH: Okay. Okay, then we're in better shape. I didn't know how long it might take. That's why I was kind of rushing this.

MR. MAUS: It would take a while, Ms. Joseph, because once the County files a pleading with the Circuit Court, we would have 21 days to respond. The Circuit Court would then, at its term day, which comes once every other month, in all likelihood, set a hearing date, and –

MR. BOWLING: Here, it's once a month.

MR. MAUS: And honestly, they have to give priority to criminal cases, so civil cases come second, kind of second-class citizens on the Circuit Court's docket.

MS. JOSEPH: Okay, thanks. So, February?

MR. SHEPHERD: What's the first Tuesday in February?

MS. ALLEY: The meeting date in February is February 4, 2020. That submittal date is December 2, 2019.

MR. SHEPHERD: Is there a motion?

MS. JOSEPH: I move that we defer this hearing to our meeting on February 4, 2020, and if the applicant so desires, we consider the variance request at the same time.

MR. BOWLING: You need to meet the criteria set out for deferring a meeting, Mr. Chairman. Do you want to read to the members what those criteria are? It starts on the preceding page.

MR. SHEPHERD: "Deferrals. The BZA may defer any matter, at the request of a member of the BZA, the County staff, or the applicant or appellant, that 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 shall consider the reasons for the deferral, if the request is submitted by the appellant or applicant, the recommendations of staff and members of the BZA."

For this particular thing, I, is there a particular criteria that we'd be looking at to base this deferral on, beyond that? Seems like this is within our purview.

MR. BOWLING: Well, that's up to the BZA. It's not my decision to make, Sir.

MR. SHEPHERD: Does this seem, to me, it's saying that I, or anyone on the BZA, can request this deferral, and I think that's what's before us.

MR. BOWLING: Yeah, but it's the number of criteria set out there. You might want to read them all, just to, then if the –

MR. SHEPHERD: Well, we consider the –

MR. BOWLING: If the criteria have been met, you can move forward on the motion.

MR. SHEPHERD: The factors are whether deferral would promote fairness in the process; whether the deferral would be solely for the convenience or personal benefit of the applicant or appellant; whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, or the neighborhood, or the public; whether the deferral would allow the appellant or applicant to resolve the underlying issues so that the BZA action may be unnecessary; and whether the deferral would allow the BZA to make a decision within 90 days of the filing of the application or appeal.

To me, this is very much on target in that it promotes fairness in the process.

MS. JOSEPH: And resolves underlying issues, is what –

MR. BOWLING: And you've already made your decision within 90 days of the applicant's request, made on October 1, 2019.

MR. SHEPHERD: So, can we restate the motion? Or is there further discussion on that? Well, let's restate the motion, and if there's further discussion, we will have it.

MS. JOSEPH: I did move to defer this item, which is AP201900004 Bufton & Maus, PLC, defer it to our meeting scheduled for February 4, 2020 with also a hearing of the variance, if the applicant so desires to submit an application for a variance. Having read into the minutes the criteria, we had agreed that this promotes fairness and also resolves some underlying issues for us to defer this item.

MR. SHEPHERD: Thank you.

MR. ROBB: I'll second the motion.

MR. SHEPHERD: Further discussion? Let's call the roll.

MS. ALLEY: Mr. Robb?

MR. ROBB: Yes.

MS. ALLEY: Mr. Rinehart?

MR. RINEHART: Aye.

MS. ALLEY: Ms. Joseph?

MS. JOSEPH: Aye.

MS. ALLEY: Mr. Shepherd?

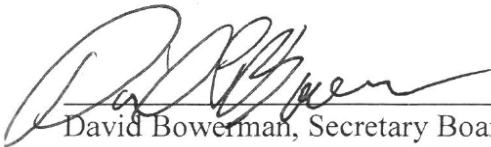
MR. SHEPHERD: Aye. Thank you. Hope this moves us toward a resolution of this.

4. Adjournment

At 10:45 a.m., Mr. Rinehart moved to adjourn the meeting. Ms. Joseph seconded the motion, which passed unanimously (4-0).

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,



David Bowerman, Secretary Board of Zoning Appeals