

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING
TUESDAY, AUGUST 4, 2020 – 2:00 P.M.

Board Members: John Shepherd, Chairman
Ed Robb, Vice-Chairman
Marcia Joseph, BZA Secretary
Randy Rinehart

Staff Members: Bart Svoboda, Zoning Administrator
Marsha Alley, BZA Recording Clerk

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 Chairman John Shepherd. He said this is an electronic meeting and asked for patience as they become familiar with this meeting alternative and virtual process. He stated that this meeting is being held in pursuant to and in compliance with Emergency Ordinance #20-A(8), “An Emergency Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.”

Mr. Shepherd said the persons responsible for receiving public comment are the Board of Zoning Appeals of Albemarle County. He said the opportunities for the public to access and participate in the electronic meetings are posted on the Albemarle County website, on the Board of Zoning Appeals homepage, and on the Albemarle County calendar.

2. Establish a Quorum

The BZA established a quorum, with four members present.

Mr. Shepherd said the BZA members who are electronically present at this meeting were: John Shepherd, Randy Rinehart, Marcia Joseph (Secretary), and Ed Robb (Vice Chair). Ms. Joseph, Mr. Robb, Mr. Rinehart, and Mr. Shepherd each stated their presence.

Mr. Shepherd introduced others in attendance: James Bowling (BZA Attorney); Andy Herrick (Deputy County Attorney); Bart Svoboda, Zoning Administrator; Marsha Alley, BZA Recording Clerk; and Ms. Valerie Long and Mr. Patrick May (representatives for the applicant).

3. Request to Extend Deferral

A. Project Number: AP202000001 R. A. Yancey Lumber Corporation 55-111B, 55-112

Property Owner/Appellant: R. A. Yancey Lumber Corporation

Mr. Shepherd noted that the BZA had granted the appellant a deferral the month prior. He said that at that time, both staff and the appellants had provided background information, and the BZA understands the situation. He said the underlying reason for deferral was that the BZA wanted to allow the Board of Supervisors to complete the process of looking at all the issues facing this site. He said they had

1 completed most of their work and that there was a meeting scheduled the following day to address it
2 again.

3
4 Mr. Shepherd said Mr. Svoboda would provide the staff report and the County's view on this matter.
5

6 Mr. Svoboda stated that the request is to extend the deferral that was granted at the last meeting. He said
7 this was an opportunity for the appellant to correct the violation through other actions, which would be
8 the Board's action. He said the BZA granted the deferral for the appeal on June 2nd, and the Board of
9 Supervisors granted some of the special permit requests on July 15th. He said they would hear the
10 remaining number of requests on August 5th (the following day).
11

12 Mr. Svoboda said they want to follow the BZA's last decision (as they do not feel that any of the
13 circumstances have changed) and allow the appellant to move through the special exception process, with
14 the final decision by the Board hopefully coming the following day. He stated that the appellant is
15 therefore requesting this extension of deferral to the first meeting and that their email was attached.
16

17 Mr. Svoboda said they are still in the process of special exceptions and that they were granted an
18 opportunity to pursue it through that process which was not yet complete.
19

20 Mr. Shepherd informed the appellant that they had 15 minutes to speak.
21

22 Ms. Valerie Long said she is with the law firm of Williams Mullen and is representing the appellant in
23 this action. She said she was joined by Mr. Patrick May of Yancey Lumber Company. She said the
24 appellant did not have anything to add beyond what Mr. Svoboda added and that, as stated in their email
25 to Mr. Svoboda on July 21, she believed the request was fairly straightforward.
26

27 Ms. Long said that on July 15th, the Board of Supervisors approved the majority of the special exception
28 requests and deferred action on three items to provide time for the appellant to work with staff to clarify
29 the conditions of approval that would apply to those three special exceptions. She said that during the
30 Board meeting, they discussed the fact that the appellant was happy to do that, but that it did create a
31 logistical or timing situation regarding the appeal. She said they discussed the fact that they would need to
32 come back before the BZA and request that the deferral be extended to accommodate the Board of
33 Supervisors meeting on August 5th. She said the Supervisors are aware of that request and understood that
34 this would be part of the appellant's request.
35

36 Ms. Long said that for all of the reasons stated in the appellant's email and in the letter sent on May 22,
37 2020, they would respectfully request that the BZA extend this deferral in order to allow the Board of
38 Supervisors to finally resolve the matter so that they can move forward and hopefully dispense with the
39 need for further hearings before the BZA.
40

41 Ms. Long said she would be happy to answer any questions or provide additional information that any
42 BZA members might need, as would Mr. May.
43

44 Mr. Shepherd asked Mr. May if he had anything to add.
45

46 Ms. Long said Mr. May had informed her that he had no need to respond unless there were questions for
47 him.
48

49 Mr. Shepherd turned deliberation over to the BZA.

1
2 Mr. Robb, Mr. Rinehart, and Ms. Joseph said they had no comments or questions.
3

4 Mr. Shepherd stated that he watched the Board of Supervisors meeting and found it to be interesting. He
5 said he had the sense that the stacker/sorter was the item that gave the Supervisors the most pause, which
6 is what was being worked on currently and would be addressed on August 5th. He said it was good that the
7 BZA was able to stand back and allow that process to take place, and he believed it was almost complete.
8 He said it does seem somewhat complicated and that he didn't know that it would actually be finished the
9 following day; but he hoped it would be.

10
11 Mr. Shepherd said all his reasoning from the previous month remains unchanged this month in terms of
12 his approach to this.
13

14 Mr. Shepherd said he thinks the BZA has a choice about deferring this for one more month or to some
15 other date certain. He said alternatively, they could defer it to a time when the Board of Supervisors has
16 completed its deliberations, come to final conclusions, and finished its work. He asked if anyone else had
17 thoughts or questions on the topic.
18

19 Mr. Shepherd asked Mr. Robb if he had concerns about the length of time the BZA would defer this.
20

21 Mr. Robb replied that he felt it was proper and sensible to defer until the next regular meeting of the BZA.
22

23 Mr. Rinehart said Mr. Shepherd may have some points to make for deferring it until a different time in the
24 future but that he himself supported Mr. Robb's position.
25

26 Ms. Joseph said if the BZA goes with the September meeting, they are assuming that the Board of
27 Supervisors will have worked through everything they need to do. She said the only topic they were
28 concerned about was the sorter/stacker, as this was the only one that was in the cease and desist or
29 determination letter that was sent out. She said that if the Board of Supervisors doesn't come to some
30 conclusion in their next meeting, the BZA may have to then defer it until October. She said perhaps this
31 would not make any difference.
32

33 Mr. Shepherd agreed that he would like to defer this to the certain date in September. He said he was
34 expecting this to conclude fairly rapidly; however, he recognized that there is a possibility that this could
35 go on for quite some time but that he really did not know. He said there may come a point where the BZA
36 would want to go ahead and act on the appeal itself, depending on the timing.
37

38 Mr. Shepherd said he did not want to defer it indefinitely. He said he knew some Board members had
39 talked about that, and they were hoping the BZA would let the process completely play itself out. He said
40 he believed it should go to September, however.
41

42 Mr. Shepherd said he believed the BZA members were all in agreement. He asked if there was any further
43 discussion. Hearing none, he asked for a motion.
44

45 **MOTION:** Mr. Rinehart moved to defer AP202000001 R.A. Yancey Lumber Corporation to the next
46 BZA meeting on September 1, 2020. Mr. Robb seconded the motion, which passed unanimously (4-0).
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1 **4. Approval of Minutes**

2 **A. June 2, 2020**

3 **MOTION:** Ms. Joseph moved to approve the revised minutes for June 2, 2020. Mr. Rinehart seconded
4 the motion, which passed unanimously (4-0).

5
6 Mr. Shepherd said the numbers that were now in the minutes were very helpful, and he appreciated the
7 “track changes” mechanism that was used to highlight the changes in the June 2 minutes. He said this
8 made the changes easy to find and talk about. He said although these were small things, they make things
9 easier in the long run.

10
11 **B. July 7, 2020**

12 Ms. Joseph asked for the pages to be numbered. She also said that on page 6, line 14, the word “were”
13 should be “was.”

14
15 Ms. Joseph said if everyone agreed, they could approve it if Mr. Bowling or Mr. Herrick agreed, as she
16 was sent a clean copy.

17
18 Mr. Bowling said this was correct if everyone accepted the change.

19
20 Mr. Shepherd stated that on page 1, line 40, he was not sure that he had identified everyone’s job
21 description on the board—but since Mr. Robb was noted as the Vice Chair, Ms. Joseph should be
22 identified as the Secretary.

23
24 Mr. Shepherd said on page 4, line 22, “what the sun would look like” should be changed to “what the sign
25 should look like.”

26
27 **MOTION:** Mr. Rinehart moved to approve the July 7, 2020 minutes with the noted changes. Ms. Joseph
28 seconded the motion, which passed unanimously (4-0).

29
30 **5. Old Business**

31 Mr. Svoboda said he did not have an update on the new BZA member and that it was still in a holding
32 pattern.

33
34 **6. New Business**

35 Ms. Joseph said she was looking through and trying to figure out special exceptions and variances and got
36 extremely confused. She said the ordinance has obviously changed the way that setbacks are addressed.
37 She said that the Albemarle County Zoning Ordinance says that any minimum setback in industrial
38 districts may be reduced by special exception. She said what she finds fascinating about this is that a
39 reduction in the setback is normally called a variance, and to her, it is normally something that comes
40 before the BZA.

41
42 Ms. Joseph said the ordinance also speaks to the fact that the duties of the BZA are to grant variances or
43 to not grant variances, and they are the body that looks at a variance. She said the ordinance is very clear
44 as to the issues to be considered before a variance can be granted by the BZA. She said that it was
45 fascinating that the Board of Supervisors can essentially grant a variance for a setback without going
46 through the whole list of criteria, such as whether the need for a variance is the result of a self-imposed
47 situation.

48

1 Ms. Joseph said what she was trying to figure out—and what she would love to receive from staff—is
2 what to tell people coming in. She asked if they should tell them that it is self-imposed and to therefore,
3 go before the Board of Supervisors to get a special exception; or, if it is a matter that is due to the
4 topography or shape of the lot, to then go to the BZA and look at the specific list of criteria the applicant
5 needs to meet before they are granted a variance.

6
7 Ms. Joseph said she did not expect an answer immediately but that she would love to be able to have an
8 extended conversation about this, perhaps at the BZA’s September meeting, so that the difference
9 between the two can be explained and about how staff offers advice to applicants when they come in. She
10 expressed that this very much confused her and that she could see why the Yancey Lumber matter came
11 before the BZA because it was stuck in the middle in terms of what they would do. She said the letter
12 comes to the BZA because the applicant has done something that was in violation and yet, the BZA hears
13 it and it then goes to the Board of Supervisors.

14
15 Ms. Joseph said she would like to have a conversation at which everyone is prepared to talk about this.
16 She said when going through the ordinance and finding this information, she wondered what was going
17 on. She said it may not be as complicated as she was making it out in her mind but that she would
18 appreciate staff preparing something that they could discuss in September.

19
20 Mr. Svoboda said they could get this on the agenda and make sure they have sufficient time. He said there
21 are certain areas where the Board of Supervisors reserves the right to grant special exceptions, which is a
22 different criteria than the variance that Ms. Joseph pointed out. He said they will need to talk about it in
23 more detail, however, for understanding.

24
25 Mr. Rinehart said this made a lot of sense and thanked Ms. Joseph for bringing it up, adding that it created
26 questions of his own.

27
28 Mr. Shepherd said he was confused by this as well. He said it seems there is a contradiction. He said he
29 would like to think it is resolved in the ordinance but that he did not see it there now.

30
31 Mr. Shepherd said he assumed that it could possibly come into play with the setback for the debarker
32 machine (the Yancey Lumber machine that was across the VDOT right of way). He said he has seen the
33 list of findings that the Board of Supervisors made and that they have granted that setback. He said he
34 didn’t expect them to change that finding, but the BZA might be addressing both of those items in terms
35 of the appeal having to do with the Notice of Violation, which includes the debarker as well as the
36 stacker/sorter. He said it is the time and place, if the BZA hears and does the appeal, to have a clear
37 finding from the County on how to interpret that. He said he did not know how to interpret it.

38
39 Mr. Shepherd said he was glad they raised the issue. He said he didn’t know if the Board of Supervisors,
40 Mr. Fritz, or anyone was interested in considering that now and that he would leave it to Mr. Svoboda and
41 Mr. Herrick taking it from there.

42
43 Mr. Herrick suggested that if and when the Yancey item came back before the BZA, it could be addressed
44 as part of that discussion. He said that if the Yancey matter were substantially resolved without further
45 BZA involvement, staff could brief the BZA about the specific issues afterwards.

46
47 Mr. Shepherd said he appreciated that. He said the Yancey matter may or may not bring this issue front
48 and center. He said he suspects that it will not because the Board of Supervisors has already made a
49 finding on it and that he imagined the BZA would simply accept this and move on. He said he was not

1 doubting it, either. He said hypothetically, however, it is important that it is clear either to the BZA (as
2 they may not be looking at it correctly) or in the ordinance as to what criteria is brought to the analysis for
3 minimizing a setback. He said the question is if it is the criteria in the variance section, or if it was the
4 more subjective criteria that is in the special exceptions criteria. He said it was not just Yancey that he
5 was interested in and that he was almost more interested in the case beyond the horizon.

6
7 Ms. Joseph said this should not be read as a challenge to the Board of Supervisors from her, as this was
8 not what was going on here. She said the legislative branch is allowed to do the things they are allowed to
9 do, while the judicial branch is allowed to do the things they are allowed to do and that this seems to be
10 messy in her mind.

11
12 Mr. Herrick said that since this may come up as an issue in a pending case, he would suggest that they
13 defer further discussion of this particular issue until that case is back on the table and all the participants
14 are there. He said that if this case were resolved without the BZA's involvement, they could address this
15 issue separately. His thought was to defer the discussion until that item and all the participants were back
16 in the room.

17
18 Mr. Shepherd said he understood.

19
20 Mr. Robb asked what the BZA's standing is regarding this subject. He said he appreciated Ms. Joseph's
21 research on this matter but that he wanted to know what standing the BZA has as far as suggesting that
22 the Board of Supervisors do anything about identifying if there is an error here or an effort to confuse.

23
24 Mr. Shepherd said he would try to answer that, adding that Mr. Herrick should stop him if he needs to be
25 corrected on anything.

26
27 Mr. Rinehart expressed that the BZA seemed to be going down a rabbit hole and that he could read from
28 the body language of staff that they needed to pause this discussion until they can address the Yancey
29 item. He said while he applauded Ms. Joseph for raising the issue, he believed the discussion should be
30 paused until the next month or beyond.

31
32 Mr. Shepherd said this was his point—that what was in front of the BZA was a deferral and what was in
33 the notice of violation. He said this is what they are dealing with and that everything else was not front
34 and center for them.

35
36 Ms. Joseph clarified that the only reason it came up had nothing to do with how this affects Yancey, but it
37 has to do with the words in the ordinance. She said she was not interested in telling the Board of
38 Supervisors how to do their job. She said it just came up because of this particular project.

39
40 Mr. Svoboda said as part of the discussion next month, one way or another, staff will clarify the criteria
41 for a variance versus the criteria for a special exception. He said this should address all the questions that
42 he has heard, and if he missed one, he was sure the BZA would let him know next month.

43
44 Mr. Rinehart asked what time the Board of Supervisors meeting was the next day so that he could log on
45 to watch.

46
47 Mr. Herrick said the Yancey Lumber item was on the Board of Supervisors' August 5th meeting agenda.
48

1 Mr. Svoboda directed Mr. Rinehart on how to access the meeting and said he would send a link to the
2 page.

3
4 **7. Adjournment**

5 **MOTION:** At 2:36 p.m., Mr. Robb moved to adjourn the meeting. Mr. Rinehart seconded the motion,
6 which passed unanimously (4-0).

7
8 (Recorded by Marsha Alley and transcribed by Beth Golden)

9
10 Respectfully Submitted,

11
12 A handwritten signature in blue ink, appearing to read "Marcia Joseph", is written over a horizontal line. The signature is cursive and includes a long horizontal stroke at the end.

13
14 Marcia Joseph, Secretary Board of Zoning Appeals
15