



COUNTY OF ALBEMARLE  
Department of Community Development  
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**ALBEMARLE COUNTY BOARD OF ZONING APPEALS  
ELECTRONIC MEETING VIA ZOOM  
AGENDA  
TUESDAY, NOVEMBER 10, 2020 at 2:00 P.M.**

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

**This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(14), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster. The opportunities for the public to access and participate in the electronic meeting are 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. <https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals>.**

## **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.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS  
ELECTRONIC MEETING VIA ZOOM  
TUESDAY, OCTOBER 6, 2020 – 10:00 A.M.

Board Members Present: John Shepherd, Chairman  
Ed Robb, Vice Chairman  
Marcia Joseph, Secretary  
Randy Rinehart  
Edward (Bo) Carrington

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 approximately 10:00 a.m. by Chairman John Shepherd.

Mr. Shepherd addressed the board stating that this is an electronic meeting and asked for everyone to be patient as we all become familiar with this meeting alternative and virtual process. He made the following statement:

This meeting is being held pursuant to and in compliance with Emergency Ordinance No. 20-A(14); An Emergency Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster.

The BZA members who are electronically present at this meeting are John Shepherd, Randy Rinehart, and Bo Carrington. Mr. Shepherd noted that Ms. Joseph had been present earlier but was having technical issues. He added that he hoped she would be able to rejoin soon. Given that a quorum was present, the Chairman continued the announcements.

The opportunities for the public to access and participate in the electronic meeting are 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.

Mr. Shepherd noted that there are no public hearings scheduled for the meeting.

**2. Establish a Quorum**

Each member verbally indicated their presence for the record in order to establish a quorum with three members present. Mr. Rinehart, Mr. Carrington, and Mr. Shepherd.

Mr. Shepherd introduced others in attendance: James Bowling, BZA Attorney; Andy Herrick, Deputy County Attorney; Bart Svoboda, Zoning Administrator; staff members, Rebecca Ragsdale and Francis MacCall; and Marsha Alley, BZA Recording Clerk.

1 **3. Public Hearings**

2 Mr. Shepherd announced that there were no public hearings scheduled for this meeting.

3  
4 **4. Approval of Minutes**

5 **A. September 1, 2020**

6 Mr. Carrington and Mr. Rinehart had no comments regarding the minutes.

7  
8 There was a brief discussion regarding the details of the motion for SP2020-011 on page 7.

9  
10 Ms. Alley clarified that the details of the motion and the vote had been summarized in paragraph format  
11 and were provided on page 7, line 42.

12  
13 Mr. Shepherd accepted the clarification.

14  
15 **MOTION:** Mr. Rinehart moved to approve the minutes for September 1, 2020. Mr. Carrington  
16 seconded the motion, which passed unanimously (3-0).

17  
18 **5. Old Business**

19 Mr. Shepherd asked Mr. Svoboda if there was any Old Business to discuss, particularly an update  
20 regarding the Maus case.

21  
22 Mr. Svoboda added that a boundary line adjustment had recently been submitted by Mr. Maus which has  
23 been signed. He noted that once the plat is recorded, the building would meet the required setback.

24  
25 There was discussion regarding the approval of the plat and how it relates to the pending court case.

26  
27 Mr. Herrick stated that there are two appeals pending before the Circuit Court at this time. He added that  
28 once the plat is recorded, the hope is that it will remove the need for those cases to be pursued further.

29  
30 **6. New Business**

31 **A. Training Session**

32 Mr. Shepherd stated that Mr. Herrick would be providing training today that he usually provides at a state  
33 level. He noted that it the county is fortunate to have this available. He added that he was glad to have  
34 the BZA together at the same time along with other staff to be able to participate in the training.

35  
36 Ms. Alley informed the Chairman that Ms. Joseph had rejoined the meeting at approximately 10:15 am.

37  
38 There was a brief discussion as to what the protocol should be in the event of technical difficulties during  
39 a meeting. It was determined that phone numbers would be included in the meeting invitations so that if  
40 laptop connections failed, members and the public could phone in to continue participation with the  
41 meeting.

42  
43 There was a brief discussion regarding the possibility of moving the regular meeting time to 10 am. for  
44 future meetings. At the direction of the Chairman, Ms. Alley stated that she would contact FES to  
45 determine the availability of Lane Auditorium in the event that the BZA would meet there in the future.

46  
47 Mr. Shepherd introduced Andy Herrick who would be presenting the BZA training information for the  
48 training session.

1  
2 Mr. Herrick addressed the board and gave an introduction to the Land Use Law Handbook chapters that  
3 were included in the training agenda as listed below.

- 4 1. The Board of Zoning Appeals and the Zoning Administrator: Composition, Powers and Duties
- 5 2. Special Use Permits
- 6 3. Variances
- 7 4. Decisions by Zoning Officials
- 8 5. Appeals of Decisions by Zoning Officials to the Board of Zoning Appeals
- 9 6. Appeals: Interpreting Statutes and Ordinances
- 10 7. Appeals: Classifying Primary Uses and Determining Whether a Use is an Accessory Use
- 11 8. Appeals: Whether a Use or Structure is Nonconforming
- 12 9. Appeals: Whether Vested Rights Exist
- 13 10. Meeting Procedures and the Freedom of Information Act
- 14 11. Conflicts of Interest
- 15 12. Appendix A: Rules of Procedure

16  
17 Mr. Robb joined the meeting at approximately 11:00 am.

18  
19 Mr. Herrick reviewed references to the Land Use Law Handbook and presented more in-depth  
20 information related to the training agenda items.

21  
22 There was discussion on various topics throughout the training regarding how the statute and local  
23 regulations apply to the BZA and its function, duties, and responsibilities. Members showed an interest in  
24 several items being further discussed specifically at future meetings.

25  
26 Time constraints did not allow for Mr. Herrick to complete the presentation of Sections 10, 11, and 12.  
27 Therefore, it was decided by consensus of the BZA that the remaining sections will be presented at the  
28 regular BZA meeting on Tuesday, November 10, 2020 at 2 pm.

29  
30 Several members and attendees thanked Mr. Herrick and complimented him on the excellent presentation  
31 and asked if he could share the slides that were referenced. He stated that he would provide the slide  
32 presentation.

33  
34 There was also discussion regarding holding annual training sessions and scheduling specific training  
35 topics when the BZA meeting agenda is light.

36  
37 Mr. Shepherd asked if anyone had any other new business to discuss. There was no additional new  
38 business.

39  
40 Mr. Rinehart apologized for having to leave the meeting promptly as he had another appointment.

## 41 42 **7. Adjournment**

43  
44 **MOTION:** At approximately 12:00 p.m., Ms. Joseph moved to adjourn the meeting. Mr. Carrington  
45 seconded the motion, which passed unanimously (3-0). Mr. Rinehart and Mr. Robb left the meeting prior  
46 to adjournment.

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2  
3  
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(Recorded and compiled by Marsha Alley)

Respectfully Submitted,

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Marcia Joseph, Secretary Board of Zoning Appeals

DRAFT

# 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.