



COUNTY OF ALBEMARLE  
Department of Community Development  
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**ALBEMARLE COUNTY BOARD OF ZONING APPEALS  
ELECTRONIC MEETING VIA ZOOM  
AGENDA  
TUESDAY, OCTOBER 6, 2020 at 10:00 A.M.**

1. Call to Order
2. Establish a Quorum
3. Public Hearings:
  - There are no public hearings scheduled
4. Approval of Minutes
  - A. [September 1, 2020](#)
5. Old Business
6. New Business
  - [Training Session](#)
7. Adjournment

This meeting is being held pursuant to Ordinance No. 20-A(14): An Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster. Opportunities for the public to access and participate in this electronic meeting are (or will be) provided at <https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals>.

Information for participation is also posted on the Albemarle County website on the Board of Zoning Appeals home page and on the Albemarle County calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received.

## **BOARD OF ZONING APPEALS ELECTRONIC MEETING GUIDELINES**

Thank you for attending the Board of Zoning Appeals (BZA) electronic 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 unused 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. For staff and applicants, there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.**

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 BZA during the public hearing, please follow the instructions below:

- Log in/call in early.
- Via Web: Use the "Raise Hand" icon to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.
- Via Phone: Press \*9 to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.

If you do not sign up to speak prior to the meeting, an opportunity to sign up will be given prior to the close of the public hearing. When this opportunity is announced, follow the directions above to notify the BZA Clerk that you would like to provide comment on a public hearing item.

Time keeping is conducted through a timer. Each speaker is allotted **three (3) minutes** to comment. The timer will commence when you begin speaking; you will be notified when three minutes has ended, and you are requested to bring your comments to a close as your microphone will be muted after several seconds.

In order to give all speakers equal treatment and courtesy, the BZA requests that speakers adhere to the following guidelines:

- When called to address the BZA, please state your name. For uncommon spellings, please spell your name for the record.
- Address comments directly to the BZA as a whole - open public debate is prohibited.
- You may email written statements and other relevant material to [BoardofZoningAppeals@albemarle.org](mailto:BoardofZoningAppeals@albemarle.org) to be included in the record.
- If you represent a group or organization, you may identify the group to be recognized.
- If you exceed your allotted time, you will be asked to end your comments and the microphone will be muted.
- If a speaker does not use all allocated time, the unused time may not be shared with another speaker.
- Speakers are permitted one opportunity to comment during each of the public comment periods per meeting.

### **Additional Guidelines for Applicants and Appellants addressing the Board:**

- 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.

# The Powers and Duties of Boards of Zoning Appeals

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## In-house Training Materials

October 6, 2020

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Presented by:  
Andrew H. Herrick, Deputy Albemarle County Attorney

Materials adapted (with permission) from:  
*The Albemarle County Land Use Law Handbook*  
([www.albemarle.org/government/county-attorney/resources/land-use-law-handbook](http://www.albemarle.org/government/county-attorney/resources/land-use-law-handbook))  
by Greg Kamptner, Albemarle County Attorney  
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## Introduction

Being an effective BZA member requires much more than longevity on the board, common sense, the wisdom that comes with life experience, or a deeply felt sense of what is right or fair. Although some or all of those qualities may be valuable to the BZA member, zoning generally, and the roles of the BZA specifically, are very legal in nature. Thus, BZA members must know the applicable laws and rules that pertain to BZA proceedings and properly apply them when conducting the BZA's business.

A well-trained BZA should be able to complete its work decisively and with confidence because it knows the legal principles that apply to the matter pending before it, understands which facts are relevant to those legal principles, is able to identify and discard the irrelevant information from the decision-making process, and understands the procedure to reach a correct decision. This outline provides a review of the substantive and procedural rules applicable to BZA's.

Because the laws and rules pertaining to BZA's are constantly changing, BZA members should:

- Continue to periodically receive BZA-related training.
- Be familiar with and periodically review the State statutes and their locality's zoning regulations that are most relevant to a BZA. The sections of the *Virginia Code* that are most relevant to a BZA are *Virginia Code* §§ 15.2-2307 through 15.2-2314. The *Virginia Code* is available online at <https://law.lis.virginia.gov/vacode/>. The General Assembly tinkers with one or more of these sections almost every year.
- Keep informed of new decisions of the Virginia Supreme Court that are most relevant to a BZA. Virginia Supreme Court opinions are available online at <http://www.courts.state.va.us/scndex.htm>. Opinions are posted the date they are issued, and the cases at the Supreme Court's website date back to 1995.

This outline is for educational purposes only and does not constitute legal advice. Always consult with your BZA's or locality's attorney if there are questions regarding a specific legal matter.

1  
2 ALBEMARLE COUNTY BOARD OF ZONING APPEALS  
3 ELECTRONIC MEETING VIA ZOOM  
4 TUESDAY, SEPTEMBER 1, 2020 – 2:00 P.M.  
5  
6  
7

8 Board Members: Marcia Joseph  
9 Ed Robb  
10 John Shepherd  
11 Randy Rinehart  
12 Edward (Bo) Carrington  
13

14 Staff Members: Bart Svoboda, Zoning Administrator  
15 Marsha Alley, BZA Recording Clerk  
16

17 County Attorney: Andy Herrick, Deputy County Attorney  
18

19 BZA Attorney: James Bowling, IV  
20  
21

22 **1. Call to Order**

23 The meeting was called to order at 2:00 p.m. by Chairman John Shepherd. He welcomed Mr. Bo  
24 Carrington, the newest member, to the Board of Zoning Appeals.  
25

26 Mr. Shepherd stated that this was an electronic meeting and asked for patience as they become familiar  
27 with this meeting alternative and virtual process. He said this meeting is being held in pursuant to and in  
28 compliance with Emergency Ordinance #20-A(8), “An Emergency Ordinance to Ensure the Continuity of  
29 Government During the COVID-19 Disaster.”  
30

31 Mr. Shepherd noted that the following BZA members were electronically present at the meeting:  
32 John Shepherd, Randy Rinehart, Marcia Joseph (Secretary), Bo Carrington, and Ed Robb (Vice Chair).  
33

34 Mr. Shepherd added that the persons responsible for receiving public comment are the Board of Zoning  
35 Appeals of Albemarle County. He said the opportunities for the public to access and participate in the  
36 electronic meetings are posted on the Albemarle County website, on the Board of Zoning Appeals  
37 homepage, and on the Albemarle County calendar.  
38

39 **2. Establish a Quorum**

40 The BZA established a quorum with five members present. Mr. Rinehart, Mr. Robb, Ms. Joseph, Mr.  
41 Carrington, and Mr. Shepherd each stated their presence.  
42

43 Mr. Shepherd introduced others in attendance: James Bowling, BZA Attorney; Andy Herrick, Deputy  
44 County Attorney; Bart Svoboda, Zoning Administrator; Rebecca Ragsdale, Principal Planner; Lisa Green,  
45 Manager of Code Compliance; and Marsha Alley, BZA Recording Clerk.  
46

1 **3. Public Hearings**

2 **A. Project Number: AP201900001 R. A. Yancey Lumber Corporation 55-111B, 55-112**

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

4 Mr. Shepherd said his understanding was that the Yancey Lumber appeal was withdrawn and that he  
5 assumed there was no action for the BZA to take on this. He asked if this was correct.

6  
7 Mr. Svoboda said this was correct.

8  
9 Mr. Shepherd said as there were many issues with the site, he was glad to know that they were all  
10 addressed and dealt with by the Board of Supervisors and that the case was complete. He asked if he was  
11 correct about this as well.

12  
13 Mr. Svoboda said this was correct at that time, noting that they still had to move through the development  
14 process. He said in terms of the appeal, no actions were required.

15  
16 Mr. Shepherd said he supposed there were still some conditions that had to be fulfilled before the  
17 applicant would receive full authorization to operate.

18  
19 Mr. Svoboda said yes.

20  
21 Mr. Shepherd said that for the BZA's purposes that day, they could say that the issues that were before  
22 them are now resolved and that they are done with those.

23  
24 Mr. Svoboda confirmed this to be the case.

25  
26 **B. Project Number: SP202000011 Pantops Corner Bundle Sign**

27 **Property Owner: Pantops Way Self Storage, LLC**

28 Mr. Shepherd asked Mr. Svoboda to present the staff report, informing him that he had 15 minutes to do  
29 so and that he could share his time with Mr. Herrick.

30  
31 Mr. Svoboda stated that Rebecca Ragsdale, Principal Planner in the Zoning Division, would be presenting  
32 the application.

33  
34 Ms. Ragsdale said she would give the BZA a brief overview of the item, as well as some background on  
35 bundle sign regulations in the ordinance. She said she would then move on to the specifics of the request.

36  
37 Ms. Ragsdale said the representation for Rebkee Partners that day would primarily be Mr. Paul Sprouse,  
38 adding that Mr. Ryan Perkins was also available.

39  
40 Ms. Ragsdale said the application was a request for one bundle sign to be authorized at the location of  
41 Pantops Corner Way and Stony Point Road. She said bundle signs were added to the ordinance in 2014,  
42 when staff took a look at all offsite sign regulations and updated them. She said it is a type of freestanding  
43 sign that identifies two or more establishments that are not part of a planned development and share a  
44 common entrance or access road.

45  
46 Ms. Ragsdale explained that in planned developments, one can locate such a sign in any place within the  
47 planned development. She said in other types of zoning districts, however, to be eligible for this type of  
48 sign, it must be commercial and must be located on a lot having frontage on one of the streets that serves

1 the development. She noted that, in this case, this is actually the County's first offsite bundle sign and that  
2 its purpose related to bundling directional signs. She said it would actually take the place of one of the  
3 freestanding signs that is allowed on the property where the sign will be located but that it will not add  
4 any freestanding signage within the development.  
5

6 Ms. Ragsdale said the site is located at the corner of what is now called Pantops Corner Way, which is a  
7 new street that connects Richmond Road to Stony Point Road. She said there are four parcels associated  
8 with Pantops Corner Way. She said these are located near the intersection of Richmond Road and Stony  
9 Point Road in the Pantops area, where there are a number of auto-oriented uses, gas stations, fast food,  
10 and offices. She said it is entirely surrounded by other commercial zoning districts, including Highway  
11 Commercial within Pantops Corner and C1 Commercial across the road.  
12

13 Ms. Ragsdale said in looking at Pantops Corner specifically, there are four parcels that are served by the  
14 common access road that connects through. She said there was a hotel currently under development, a  
15 building permit that was just issued for a Wawa to be located on the 250 frontage of Richmond Road, and  
16 the self-storage facility that was under construction as well. She indicated on a map to the location where  
17 the sign would be located on the self-storage facility parcel. She said that more specifically, the sign  
18 would be located within an area where the frontage for the parcel is located on Route 20 and at the corner  
19 of Pantops Corner Way.  
20

21 Ms. Ragsdale said in terms of the ordinance analysis, the factors to be considered were that there is no  
22 substantial detriment, the character of the district would remain unchanged, it is in harmony with the  
23 purpose and intent of the special use permit and sign regulations, and it is consistent with the  
24 Comprehensive Plan.  
25

26 Ms. Ragsdale said that staff provided a more detailed analysis in the staff report. She summarized that this  
27 was a sign that would meet all the sign ordinance regulations and has been reviewed by the Architectural  
28 Review Board (ARB). She said it was a sign that one might see in a Planned Development District with  
29 the Pantops Shopping Center nearby, so it was not a sign that was out of character for the district. She  
30 said therefore, staff did not have any concerns in relation to any of that review criteria.  
31

32 Ms. Ragsdale said staff did note in their report that there are some adjustments that will need to be made  
33 to the private street easement and some associated items. She said the purpose of the special use permit  
34 review, however, is to authorize the sign to be located on the parcel generally. She said the ordinance and  
35 sign permit process and ARB process will take care of the other items.  
36

37 Ms. Ragsdale stated that staff recommended approval of the special use permit to authorize the sign in  
38 compliance with Condition #1, which would be a certificate of appropriateness from the ARB. She said  
39 Condition #2 was that it will be located in the general location. She said given there were some site plan  
40 easement issues to be worked out, this allowed for some flexibility if things needed to shift.  
41

42 Mr. Shepherd asked Mr. Herrick if he had anything to add.  
43

44 Mr. Herrick replied no.  
45

46 Mr. Shepherd suggested the BZA save its questions until after they heard from the applicant.  
47

48 Mr. Spouse thanked Ms. Ragsdale for her presentation and said he did not have anything to add. He said  
49 Mr. Perkins was the design engineer for the Wawa parcel, which the applicant had closed on and obtained



1 site plan approval for. He said this bundle sign was important for Wawa's benefit to get access into the  
2 site with fuel prices and signage. He thanked the BZA for hearing the applicant and offered to answer  
3 questions.

4  
5 Ms. Alley noted that Mr. Perkins was also available to speak.

6  
7 Mr. Perkins said he did not have anything to add but would be available to answer questions about the  
8 layout, placement, and engineering. He said the placement and the signage exhibit the BZA saw in the  
9 presentation was the result of a fair amount of back-and-forth on making sure they met all code  
10 requirements, as well as those requirements brought up during the ARB process.

11  
12 Mr. Shepherd opened the public hearing.

13  
14 Ms. Alley stated that no one had signed up or raised their hand to speak. She invited the public to raise  
15 their hands to make comments.

16  
17 As no hands were raised, Mr. Shepherd closed the public hearing and turned over the discussion to BZA  
18 members.

19  
20 Mr. Shepherd gave Ms. Ragsdale an opportunity to add to her remarks if she wished to do so.

21  
22 Ms. Ragsdale responded that she had nothing to add.

23  
24 Mr. Shepherd asked the applicants if they had anything to add.

25  
26 The applicants said they had nothing to add.

27  
28 Mr. Shepherd asked the BZA members if they had comments or questions.

29  
30 Mr. Rinehart said he had no questions.

31  
32 Ms. Joseph said since this was the first time the BZA was looking at a bundle sign, she had some  
33 questions about that aspect of signage. She said she wondered about the definition for the bundle and was  
34 trying to figure out if the signage itself, including all the bundles, needed to meet 32 square feet, or if  
35 there could be additional square footage if there were more businesses behind it.

36  
37 Ms. Ragsdale explained that the maximum square footage was 32 square feet, except for the additional  
38 area allowed for fuel price display, since Wawa will be part of the sign. She said they can choose within  
39 Pantops Corner how they share the tenant panels, but the overall maximum was 32 square feet, plus the  
40 allowance of 50% of the sign area for fuel price display (not to exceed 16 square feet). She said the  
41 maximum was actually 48 square feet total.

42  
43 Ms. Joseph said in the Reason for Review on page 2 of the staff report, it said something that she could  
44 not quite figure out. She said it talked about the fact that this was approved in 2014 and then, there was a  
45 sentence that said, "However, there were concerns about a proliferation of too many signs." She said she  
46 was trying to figure out if it was a matter of too many of the individual signs, or too many of the bundle  
47 signs in an area.

1 Ms. Ragsdale replied that she believed it would be too many of the bundle signs themselves and not each  
2 business on the sign. She said she went back through the record, and it was indicated that it was important  
3 to have these types of developments bundle their directional signage so there is not a proliferation of  
4 directional signage in a particular area. She said other than that, there was not much in the record she  
5 found in terms of the legislative history, other than staff thinking it might be appropriate to allow it by  
6 right. She said since it was a new regulation, the Board of Supervisors at that time was not yet  
7 comfortable allowing it by right, so they went forward with a special use permit review process.

8  
9 Ms. Joseph asked if it was about the proliferation of each individual business, or the actual bundle sign  
10 itself.

11  
12 Ms. Ragsdale replied that it was about the proliferation of freestanding signs themselves.

13  
14 Ms. Joseph asked Ms. Ragsdale if she had had a chance to look around the area and make some sort of  
15 analysis of what her thoughts were about the proliferation of the signs within the Pantops area.

16  
17 Ms. Ragsdale replied that she did visit the site and as mentioned, staff looked at the character of the area  
18 and what signage was there. She said it is taking the place of the freestanding sign that would be allowed  
19 on the self-storage property. She said it is a type of sign in a Planned Development District that one sees  
20 quite often. She said at the nearby Pantops Shopping Center, there are multiple tenants on one sign, so  
21 staff did not have any concerns about it in this particular area.

22  
23 Ms. Joseph said this was off of Route 20 also and asked if there was not much going on in that particular  
24 area on Route 20.

25  
26 Ms. Ragsdale replied that the site was across from the Winding River Office Park and McDonald's. She  
27 said there was a Flow site beside the site on Route 20.

28  
29 Ms. Joseph asked about bundle signs there.

30  
31 Ms. Ragsdale replied that there was not a similar sign for the office park. She said this would be an  
32 example of a property that could have one, as it was three separate properties with a couple different  
33 buildings. She said if they choose to seek a bundle sign in the future, they could.

34  
35 Ms. Joseph said she noticed on the plat that it illustrated there was another sign easement on Route 250,  
36 but the applicant had not come in with that.

37  
38 Ms. Ragsdale confirmed this was the case.

39  
40 Ms. Joseph asked Ms. Ragsdale if she could go into more detail about the location, pointing out that the  
41 location would not be what was shown on the plat itself, but what was shown on the other illustrative  
42 drawing on page 6.

43  
44 Ms. Ragsdale presented a slide, noting that the sign location on the left was circled in blue. She noted  
45 there were some easement adjustments that needed to be made, which was reflected on the right side and  
46 showed what staff anticipated to be the new sign easement area and the private street easement.

47  
48 Ms. Joseph said she was looking at the very last page provided by staff that showed the plat and where the  
49 sign was going off of Route 20. She said it showed the property line and that it almost looked as if there

1 could be another parcel. She asked if this was the right-of-way line for Route 20, noting that it said, “State  
2 Route 20 variable widths.” She said she was assuming it could be a huge width for Route 20.

3  
4 Ms. Ragsdale said this property was part of some proffers staff told the BZA about and that some Route  
5 20 improvements were required. She said what was shown was the property line and the edge of the  
6 VDOT right-of-way.

7  
8 Ms. Joseph asked if no one else owned that small sliver, aside from VDOT.

9  
10 Ms. Ragsdale said this was correct.

11  
12 Ms. Joseph said in Attachment E, it talked about the sign area being 32 square feet, plus “bonus tenant  
13 panels.” She asked what a bonus tenant panel was.

14  
15 Ms. Ragsdale replied that this was something shopping centers can take advantage of if there is a certain  
16 square footage. She said once certain square footages are exceeded within larger shopping centers, they  
17 receive bonus signage of 8-square-foot tenant panels not to exceed a total of 32 square feet, depending on  
18 how large the shopping center is. She said this would not apply in this case, however.

19  
20 Ms. Joseph said this was the first time the BZA was looking at something like this, so she wanted to try to  
21 understand as much as she possibly could.

22  
23 Mr. Robb and Mr. Carrington said they had no questions or comments.

24  
25 Mr. Shepherd said he appreciated Ms. Joseph’s questions. He said he was thinking about this as setting a  
26 precedent for the review of these signs in the future. He said he wanted to make sure that moving forward,  
27 if the BZA sees more of these, they start to establish the baseline for what is acceptable, specifically  
28 around the proliferation question. He said he assumed they were okay at that time in terms of  
29 proliferation, but that there would come a point where there will be too many. He said they want to  
30 establish the basis for the judgment of the proliferation of bundle signs in an area and have a way to keep  
31 track of that and make it part of their analysis moving forward. He said with this being a precedent, he  
32 wanted to underline that for future reviews of this kind.

33  
34 Mr. Svoboda said the proliferation was really about the number of freestanding signs or directional signs  
35 that would be at the intersection. He said because this particular type of sign takes the place of the  
36 freestanding sign that would be on this parcel, there would be more businesses on the parcel, but less  
37 overall freestanding signage in that area. He said this was about allowing visibility from parcels that do  
38 not actually have the corner lot to use the corner lot available signage (as they still get 32 square feet  
39 either way) without having to have additional directional or freestanding signage at that intersection.

40  
41 Mr. Shepherd thanked Mr. Svoboda for the clarification. He said the clarification was very helpful, since  
42 he was reading the report and encountering these ideas for the first time. He said this had not been what  
43 he imagined the line in the staff report to mean.

44  
45 Ms. Joseph proposed that instead of the condition having the word “must,” it would read, “The sign shall  
46 comply with the certificate of appropriateness.” She said with the second condition, she would like to  
47 consider having it read, “The sign location noted on an amended plat shall be in general accord with the  
48 location as shown on Attachment A and comply with ordinance requirements.” She said she believed a  
49 plat should be required as part of this.

1  
2 Mr. Herrick said he could respond to the question of “shall” versus “must.” He said the BZA was free to  
3 do what it wished in the form of a motion. He said when staff drafts these conditions, however, he is  
4 always advising them to use terms like “must,” “will,” and “may” in the place of “shall.” He said the  
5 movement among legal drafting has been to move away from the term “shall” because it could be  
6 interpreted in different ways. He said this was why he suggested to staff that they use terms like “must,”  
7 “will,” or “may,” instead of “shall,” noting that the BZA was free to amend as they saw fit.  
8

9 Ms. Joseph asked Mr. Herrick if he felt that the word “must” would mean that this was what the applicant  
10 will do. She said she has always used “shall,” but that she was from a former time. She said if Mr. Herrick  
11 felt that “must” had the same power that “shall” did, it would be fine.  
12

13 Mr. Herrick said “must,” in this case, carried more power than “shall” because “must” would show what  
14 was required. He said there have been various cases where sometimes, the word “shall” means “must” and  
15 at other times, it means “will.” He said it is up to the court to determine for each individual case whether  
16 the “shall” means “must” or “will.” He said he would rather have the BZA say that when they say “must”  
17 they mean it, as opposed to “will.”  
18

19 Mr. Bowling said the judicial system has created the debate as to when “shall” means “shall” and when it  
20 means “may.”  
21

22 Ms. Joseph said she appreciated these insights and would leave it as “must.”  
23

24 Mr. Bowling said “must” was more aggressive than “shall.”  
25

26 Ms. Joseph said part of the condition was requiring an amended plat. She said she knew what “general  
27 accord” meant, but also believed that there needed to be a plat. She asked if this was something the BZA  
28 needed to do, or if it was something required by staff.  
29

30 Ms. Ragsdale replied that staff does not like to include in conditions anything that will already be a  
31 requirement of the ordinance, so they did not feel that it was necessary to add any more detail to  
32 Condition #2.  
33

34 Ms. Joseph asked if an amended plat will be required before the sign is installed.  
35

36 Ms. Ragsdale replied this was correct. She said the applicant would be going through the sign permit  
37 review process, where staff will confirm that all the requirements of the ordinance were met.  
38

39 **MOTION:** Ms. Joseph moved to approve SP202000011 Pantops Corner Bundle Sign with the conditions  
40 as outlined by staff: (1) the sign must comply with the certificate of appropriateness as approved by the  
41 ARB, and (2) the sign location must be in general accord with the location as shown in Attachment A.  
42 Mr. Rinehart seconded the motion, which passed unanimously (5-0).  
43

#### 44 **4. Approval of Minutes**

##### 45 **A. August 4, 2020**

46 Mr. Shepherd said he appreciated these minutes included the page and line numbers, which made them  
47 much easier to review.  
48

1 **MOTION:** Mr. Rinehart moved to approve the minutes for August 4, 2020. Mr. Robb seconded the  
2 motion, which passed unanimously (5-0).

3  
4 **5. Old Business**

5 **A. Granting deviations from certain setback regulations**

6 Mr. Shepherd asked if this was a follow-up on the request for a discussion of special exceptions, or if this  
7 was a different topic.

8  
9 Mr. Svoboda said this would be that particular topic and that it was up to the BZA if they wanted to get  
10 into this topic in greater detail. He said they could otherwise skim the surface and possibly allow Mr.  
11 Herrick to go into more depth in a future training. He yielded the floor to Mr. Herrick to go through the  
12 two listed items, noting that this was about the difference between variances and special exceptions.

13  
14 Mr. Shepherd said since the last meeting, he studied the ordinance carefully and had a much clearer idea  
15 about special exceptions. He said he was less concerned and more confident in his understanding of them.  
16 He added that there were no imminent cases on the horizon that would involve variances or special  
17 exceptions. He said he looked forward to hearing what staff would say but that he was not particularly  
18 concerned about having a great deal of detail and explanation at that time. He said he believed it was an  
19 easy topic to approach and that he was more excited about it last month before he understood it as well as  
20 he did now.

21  
22 Mr. Herrick said he would be brief. He said the materials Mr. Svoboda hyperlinked in the agenda address  
23 and respond to the questions that were raised at last month's BZA meeting. He said the main question was  
24 if there were some other body that has the ability to grant deviations from the setback requirements. He  
25 said it was an argument that had been raised in a case that was before the BZA, as well as in other court  
26 cases. He said the answer was that the BZA has exclusive authority over variances but that variances are  
27 not the only way by which there can be a deviation from the setback requirements.

28  
29 Mr. Herrick said he cited the case in the Land Use Law Handbook called *Board of Supervisors of Fairfax*  
30 *County vs. Robertson*. He said this is a 2003 Virginia Supreme Court case in which the court reviewed  
31 Fairfax County's use of a special exception to grant a deviation from the setback requirements. He said  
32 the Virginia Supreme Court did not say that the Fairfax County Board of Supervisors could not grant  
33 those sorts of deviations. He said even though the state statute says that the BZAs have the ability to grant  
34 variances, the Virginia Supreme Court has affirmed the practice of the local governing body (the Board of  
35 Supervisors) granting deviations from setbacks. He said thus, the BZA is not the only body that has the  
36 ability to grant deviations from setbacks.

37  
38 Mr. Herrick said for more information, he would refer the BZA to the *Robertson* case that was linked in  
39 the agenda packet.

40  
41 Mr. Shepherd said it seemed to him that with the addition of the special exception provisions in the  
42 ordinance, it did reduce the BZA's scope. He said it seemed to him that the BZA can do setback variances  
43 in the Rural Areas, but not in any of the other zoning districts, as those were all handled by the Board of  
44 Supervisors. He asked Mr. Herrick if he read it that way.

45  
46 Mr. Herrick said he would defer to Mr. Bowling but that this was not his understanding.

47  
48 Mr. Shepherd said perhaps they could discuss this via email later unless this was a training point.  
49

1 Ms. Joseph said she believed this was a training point and a very important aspect due to what happened  
2 with Yancey Lumber. She said the BZA needed to talk about it and understand how this would play out  
3 because as the Yancey applicant said, they had been diligently working toward a special exception for two  
4 years and suddenly, they were sent a letter that said they did not meet the setbacks and were therefore in  
5 violation. She said she did not think this was something that should happen to applicants. She said it was  
6 one or the other, but one cannot do both.

7  
8 Ms. Joseph said she believed the BZA did need to have a discussion about how they will proceed with  
9 this, as she felt the BZA was put in an awkward position in that point in time when the applicant was  
10 proceeding through the process to get a special exception. She said the BZA should probably have more  
11 time to talk about this, perhaps during a training with staff, so they can determine how to proceed with  
12 this.

13  
14 Mr. Shepherd said he was glad to have the topic out there with people thinking about it. He said they  
15 would drill into this soon.

16  
17 Mr. Shepherd said the BZA had been talking about doing training for quite some time but held off on  
18 doing this until they had a full complement on the board, in order for all board members to go through the  
19 training together. He said one thing that was valuable for their work together was that they do the training  
20 together in order to have a shared knowledge base and information they can operate with. He said this will  
21 strengthen their conversations and decision-making basis. He said it did not mean they had to have shared  
22 ideas about everything but that they would be starting from the same point.

23  
24 Mr. Shepherd asked Mr. Svoboda if he could offer dates on which the BZA could have training in-house.  
25 He asked if Mr. Herrick had training ready to go from trainings he had done over the last few years. He  
26 mentioned there were also more formal training opportunities available through VCU.

27  
28 Mr. Svoboda replied that he could send information to the BZA members about the formal training. He  
29 said his thought has always been that if they are doing any in-house training, as long as Mr. Herrick was  
30 available, they should schedule it during their regular meetings, as these are already reserved on the  
31 members' schedules.

32  
33 Mr. Rinehart said he would ask a question he asked the previous month. He asked what the chances were  
34 of the board members being together for training in person in a socially distant way versus having it on  
35 Zoom.

36  
37 Mr. Herrick replied that his understanding was that the building was not scheduled to be open to the  
38 public before November 9 at the earliest and that the Board of Supervisors would not be meeting in  
39 person before that date at the earliest. He said the earliest that the BZA would be meeting in person again  
40 would be in December.

41  
42 Mr. Rinehart asked if the BZA could not acquire an appropriate space outside of the County Office  
43 Building to perform the training.

44  
45 Mr. Herrick replied that while he was not saying the BZA couldn't do so, logistically, it would be  
46 complicated for staff to arrange.

47  
48 Mr. Svoboda explained that even the BZA's training counts as a meeting with everyone there, so they  
49 would still have to do the advertising notice. He said if they are meeting in public or having a public

1 meeting as opposed to a public hearing, they would still need to be able to at least broadcast, if not have  
2 folks present.

3  
4 Mr. Svoboda said he was in a “mask-to-mask” meeting that day in a room that was about 30 feet by 25  
5 feet. He said to meet the spacing requirements, the room only held five people. He said it would be  
6 difficult, at best, to get the people in the room and that it would be very challenging to have the audio and  
7 video available to broadcast from an offsite location or a place other than the board room, as they were  
8 not set up for that. He said it was likely that the training would have to take place on Zoom, though he  
9 would prefer it to be in person.

10  
11 Mr. Shepherd said earlier that day, he was at the 5<sup>th</sup> Street County Office Building and noticed that there  
12 was a meeting of a decent size being held in the conference room there that is close to the Police  
13 Department. He said he was not trying to complicate the matter but that he assumed the room was wired  
14 for meetings and that it was a big space. He asked if training in this room were possible.

15  
16 Mr. Svoboda replied that he did not know if it was wired for broadcasting. He said he did not believe  
17 there was a camera set up there as there is in the board room. He said he could check and see if it was  
18 available, but it was unlikely.

19  
20 Mr. Herrick said another consideration was that this room may be used for early voting. He said the  
21 Registrar is located in the County Office Building at 5<sup>th</sup> Street and will be using that room for in-person  
22 early voting.

23  
24 Mr. Shepherd said this was exactly right and where he would be doing early voting for people. He said  
25 Mr. Herrick was right that the room was booked solid from September 18 on. He apologized for  
26 mentioning this room. He said while he preferred to meet face-to-face, it seemed that they would still be  
27 meeting on Zoom.

28  
29 Mr. Herrick said he didn’t know how the upcoming calendars looked. He said typically, he has given the  
30 training at VCU in early October but had not yet heard when or if they would be doing that this year. He  
31 said he would be happy to devote the October meeting to an in-house training if it suited both staff and  
32 the BZA.

33  
34 Ms. Alley said that VCU’s 39<sup>th</sup> Certified Board of Zoning Appeals Program was scheduled for October 8  
35 and 9 and that her understanding was it would be held virtually.

36  
37 Mr. Shepherd asked Ms. Alley if she could let the BZA know about that option in the future and include  
38 the brochure.

39  
40 Ms. Alley replied that she could send the BZA members the information she had.

41  
42 Mr. Shepherd said generally, he believed the training would be good. He said the idea of everyone  
43 traveling to Richmond to do this two days in a row would be more than what people wanted to take on but  
44 that he would like to hear about the option, as he may want to do it himself or encourage others to do so  
45 as well. He said he appreciated Mr. Herrick being ready to start with Chapter 1 in October.

46  
47 Mr. Herrick asked if this was something the BZA wanted staff to schedule at that point, or if they wanted  
48 to explore their training options at VCU and then circle back in November if they decide not to proceed  
49 with it.

1  
2 Mr. Rinehart asked if the training were done in-house on Zoom, what this would involve in terms of time.  
3 He asked if this would take two days or two hours.  
4

5 Mr. Herrick replied that staff would tailor this to suit the BZA's wishes. He said his plan was to deliver  
6 the same training that he delivered to the statewide group, which was typically about two hours.  
7

8 Mr. Rinehart asked if it would be only one session of two hours.  
9

10 Mr. Shepherd suggested having two sessions of one hour each, with the first being in October.  
11

12 Mr. Rinehart disagreed, expressing that for continuity's sake, he wouldn't want to break up the training.  
13

14 Ms. Joseph and Mr. Robb agreed with Mr. Rinehart.  
15

16 Ms. Joseph asked when the regular BZA meeting in October would be.  
17

18 Mr. Herrick replied that the regular scheduled meeting would be held Tuesday, October 6. He said  
19 training at VCU would be October 8-9, so it would be duplicative for anyone who chose to go to the VCU  
20 training. He said if there were a number of BZA members who wished to do the VCU training, it may  
21 make sense to do that instead of in-house training. He said if the sentiment were that they were not  
22 interested in the statewide training, he was happy to deliver the same training to the BZA.  
23

24 Mr. Rinehart expressed his preference for meeting in the morning (around 9:00 or 10:00 a.m.). He asked  
25 if this could be considered, rather than waiting until 2:00 p.m.  
26

27 Mr. Herrick said he was free the morning of October 6 if the board preferred to meet earlier in the day.  
28

29 Mr. Shepherd asked if this was the regular board meeting day.  
30

31 Mr. Herrick replied yes.  
32

33 The board members all expressed that they were fine with meeting in the morning.  
34

35 Mr. Shepherd asked what time they could meet.  
36

37 Ms. Alley said she checked staff members' schedules and that on October 6, 10:00 a.m. to noon would be  
38 better, as there were a couple morning appointments already scheduled for staff.  
39

40 Mr. Shepherd said 10:00 a.m. was fine with him. He asked if this assumed they would not have other  
41 items.  
42

43 Ms. Alley said she was unaware of any public hearing items for October.  
44

45 Mr. Herrick said he would plan to give the BZA a presentation on October 6 at 10:00 a.m., and the board  
46 could adjourn the meeting to that date and time when it was time to do so.  
47

48 Mr. Rinehart asked if there would be materials sent out ahead of time to the board members.



1  
2 Mr. Herrick said that while he would like to be able to offer this, as he was not in the office, he could not  
3 guarantee this or what it would look like, at that point.

4  
5 Mr. Svoboda said he would meet with Mr. Herrick to determine what he would need to distribute and  
6 whether or not staff could assist with that. He said either way, he would inform the board.

7  
8 Mr. Shepherd said he appreciated this, noting that this was not the only time the board could have this sort  
9 of activity but that it would be a great start. He said it was something they might want to do every so often  
10 to keep up with matters as new developments arise, or as they encounter authority issues that need some  
11 analysis outside of a case itself. He said he looked forward to the ongoing process.

12  
13 Mr. Herrick said he would briefly address Mr. Rinehart's prior question. He said typically when he gives  
14 the training at VCU, they adapt the Land Use Law Handbook for the use of the students in that class and  
15 take selected chapters out of the handbook. He said it may be a more efficient use of paper and resources  
16 for him to simply send the board members the links of the chapters that they will cover in the training.

17  
18 Mr. Rinehart said this made perfect sense to him.

19  
20 Mr. Shepherd said Mr. Greg Kamptner did a lot of the work on the Albemarle County Land Use Law  
21 Handbook. He said the County Attorney's Office created this and that his understanding was that it was  
22 the gold standard in Virginia. He said it is taken for granted and is a good resource to have. He told Mr.  
23 Carrington that so many of the issues the board members deal with will be very well-covered,  
24 theoretically, with all the legal basis for the decision making in that handbook. He said it would serve Mr.  
25 Carrington well to continue to go back to it.

26  
27 Mr. Rinehart brought up an idea about asking staff to calendar this out so the training happens annually.  
28 He said they could set aside a time during a month where there is nothing on the agenda. He said despite  
29 having served on the BZA for over 20 years, he has never had training. He said having a discipline where  
30 staff reminds the BZA that they have training coming up (in four months, for example) would help them  
31 to continue to freshen and sharpen the saw. He said he would like to ask staff to do this.

32  
33 Mr. Svoboda said yes to this idea.

34  
35 Mr. Shepherd said it was a good idea. He said this conversation was so much more positive than the last  
36 several times they had talked about training. He said it was helpful to have a full quorum to move things  
37 along. He said he would appreciate Mr. Carrington's reaction to anything he sees the BZA doing, as they  
38 take it for granted. He said the view from the outside can be a very accurate and valuable one. He said he  
39 appreciated Mr. Carrington fulfilling that role, especially as he was getting started. He said if something  
40 seemed confusing or strange to him, it may be something that actually needs to be addressed.

## 41 **6. New Business**

42 There was no new business.

## 43 **7. Adjournment**

44  
45 **MOTION:** At 3:02 p.m., Mr. Rinehart moved to adjourn the meeting to October 6, 2020 at 10:00 a.m.  
46 Mr. Robb seconded the motion, which passed unanimously (5-0).

47  
48  
49 (Recorded by Marsha Alley and transcribed by Beth Golden)

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3  
4  
5  
6  
7  
8

Respectfully Submitted,

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Marcia Joseph, Secretary Board of Zoning Appeals

DRAFT