

NELSON COUNTY BOARD OF ZONING APPEALS

January 16, 2018

MEETING MINUTES

Present: Gifford Childs, Ron Moyer, Mary Kathryn Allen, Carole Saunders, Angela Jones and Shelby Bruguire (Alternate)

Staff: Sandy Shackelford, Director, Planning & Zoning, and Emily Hjulstrom, Secretary

Call to Order: Mr. Childs called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovingson. There were six members present to establish a quorum.

Approval of Minutes (December 5, 2016): Mr. Childs asked for any changes or corrections on the minutes.

Mr. Childs noted that on page 2 that Mr. George Nicklas' name was misspelled as 'Nicholson'.

Mrs. Allen made a motion that the meeting minutes be approved. Mr. Moyer provided the second; the motion was approved 5-0.

Election of Officers:

• **Chairman:**

Mrs. Bruguire noted that each member would have more experience if the Board of Zoning Appeals rotated officers annually. Mrs. Saunders recommended that Mrs. Allen be elected as chair.

Mr. Moyer made a motion that Mr. Childs be reelected chair. The motion failed to get a second.

Mrs. Saunders made a motion that Mrs. Allen be elected chair. Mrs. Jones provided the second; the motion was approved 5-0.

• **Vice-Chairman:**

Mrs. Saunders made a motion that Mr. Childs be elected vice-chair. Mrs. Allen provided the second; the motion was approved 5-0.

• **Alternate:**

Shelby Bruguire will serve as the alternate for the 2018 year.

• **Secretary:**

Emily Hjulstrom will serve as the secretary to the BZA.

Ms. Shackelford asked the BZA if they were interested in adopting an inclement weather procedure. She recommended that if a meeting is canceled due to inclement weather then it should be rescheduled to the following week. Mrs. Allen recommended that a rescheduling would be the following Monday that the County is open.

Mrs. Allen made a motion that if there is a cancellation of a BZA meeting that it be postponed to the following Monday that the County is open. Mr. Moyer provided the second; the motion was approved 5-0.

1. Atlantic Coast Pipeline

a. Retention of Legal Counsel – David Shreve

Ms. Shackelford introduced Mr. David Shreve to the BZA.

David Shreve then addressed the Board. His practice is in Altavista and he has been in practice for 40 years. He further noted that for 37 of the 40 years he served as the County Attorney for Campbell County. He stated that his job would be to be neutral and give the best independent legal advice that he can to the BZA. He mentioned that he represented Dominion Power when it was Virginia Power in 1992 but has not represented them in any fashion since. He stated that he has no conflict of interest and no connection to Dominion Power aside from them providing his electricity.

Mrs. Allen made a motion that the BZA retain legal counsel of David Shreve. Mrs. Jones provided the second; the motion was approved 5-0.

b. Request for Technical Assistance – Draper Aden Associates

Ms. Shackelford presented information to the BZA on Draper Aden. She noted that she looked at four different agencies and that Draper Aden Associates was very well qualified and able to give the BZA flood plain guidance. Mr. Childs asked how the technical assistance would be paid for. Ms. Shackelford noted that the BZA could request that the applicant pay for technical assistance. Mr. Childs asked who would pay for the legal counsel. Ms. Shackelford replied that the County would pay for the legal counsel. Mr. Shreve noted that Draper Aden is a well-respected firm.

Mrs. Allen made a motion to request Draper Aden Associates for Technical assistance with the flood plain review. Mr. Moyer provided the second; the motion was approved 5-0.

c. Establishment of meeting procedures

Mr. Shreve gave the BZA copies of the State code and County code that specifically relate to variances. He also presented them with the meeting procedures used in Campbell County (next page) and recommended that the BZA adopt them.

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PUBLIC HEARING GUIDELINES

1. The Presentation by the Petitioner's representative(s) will be limited to fifteen (15) minutes. If it is difficult to fully explain a complex proposal orally within the time limit, it is recommended that the petitioner submit in advance to the Zoning Office written information that can be mailed to the Board of Zoning Appeals prior to their respective meetings.
2. A sign in sheet will be available and anyone desiring to speak must sign in.
3. Speakers representing a group will be allowed five (5) minutes to speak if their presentation will reduce the number of persons to make public comment.
4. Subsequent speakers will be allowed a maximum of three (3) minutes each and cannot allocate their time to another individual.
5. Speakers must come to the podium, give their name and address before making their remarks.
6. Speakers will be timed by a staff assistant and given notice when they have one (1) minute left and when their time has expired. Upon notification the speaker shall relinquish the podium and return to their seat.
7. Speakers are asked to not be repetitive and to insure their remarks are relevant to the request at hand.
8. When the public hearing is closed the Board of Zoning Appeals will deliberate on the agenda item, during which the public may remain present but will not be allowed to speak. Members of the Board of Zoning Appeals may ask questions of anyone in the audience in order to seek clarification of issues that were brought out at the hearing.
9. Abusive and inappropriate language will not be tolerated.
10. The Chair will fairly enforce the above rules.

Mr. Childs mentioned that in general the BZA asks everyone to be civil with no other guidelines due to BZA meetings not being well attended. Mr. Shreve noted that there will likely be a higher attendance in these meetings and that he recommends adopting some guidelines. Mrs. Allen also recommended adopting public hearing guidelines because it would allow more people to speak and allow the public to be more prepared for the meeting.

Mrs. Bruguere noted that she has reviewed neighboring counties' meeting procedures and thought that the procedures recommended by Mr. Shreve are very common and that she recommended them as well.

Information submission procedures

Ms. Shackelford noted that she would be the person to accept submissions and distribute to the Board of Zoning Appeals and the applicants. She also noted that it would be made available for the public.

Concurrent consideration of requests

Mr. Shreve stated that the 11 variance requests will likely need to be heard individually by the BZA because if one variance is appealed combining the reviews could potentially cause trouble with the Circuit Court. He explained that either party has a right to appeal the BZA's decision to the circuit court. If the BZA hears the variance requests individually, then if one is appealed only that information from that specific hearing will need to go to the Circuit Court. If the BZA were to treat the 11 variances as one, then the information from all the variances would need to be submitted and reviewed by the Circuit Court judge.

Mrs. Allen asked if each variance would have its own public hearing. Mr. Shreve confirmed that they would have individual public hearings and that there would be a public hearing sign-in sheet for each variance. Mr. Shreve noted that the applicant will be able to make one presentation and have it be used for all 11 variances. Mrs. Saunders recommended that there be a bulletin board posted outside with the public hearing information and the sign in sheets. Mr. Shreve noted that at other hearings he has seen the sign-in sheet outside the room for people to sign before the meeting. The sign-in sheets are then given to the chair to use during the public hearing.

Mr. Childs asked if there would be disadvantages to this plan. Mr. Shreve noted that some people will likely say that there isn't enough time to present their case. He explained that by state code you have to give administrative staff and the public an equal amount of time and that this would satisfy it.

Mr. Childs asked how the different variance requests would be scheduled. Mr. Shreve recommended that the BZA schedule half of the variances for one meeting and the other half for the next. Mr. Shreve further noted that the state law states that the BZA needs to reach a decision in 90 days from the date of the application (1/16/2018). He also noted that the Supreme Court has ruled that they can take more than 90 days if they have the concurrence of the applicant.

Mrs. Allen asked if they would review everything after the variances are presented in a work session. Ms. Shackelford noted that it would be a public meeting (open to the public) but not necessarily a public hearing (open to the public where the public speaks).

Mr. Shreve suggested that the BZA have a closed session with him to prepare for the meetings and that they can invite Draper Aden Associates to attend as well. Ms. Shackelford noted that the next scheduled BZA meeting date (February 5th) is too soon to be able to advertise for the public hearing. Mr. Shreve suggested using the February 5th meeting for the closed session.

Mrs. Bruguere asked if they would have to re-advertise the public hearing for a variance scheduled on the first day if it was pushed to another day. Mr. Shreve noted that they could continue the hearing to another day and not have to re-advertise.

Public hearing procedures

Mrs. Allen made a motion that they accept the proposed public hearing guidelines set before them by Mr. Shreve. Mr. Moyer provided the second; the motion was approved 5-0.

Mrs. Allen made a motion to have individual hearings for each request. Mrs. Jones provided the second; the motion was approved 5-0.

d. Determine date to commence public hearings

Ms. Shackelford asked if they would like to schedule the public hearings to begin on March 5th. Mr. Shreve noted that the February 5th meeting will be in three weeks. He further noted that they could set a special meeting date as long as they are able to advertise for it. Mrs. Allen recommended scheduling the meeting sooner so that they have more time to review the information. She then proposed Monday, February the 12th. Mr. Shreve mentioned that they can request more information from either side and that having the meeting on the 12th would give them more time to get the additional information. Mr. Childs asked the applicants if they were available for a meeting on the 12th. Staci Rogge (representative for the applicants) stated that the meeting date worked for them.

Mrs. Allen made a motion to have a hearing on February 12th and that they would adjourn to the next day if needed. Mrs. Jones provided the second; the motion was approved 5-0.

Other Business:

Ms. Shackelford asked if the BZA would give her authorization to ask for more information from the applicants for the BZA.

Mrs. Allen made a motion to authorize Ms. Shackelford to request more information from the applicants. Mrs. Jones provided the second; the motion was approved 5-0.

Adjournment:

Mrs. Allen made a motion to adjourn the meeting at 7:49 P.M.

Respectfully submitted,



Emily Hjulstrom
Secretary