

**Stafford County
BOARD OF ZONING APPEALS**

MINUTES January 23, 2007

The regular meeting of the Stafford County Board of Zoning Appeals on Tuesday, January 23, 2007 was called to order with the determination of a quorum at 7:00 p.m. by Vice Chairman Larry Ingalls in the Board of Supervisor's Chambers in the Stafford County Government Center. Mr. Ingalls introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Ingalls said the By-laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

Members Present: Larry Ingalls, Julie Rutledge, and Cecelia Kirkman, Angelo Amador, Ernest Ackermann

Members Absent: John Overbey, Steven Beauch

Staff Present: Rachel Hudson, Deputy Zoning Administrator
Melody Friberg, Senior Zoning Technician
Wanda Doherty, Recording Secretary

Declarations of Disqualification's: None

Mr. Ingalls said with the absence of the applicants for the Public Hearing case we will start the meeting with unfinished business and give the applicant a chance to show up.

Mr. Ingalls welcomed new Board of Zoning Appeals member Ernest Ackermann and hopes he finds serving on the Board challenging and rewarding.

Mr. Ingalls said under unfinished business we have our 2006 Annual report to approve. He said the report was in your package to review and we had other opportunities to comment.

Mr. Ingalls asked if he had a motion to approve the 2006 Annual Report. He said Mr. Kopchinsky is here because he was the 2006 Chairman and he will be the one who signs the report as the Chairman for that year.

Motion:

Ms. Rutledge made the motion to approve the 2006 Board of Zoning Appeals Annual report.

Mr. Ingalls said the Chair declares the motion dead for lack of a second to the motion.

Mr. Ingalls said, do we have something else.

Mr. Ingalls said if we do not have a motion than the Chair will postpone it until we have more members present.

Mr. Amador made the motion to postpone so the Board can discuss the Annual report. He said he has objections with parts of the report and that is why he did not second the motion to approve. He said it is the same objection he had at the prior meeting.

Mr. Ackerman seconded.

Mr. Amador said his view of the Annual report is to try to get a consensus document and it dose not mean we all agree. The document (Annual report) at least in the four years I have been here is trying to get a consensus document, which we do not all agree, but there are a lot of things we agreed to in the beginning and I am fine with the language and technical changes that could be incorporated or not. He said he has objections as to actual content and I was not fine on voting for the report but if it is discussed than I can submit my objections and take it for a vote again. He said his issue is with alternate Board members and knows others disagree with me, so we should try to get a consensus document.

Ms. Rutledge said you are saying you would like to change the wording.

Ms. Amador said if members want to let the Board of Supervisors know they personally feel there should be alternates, that is fine but feels strongly about voting for a document that does not represent his views and it is coming from the Board.

Ms. Ingalls said you are saying you do not want alternates and the entire paragraph taken out.

Mr. Amador said he would not want a document with that paragraph and if you take a vote on a different day, you might have a different majority. He said we could take a vote today and say we would not like to have alternates and have a different split, but instead of having either one of those two results in there, just leave it out.

Ms. Kirkman made a substitute motion to deny the report.

Mr. Amador seconded the motion for discussion.

Ms. Kirkman said she made the substitute motion because she disagrees with just about everything in the report. She said starting with the recommendation that there be alternates and concurs with Mr. Amador. She said on the first page third paragraph it is pretty unclear about what it is about, as best as she could make out it is an indirect reference to the problem we had with proper completion of affidavits. She said that needs to be made clear if that is in fact what it is referring too. She said she objects to changing the language for making a recommendation about changing the language in the floodway district ordinance. She said she believes the interpretation is muddy only because people have construed it that way. She said lastly she objects to changing the location of the Chesapeake Bay Preservation Act, particularly in consideration that it might be moved out of the Zoning Ordinance, which is where this could

potentially lead. She said for all those reasons she thinks there is little ground for a consensus report and that is why I made the motion to deny.

Ms. Rutledge said she would like to ask whether or not Mr. Ackerman could participate in the session for the 2006 Annual Report since he was not present during that time. She said if that were the case, we would only have four Board members and would be in favor of postponing.

Mr. Ackermann said he did not see why he could not participate on a decision at this time. He said he is a member of the Board.

Ms. Rutledge said because the report reflects business in 2006 calendar year not the current year.

Mr. Ackermann said but other applications that people would submit could reflect things that happened previously.

Ms. Rutledge said yes, but this is an Annual report.

Mr. Amador said he did not see why Mr. Ackerman should not be able to participate since the report is coming from the Board of Zoning Appeals and the Board of Zoning Appeals speaks through itself and not individuals. He said the position should not be different because of different members and we are talking about requesting changes from the Board of Supervisors.

Mr. Ingalls said normally he would leave it up to each individual to decide who participates in any vote they may or may not want to make. He said he may have somewhat of the same feeling but if Mr. Ackermann feels comfortable, has read the report, and understands it but he did not know how since the report is based on the cases we had before. He said it is like voting on minutes when you were not present for the meeting. He said again, we would leave that up to Mr. Ackermann.

Mr. Amador said it is my view these are recommendations, the report is not just a summary and if we were drafting a summary, I would not have the objections. He said when we are recommending alternates you need to be here to understand what you are recommending. He said this is not a summary even though a lot of it is summary but it goes into recommendations of policy and I object to some of them.

Mr. Ingalls said we as a Board can make recommendations to the Board of Supervisors and I think it is part of our duty when we are having problems with an ordinance to let them know. He said there is nothing wrong with putting recommendations into this Annual report but if there were something I would not support I would voice my opinion. He said if the majority of the Board says they want it in the report than it would stay in the report because that is what the majority of the Board said.

Ms. Rutledge said there are members that are not present who were in favor of alternates.

Mr. Amador said there is a motion on the floor so we need to vote and when the members show up we can have this discussion.

Ms. Rutledge said that is your personal opinion but it might not be reflective of every member on the Board.

Mr. Amador said he agrees but we have a motion on the floor.

Ms. Rutledge said we have a motion on the floor to discuss.

Ms. Rutledge said, Mr. Chairman on the first page where it says *our Board "assumed" that this case was vetted through the County (to include the Board of Supervisors)* that is where it gets unclear for me. She said this could be stated more clearly. She said there was also some wording that sounded controversial.

Mr. Ackermann said the issue of alternates is to have enough members for the surety of a quorum for the applicants. He said members should have the responsibility to be at the meetings and if they cannot attend let someone know.

Mr. Ingalls said we have tried to do that with limited success but at the same time it is an advertised public hearing and you may have citizens other than the applicant that show up to speak and if they show up and we don't have a quorum for that particular case we have inconvenienced them and the applicant.

Mr. Amador said the County does that when they show up for a hearing, we have advertised it, everybody is here ready to go, and they postpone it and inconvenience everybody.

Ms. Kirkman said we do that all the time by allowing people to withdraw or postpone their applications after it has been advertised. She said we have had people come to speak at Public Hearings and had to walk away because the case was postponed.

Mr. Ackermann said the report says nothing of how the alternates will be chosen.

Mr. Ingalls said there is state law now that allows for alternates.

Mr. Amador said he was appointed by recommendation of his Supervisor.

Mr. Ackermann said we do not represent districts so how would the alternates be chosen.

Mr. Ingalls said he did not know how the Board of Supervisors would pick alternates. He said the Board of Supervisors would have to adopt an ordinance and we do not know how they would nominate somebody to the Circuit Court.

Mr. Ackerman said that is what concerns me about having the same type of representation.

Ms. Kirkman said if you are the person nominated by the Falmouth Supervisor and appointed by the Circuit Court and not present the alternate could be from another district and would be standing in your place.

Mr. Ackermann said if I did not show up for the meeting and six other members did than an alternate would be used.

Mr. Ingalls said we know a member of the Board of Supervisors appoints us all but that is a recommendation and we are appointed by the Circuit court. He said I am from the George Washington district but the Judge asked me to represent Stafford County.

Ms. Rutledge said we are not supposed to be politically motivated. She said we are supposed to be representation to the County and not your Board of Supervisor personal political decisions.

Mr. Ingalls said if no more discussion I will call for the vote on the substitute motion to deny the 2006 Annual report.

Vote:

Motion to approve 2-2-1 abstain (Mr. Ackermann)

Mr. Ingalls – nay

Ms. Rutledge – nay

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann - abstain

Ms. Rutledge said, Mr. Chairman I make the motion to postpone the 2006 Annual report to the February meeting for more members to be present and perhaps between now and then we could make recommendations as to wording and send to Wanda to include in the report and bring to the next meeting to work on.

Mr. Ingalls said we have a motion to postpone the 2006 Annual report to the next meeting, do I have a second.

Ms. Kirkman said she makes another substitute motion. She said her substitute motion is that we divide the questions and vote on each issue in the report separately.

Mr. Ingalls said it sounds like we all may have some issues with wording.

Ms. Kirkman said Mr. Chair as a point of order we need to see if there is a second for the motion before we have discussion.

Mr. Ingalls said do I have a second to divide the questions into, how are we dividing the questions.

Mr. Amador said basically approve different sections.

Ms. Kirkman said that is correct.

Mr. Amador seconded to have a vote on the separate sections.

Ms. Kirkman said she made the motion because there seems to be a misunderstanding, is this that we do not agree with the words or that we do not agree with the concepts. She said she was hopeful that by going through each section we might be able to find if there are areas where we do agree and or clearly identify areas where we do not agree.

Ms. Rutledge said she would not vote in favor of this motion. She said she feels there should be more input from the other two members that were present during the year 2006.

Mr. Ingalls said it also appears there could be some changes in the wording as Mr. Amador and Ms. Rutledge have indicated. He said if we sit here and go word by word and paragraph by paragraph, our short meeting will turn into a long meeting. He said he was not going to vote in favor of that motion because the Board needs to follow the suggestion of Ms. Rutledge, postpone it and everybody submit your changes to the secretary. He said after you submit your changes we can get it back and review for the next meeting. He said the three items in there are the floodway, Chesapeake Bay and Alternate items are the three big items. He said whether we agree on the items or not felt when all seven members were present, the majority agreed on the items.

Ms. Rutledge said if a member wanted to submit their own draft it could be in our packets.

Mr. Ackermann said he would like to amend the motion to postpone until the next meeting and when it is brought back, we divide the questions and I submit the Chair's recommendation to submit changes to the secretary.

Mr. Ingalls said do we have a second to Mr. Ackermann's motion to postpone and submit changes to the secretary and divide the three main items that seem to be the issue.

Ms. Rutledge seconded the motion.

Ms. Kirkman said she is going to oppose the motion. She said this has been on our agenda we knew it was going to be here and I think we should vote tonight on it.

Mr. Ingalls called for the vote.

Mr. Amador asked between now and then who do we submit the changes too.

Mr. Ingalls said to submit to staff so they can include in the packets or email to the Board members so we have on or before the next meeting to review.

Ms. Kirkman said she did not understand how that is going to work. She said she is going to submit entirely different paragraphs, so what would we be voting on.

Ms. Rutledge said it could be cut and paste.

Mr. Ingalls said you could submit a completely new document and you could vote on your document versus someone else document.

Ms. Rutledge called for the question.

Mr. Ingalls said the question has been called for. He said all those in favor of the motion to postpone until next month and submit changes to the recording secretary and next month we will vote on the report by dividing the questions into different parts. He said it appears there are four parts with three questions.

Vote:

Motion to approve 3-2

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman – nay

Mr. Amador – nay

Mr. Ackermann – yes

Ms. Hudson said she had a question about the vote. She said you have five members present and you have to have a quorum to vote, which you do.

Mr. Ingalls said it is not like a case the majority rules.

PUBLIC HEARINGS:

Ms. Friberg reviewed the following case for the Board.

SE06-17/2600721 - DARRYL R. & SENETTIE D. NELSON - Requests a Special Exception per Stafford County Code, Section 28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 35-9F. The property is Zoned A-2, Rural Residential, located at 24 Richards Ferry Road.

Mr. Ingalls opened the Public Hearing.

Mr. Nelson said he would like to add an addition to the back of the house, which includes a deck and enclosed room and would not make the zoning worse. He said it would not violate any zoning in the front of the house. He said the front corner of the house is the current issue. He said if you look at the map provided you, you can see where it sticks out a little bit.

Ms. Rutledge said your application says the deck is already there.

Ms. Nelson said the old deck is there and we plan to tear down the old deck and put up a new deck.

Ms. Rutledge asked if the new deck would be the same size.

Mr. Nelson said, no the new deck would be a little bit wider and longer to go the entire length of the house in the back.

Mr. Ingalls said he thought a permit was issued to build the deck.

Mr. Nelson said that is correct.

Mr. Ingalls said but you have not proceeded with that construction.

Mr. Nelson said that is correct.

Mr. Ingalls said the sunroom would be built on top of the deck.

Mr. Nelson said yes.

Mr. Ingalls asked the applicant how big and how wide would the deck be.

Mr. Nelson said the sunroom is going to be a 9' x 25' on the far right hand side of the house from Richards Ferry Road.

Mr. Ackermann said so it would not be closer to the road.

Mr. Nelson said no.

Ms. Rutledge asked if you would see the deck from the side.

Mr. Nelson said if you are facing the house no but if you look at it from the side, you will see it.

Mr. Ingalls opened the Public Hearing for other comments.

Proponents: None

Opponents: None

Mr. Ingalls gave the applicant a final opportunity to speak.

Mr. Nelson said construction would not be in front of the house at all.

Mr. Ingalls closed the public hearing.

Motion:

Ms. Kirkman made the motion to approve the Special Exception request.

Ms. Rutledge seconded the motion

Ms. Kirkman said she made the motion because it seems exactly the kind of situation the Board of Supervisors had in mind when they passed the legislation allowing these kinds of Special Exceptions for nonconforming properties.

Ms. Rutledge said she seconded because it meets the criteria set for Special Exceptions, it is not going to change the character of the neighborhood, you would not see the addition from the road and it would not increase the nonconformity.

Mr. Amador said he would like the record to show that Ms. Kirkman and Ms. Rutledge are in harmony in this particular case.

Mr. Ingalls said the motion to approve the request.

Vote:

Motion to approve 5-0

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann – yes

Mr. Ingalls said he would like to make the applicant aware that the case could be appealed within 30 days.

ADOPTION OF MINUTES

November 28, 2006

Ms. Rutledge made the motion to adopt the minutes with minor changes.

Mr. Amador seconded.

Vote:

Motion to approve 4-1 abstain (Mr. Ackermann)

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann - abstain

REPORT BY DEPUTY ZONING ADMINISTRATOR

Ms. Hudson said she asked the clerk to the Board of Supervisors if the Board acted on alternates for Board of Zoning Appeals they could get additional information if they wanted it and she said there was no comment and the Board of Supervisors took no action.

OTHER BUSINESS

Mr. Ingalls said he recognizes the voting of 2007 Board of Zoning Appeals officers under other business at this time.

Ms. Rutledge made the motion to postpone voting on the selection of officers until Mr. Overbey and Mr. Beauch are present so there is a better reflection of the Board.

Ms. Kirkman said, Mr. Chairman I think as a point of order our By-Laws require us to do the election tonight.

Ms. Rutledge said we could postpone.

Mr. Ingalls said it is my understanding that Mr. Beauch will not be at the February meeting and Mr. Overbey may not be at the February meeting.

Ms. Rutledge made the motion to elect Mr. Ingalls as Chairman for 2007.

Mr. Amador said he had a substitute motion to nominate Mr. Ingalls for the Vice Chairman of the Board.

Mr. Ingalls said let us take care of the Chairman position first. He said he believes everyone knows his position that everyone on the Board should have the opportunity to serve as Chairman if so desired. He said some people have declined over the past few years but those who would like to try should have the opportunity. He said he is going to remove his name from consideration as Chairman of the Board.

Mr. Amador said this is his last year on the Board; he has never served as Chairman and does not wish to serve as Chairman.

Mr. Amador made the motion to nominate Ms. Kirkman as Chairman of the Board.

Mr. Ackerman seconded the motion.

Mr. Ingalls asked if there are other nominations.

Ms. Rutledge nominated Mr. Overbey for Chairman.

Mr. Ingalls said we have a motion for Mr. Overbey as Chairman do we have a second.

Mr. Ingalls said the motion has died for lack of a second.

Ms. Rutledge nominated Mr. Beauch for Chairman.

Mr. Amador said Mr. Beauch said he did not want to serve.

Ms. Rutledge said Mr. Beauch has not served as Chairman.

Mr. Ingalls said that motion has died for lack of a second.

Mr. Ingalls said hearing no more nominations I call for the vote for electing Ms. Kirkman as Chairman for 2007 year.

Vote:

Motion to approve 4-1

Mr. Ingalls – yes

Ms. Rutledge – nay

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann - yes

Mr. Ingalls said nominations are open for Vice Chairman of the Board for 2007.

Mr. Amador nominated Mr. Ingalls as Vice Chairman for 2007.

Ms. Kirkman seconded.

Mr. Ingalls asked if there are any more nominations. He said Ms. Kirkman has pledged to be here for every meeting and you will not get the opportunity to run the meeting.

Mr. Amador said this is his fifth and last year on the Board. He said he has enjoyed coming to the meetings and has to drive from DC and would not want to be late for the meetings in case Ms. Kirkman could not attend a meeting.

Ms. Kirkman said she seconded the motion because she really wants to do the best job she can as Chair and she appreciates the many years of experience Mr. Ingalls would bring being Vice Chairman. She said she would appreciate it if Mr. Ingalls would accept the Vice Chairman position.

Mr. Ingalls called for the vote for Mr. Ingalls as the Vice Chairman of the Board of Zoning Appeals for 2007.

Vote:

Motion to approve 4-1-Abstain

Mr. Ingalls – Abstain
Ms. Rutledge – yes
Ms. Kirkman – yes
Mr. Amador – yes
Mr. Ackermann – yes

Mr. Ingalls opened the nominations for Secretary of the Board of Zoning Appeals for 2007.

Ms. Kirkman nominated Mr. Amador for Secretary of the Board for 2007.

Mr. Ackermann seconded the motion.

Vote:

Motion to approve 5-0

Mr. Ingalls – yes
Ms. Rutledge – yes
Ms. Kirkman – yes
Mr. Amador – yes
Mr. Ackermann - yes

Meeting Room

Mr. Ingalls said Ms. Hudson has some information on meeting rooms.

Ms. Hudson said the Board of Supervisors has said that any public hearings held in the Board Chambers are going to be televised. She said the Board Chambers was reserved for the year and the ABC conference room was reserved until April. She said it is your pleasure as a Board to make the decision of where you would like to meet.

Ms. Rutledge said she is sure Ms. Kirkman would say we should meet in the Boardroom and be televised and at this point, it is a non-issue for me. She said she feels the Board of Zoning Appeals should be in the Board Chambers unless we are bumped.

Ms. Hudson said she would make one other comment, which comes from the Zoning Administrator. She said it is recommend who ever the 2007 Chairman is contact the Circuit and ask the Judge if the Board of Zoning Appeals should be televised and since you are the Board of Zoning Appeals do you have to be televised even if you are meeting in the Board Chambers.

Mr. Amador said courts in Virginia by law are not allowed to be televised.

Ms. Rutledge said we are quasi judicial.

Ms. Kirkman said we have been down this road before and there are other Board of Zoning Appeals that are televised.

Mr. Ackermann said he believes the Circuit court judge should be asked.

Mr. Ingalls said he believes it is appropriate we meet in the Board Chambers and the recording is better. He said we should meet in the Board Chambers and the Zoning Administrator has a good point to ask the Circuit Court Judge.

Ms. Kirkman said she did not understand the Zoning Administrator's recommendation given we have already determined under the FOIA law that we can be taped. She said we looked at that when this issue came up and I am not quite following what any potential legal issues would be.

Mr. Amador said let us just ask the Judge to make sure.

Mr. Ingalls said should we vote that our standard meeting place be the Board Chambers.

Motion:

Mr. Amador made the motion for the Board of Zoning Appeals meet in the Board of Supervisors Chambers and the 2007 Chairman ask the 19th Circuit Court Judge if there is any issue with our hearings being recorded.

Ms. Rutledge seconded the motion.

Vote:

Motion to approve 5-0

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann - yes

Ms. Hudson said Mr. Ackermann would need to have the Board of Zoning Appeals Certification training and staff would contact him with the information.

Mr. Ingalls said Mr. Kopchinsky is present and as you know, was not reappointed. He said Mr. Kopchinsky was on the Board of Zoning Appeals for ten years and a valuable asset to the Board. He said he personally thanks Mr. Kopchinsky for his service over the last ten years. He asked Mr. Kopchinsky if he would you like to say a few things.

Mr. Kopchinsky said he was surprised about the Board's reaction to the 2006 Annual report because it went out in November, and questions and comments were asked for, but he received none. He said on the 6th of December Mr. Amador did send something saying he did not agree with the last paragraph on alternates which he had stated in Board meetings. He said that was the only comment received on the entire report between November and today. He said if the information talked about tonight changes as drastically as it sounds like it could he would not sign the report. He said it would not reflect what the Board discussed in the past. He said

specifically your trying to move the Chesapeake Bay Ordinance into the subdivision Ordinance, wrong answer. He said all he said is that there is a conflict right now and the Board of Supervisors should address that issue because that subject has come before us on a number of occasions. He said subdivisions go through the Planning Commission, which handles things differently, and all of sudden we have a Chesapeake Bay issue. He said he does not deny there are Chesapeake Bay issues but the Board of Supervisors needs to look at how they want to handle that in their Ordinances. He said I am not proposing that the Board of Supervisors move anything and it does not say that in the report. He said he wanted to point out that to take pot shots on the last day when we are ready to approve something that you had a chance to review, this happened last year, we went four months of I want to make changes and we never got the changes. He said he dose not think that is an appropriate way to do business. He said if you had changes he should have received them in November or December at the latest with specific changes and not generalized "I just don't like it". He said if the changes proposed do not change the basic information then he can see me signing, otherwise he will submit his own separate report. He said whoever decides what the majority feels like can submit there own report. He said in ten years he has never seen another report written by anyone or any substantial comments by anybody other than some cheap shots once an awhile. He said it is easy to criticize than to sit down and put your thoughts into words that are coherent enough for somebody to read and understand.

Mr. Amador said you have done great work and my opposition of the alternates is on record just as I oppose cameras in the meeting.

Mr. Kopchinsky said what he put in the report was a majority of what the Board voted on. He said he asked for issues and comments and received none. He said now everyone is interested in changing the report. He said we probably had some disagreements but I am very proud to have served with all of you. He said I know what you are doing here and we have done some good things together over the years. He said there is room for improvement and we need to let the Board of Supervisors know. He thanked the members for their support for all these years.

Ms. Rutledge said Mr. Chairman I would like to thank Mr. Kopchinsky for the many, many annual reports he has done during the years.

Ms. Rutledge made the motion to adjourn.

Mr. Ackerman seconded.

Vote:

Motion to approve 5-0

Mr. Ingalls – yes

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Amador – yes

Mr. Ackermann - yes

ADJOURNMENT

8:19 p.m.

WLD

Approved: _____ Date: _____
Rachel T. Hudson, Deputy Zoning Administrator