

**Board of Zoning Appeals Annual Meeting
February 3, 2010
Hamilton Town Office**

Chairman Thomas Gatewood called the meeting to order at 7:00 PM.
The Pledge of Allegiance was followed by Roll Call.

Present: Chairman Thomas Gatewood, Vice Chairperson Ms. Kelly Gaitten,
Ms. Winifred Reed, Mr. Robert McCann, Mr. David Simpson
Also Present: Ms. Maureen Gilmore: Town Attorney
Mr. David Beniamino, Zoning Administrator

Chairman Gatewood welcomed Mr. Simpson to the BZA as the newly appointed member.
Mr. Simpson provided an overview of his career for the Board and a warm welcome was extended.

Minutes

Ms. Gaitten made a motion to adopt the April 1, 2009 minutes as amended into record. Mr. McCann made a second on the motion and the vote passed 5-0, (Aye: Gatewood, Reed, McCann, Gaitten, Simpson. Nay: none).

Officer Elections

Mr. McCann made a motion to nominate Mr. Gatewood as Chairperson. Ms. Gaitten made a second on the motion and the vote passed 4-0-1, (Aye: Reed, McCann, Gaitten, Simpson. Nay: none. Abstain: Gatewood).

Mr. Simpson made a motion to nominate Ms. Gaitten as Vice Chairperson. Ms. Reed made a second on the motion and the vote passed 4-0-1, (Aye: Gatewood, Reed, McCann, Simpson. Nay: none. Abstain: Gaitten).

Mr Beniamino will act as Secretary for the BZA.

The terms of all members were reviewed:

Term expiration of November 19, 2010: Gatewood, Reed
Term expiration of November 19, 2011: Simpson, Gaitten
Term expiration of November 19, 2012: McCann

Rules of Procedure

Ms. Gilmore suggested that the BZA consider clarification of some of the BZA procedures. Some are provisions in the State Code and 1 is a result of a Determination made by Judge Horn in the Circuit Court regarding the calculation of the appeal period. Under the Zoning Ordinance there is a whole section under the BZA and it refers to Roberts Rules of Order and this discussion will help clarify the procedures for the BZA members moving forward. Ms. Gilmore reviewed the email that she sent to the BZA members regarding The Hamilton Board of Zoning Appeals Rules and Procedures:

1. Article II, Section 2.1. The Chairperson has the same voting rights as all other members of the group. In accord with Roberts Rules of Order, the chair has the same voting rights as all other members of the group and in small groups (less than 15 members) this is the common practice. Particularly in matters where the chair's vote will affect the results of the vote, the chair may vote; the chair may abstain from voting in order to maintain the appearance of objectivity.
2. Article III, Section 3.1. The Chairperson counts towards the determination of a quorum. A quorum of the membership shall be sufficient to conduct any business by the

Board (Code of Virginia of 1950, Section 15.2308 (C)), except for reversals of ZA or Administrative Official decisions. (Article III, Section 3.1).

3. Article V, Section 5.1. The period of time in which to file an appeal to the BZA is within thirty (30) days; Saturdays, Sundays and holidays are included in the calculation of time, unlike the rule applied in Virginia Courts. In a recent Round Hill BZA case, the Loudoun Circuit Court ruled that, despite the fact that the 30th day of the appeal period fell on a Sunday (and the Town Office was not open), the appeal had to be filed by the 30th day, to be valid. (Code of Virginia of 1950, Section 15.2-2311(A).)

4. Article V, Section 5.3. In order to address some confusion during the last BZA hearing, the Board may want to consider a procedural option that allows the Board the discretion to keep a matter open and defer decision and request additional information from the applicant. Language has been suggested in this section to allow the BZA to exercise this discretion both before and during the hearing.

5. Article VI, Section 6.1 (3). An action reversing the decision of the Zoning Administrator or other Administrator Official requires a vote of the majority of the membership, or a minimum of 3. For example, if three members are present, thereby constituting a quorum, all three members (a majority of the 5 member Board) would have to vote to reverse a decision of the Zoning Administrator or other Administrative Official. (Code of Virginia of 1950, Section 15.2-2312).

6. A motion resulting in a tie vote does not pass. Since an affirmative majority vote is necessary to pass a motion, a tie vote rejects the motion. Roberts Rules of Order Newly Revised, 10th Ed., Section 1, page 4).

The Rules of Procedure require that proposed amendments be presented in writing to the Board members at least 48 hours prior to the meeting at which the vote is taken.

A review of the BZA Rules of Procedures was completed with changes made to Article 4.3, Conduct of Public Hearings as follows:

- (1) Conflict of Interest Disclaimer
- (2) Reading of the public notice and affidavit of publication of the hearing by the Secretary of the Board
- (3) Notation for the record that all members of the Board have made a personal inspection, or are familiar with, the property prior to the public hearing.
- (4) Summary of Applicant's/Appellant's Request by Secretary or Chairperson
- (5) Public Comment
- (6) Chairperson's Statement that testimony and comment be true and factual. Swearing in of the Witness
- (7) Notation for the record that witness subpoenas, if any, have been served.
- (8) Reading of pertinent written comments, reports and summary concerning the appeal and/or incorporation into the record by reference. Summary and/or overview of the appeal or variance request.
- (9) Applicant's/Appellant's presentation, including witness testimony given under oath
- (10) Staff presentation, including witness testimony given under oath
- (11) Rebuttals and/or final comment from Applicants and Staff. Questions to Applicant/Appellant and/or Staff/BZA members
- (12) BZA determination

Additional review was done of the Rules of Procedure with changes made to Article 5.2: Filing of Appeals and Variances and Article 8.1.2: Procedures for Issuing Witness Subpoenas. Mr. McCann motioned to adopt the amendments as discussed and Ms. Reed made a second on the motion. The motion passed 5-0, (Aye: Gatewood, Reed, McCann, Gaitten, Simpson. Nay: none).

Chairman Gatewood raised the issue of required site plans with regard to when they are and are not required. Mr. Beniamino advised that the Council has recently directed the Planning Commission to perform an overhaul of the Hamilton Zoning Ordinance and site plan clarification will occur in this review process. Ms. Gaitten suggested that a definition be included to define and differentiate between site plan and development plan requirements.

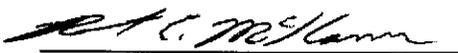
Chairman Gatewood asked Ms. Gilmore to explain what "undue hardship" means and Ms. Gilmore explained that there are legal requirements that exist which require the BZA to find legal requirements for variances. Ms. Gilmore advised that in 2000 the Supreme Court took 3 cases on variances and bundled them all together and said localities have been told several times that these are the requirements for variances and though the cases for variance requests seemed valid the Virginia Supreme Court denied the requests. The definition that had been in the code stated "approaching confiscation" as a reason for a variance to be granted and Ms. Gilmore explained what that encompassed. Ms. Gilmore advised that "undue hardship" has not been tested by the State Supreme Court yet but Ms. Gilmore will advise if any cases come through or if any definitions are established she will let the BZA aware but until then it is fairly subjective, though the hardship cannot be of the homeowner's making.

Chairman Gatewood inquired whether the Heard case can be reheard and Ms. Gilmore advised that a case cannot be reheard but Mr. Beniamino questioned whether he could reapply under the new standard and also believes the 1 year time period has passed.

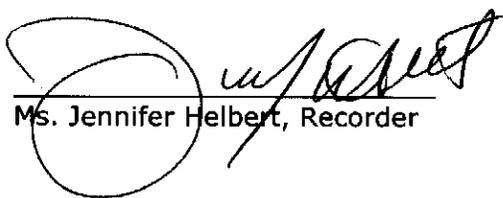
2010 Meeting Schedule

Ms. Gaitten made a motion to hold BZA meetings on the first Wednesday of each month in 2010 as follows: March 3, April 7, May 5, June 2, July 7, August 4, September 1, October 6, November 3 and December 1 at 7:00 PM. Mr. McCann made a second on the motion and the vote passed 5-0, (Aye: Gatewood, Reed, McCann, Gaitten, Simpson. Nay: none).

Chairman motioned to adjourn at 8:57 PM.



Chairman



Ms. Jennifer Helbert, Recorder