



**MINUTES OF THE LANCASTER COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING**

February 4, 2025 at 6:00 PM

1. Roll Call

Board Members present: Quorum is present (4 Board Members)

Gary Alden Charles Deese
Mark Bolin James Faulkenberry

Absent: 0

Staff: April Williams, Planning Director
Allison Hardin, Development Services Director
Aimee Sholar, Recording Secretary

Members of the press were notified in advance but were not present. All adjacent property owners were notified by mail. A notice of public hearing was published in the Lancaster News at least 15 days prior to the meeting. The Agenda was posted on the County website, and posted in the lobby of the administration Building one week prior to the meeting. A copy of the agenda is on file.

THE FOLLOWING IS A SUMMARY ONLY; IT IS NOT A VERBATIM TRANSCRIPT.

2. Call to Order

Aimee Sholar called the public meeting to order at **6:00** p.m. Allison Hardin took over at **6:05** p.m. to call a vote for Chair and Vice Chair.

3. Vote for Chair

Gary Alden nominated James Faulkenberry for Chair person; 2nd by Bolin. James Faulkenberry nominated Charles Deese for Chair person; 2nd by Gary Alden. The vote was taken and there was **a tie of 2:2**. Mr. James Faulkenberry withdrew his nomination. There were no other nominations and there was a vote to close the floor by Gary Alden and a 2nd by James Faulkenberry. Mr. Deese **was approved by unanimous consent** as the new Chair person for the Board of Zoning Appeals.

4. Vote for Vice Chair

Gary Alden nominated James Faulkenberry for Vice Chair person; 2nd by Charles Deese. There were no other nominations for the floor. There was a motion to close the floor for nominations by Charles Deese for Vice chair person; 2nd by Mark Bolin. Mr. James Faulkenberry **was approved by unanimous consent** as the new Vice Chair person.

5. Approval of Agenda

Chair Charles Deese requested a Motion to approve the agenda for February 4, 2025. Gary Alden moved to approve the agenda; Seconded by Mr. Mark Bolin.

Vote: 4:0. Motion is approved.

Minutes of December 3, 2024

Chair Charles Deese requested a Motion to approve the minutes of December 3, 2024. Mr. James Faulkenberry moved that there was a necessary edit needing to be made on the minutes. There was a Motion made by Gary Alden to Approve Minutes with an amendment to the minutes that Francis Liu was not present at the meeting of December 03, 2024. 2nd by James Faulkenberry.

Vote: 4:0. Motion is approved.

Chairman Deese turned the meeting over to Allison Hardin and April Williams for BZA Training.

6. BZA Training

DISCUSSION About being a board member on the BZA: Gary Alden asked if it was a problem that he is on another board and voting at the precinct level is a problem?

Allison Hardin commented: That since it is a volunteer basis and not an appointed office it would be fine, but she will check on it to make sure.

Chairman Deese asked whether being a director for the public works facilities corporation which is a board appointed by county council would be a problem. I am one of 5 on the board.

Allison Hardin commented: I will ask about that as well.

DISCUSSION About having the proper materials and BZA questions.

Mark Bolin stated: He would like a copy of the slides.

Gary Alden stated: He would like to get a digital copy of the taps. He also stated that he didn't need a copy of the packet because he will be getting it online.

Gary Alden commented: That he liked having the new 4 criteria instead of the confusing 8.

Mark Bolin asked: Would an unforeseen condition be an extra ordinary condition.

Allison Hardin answered: It could be.

Chairman Deese commented regarding a personal experience: Believe me from experience speaking about something that is in front of us: He had a house that was designed to go on a piece of property. He had the plans bought and drawn. He had the owner sold, had permits in hand to construct the house and found out that there was a massive septic tank in that piece of property that forbidden a house to sit on it. The real estate agent that sold the property bought it back 4 times its value because he did not disclose that it was there. It stopped the man from building his home. You can find systems like that all over the country. It's hard to imagine what can create a problem.

Allison Hardin commented: Personal experiences are great to share if they are not biased.

Mark Bolin asked: Could an attached be a deed restriction?

Allison Hardin commented: That's a good question that I don't know the answer to yet, but I will be able to by the time we meet again. Tepidly my mind says no. But I don't want to say absolutely not without double checking. Deed restrictions are private agreements between the property owner and the next property owner. The county doesn't generally get into deed restrictions. We get into easements, but we don't get into deed restrictions much.

Mark Bolin commented: Based on my personal experiences where I work at, I do see counsel discussing deed restrictions.

Allison Hardin commented: County counsel could decide to get into the deed restriction business if they wanted to that is absolutely their choice, we as staff would not advise that, but I understand sometimes you need to.

Chairman Deese commented: Those are typically added when the property is developed.

Allison Hardin commented: Absolutely and often, we will hear issues before the planning commission or before this board that says oh but there is a deed restriction, and I can't get around the deed restriction or I already have a deed restriction so you should tell me yes because my property is restricted for this. It only takes one person to sign off to release that deed restriction and then we are struck. Unless the county is a party to that deed restriction, we would be notified of the attempt to remove it, and that's why some counsels get into deed restrictions. It's a totally valid use of control over property between property owners and the seller and buyer.

James Faulkenberry commented: They always have the ability to do that.

Allison Hardin commented: Yes, they do, but we just don't have the staff opportunity right now to monitor that right now that would be a big job.

Gary Alden commented: The board that I was on previously, I didn't feel comfortable with the discussions and the possibilities of those discussions one of the dilemmas was going into executive committee and I still haven't gotten that totally straightened out in my mind. So, I think that I just

want to make a comment that when it comes time to have a discussion, that somehow we need to know how to do that.

Chairman Deese commented: In the past we always recognized the person that wanted to speak for the minutes. For me to do that I need to know that you want to speak, there is nothing wrong with raising your hand so that I can put you on record. I will then say go Mr. Alden that way the minutes are correct. This should happen with everybody including myself. As chairman you will hear very little out of me because I don't mislead other people or other members of the board by making statements that might do that, so a large part of that not all, but a large part of that will be discussions with the board and me listening closely and trying to keep order in here. I always ask the secretary to always call me last on every roll call beginning at the first of the meeting until the end. Every vote I want to be last I don't want to mislead anyone, because I promise you, you will not mislead me. I will vote my conscious. It is important that the minutes be accurate. And to do that you have to be announced. That's all I have to say, but it is important to let the minutes know that you are speaking, not someone in the audience or someone else. That is the easiest way to carry on a legitimate conversation or a discussion among the board or commission.

Allison Hardin: Thank you for that. One of the challenges that we have had with the board is that the applicant will make their presentation, and the staff will make their presentation and then there are rebuttals and at some point, the discussion with the applicant and the staff must stop and the board must go into deliberation. During deliberation time questions will come up and some of the members will want to ask staff for a follow-up or ask the applicant for a follow-up at that point procedurally you are supposed to have everything that you need to know. So don't go into deliberations if you have any questions that you may have. If you think maybe I know or maybe I won't please ask them up front as much as possible. The proper thing is to stay in deliberation and use the information you have at that point. We have reopened the floor in the past, I have been researching that to see if there are communities that have done that. I haven't come up with a standard yet, that's what I am trying to do is to be on good standing when I advise you that you should or shouldn't do that, but ask as many questions as you can up front when we have the open deliberations or the open discussion with the applicant or the staff and then when the public comes up. There are two parts to the public meeting as well, there is the public meeting that are witnesses for the applicant and then there is a public opinion side. You can have the public give their opinion at a BZA meeting as long as you clarify that this is a public opinion part and you don't use anything that can't be considered material evidence as part of your decision, if you have material evidence on the dais that says this variance would pass and you have 200 people in this room that say we don't want it, unfortunately unless one of those 200 people can come up with something that is quantifiable for the record you can't make a choice based on popular opinion you have to base it on the record and on the facts that you have in front of you. And that's part of why this is such a difficult board, at some point you must look at a room full of people and say my hands are tied. The law allows this in this way, and if you would like to make a change to that contact Allison in the planning department and start up a text amendment, start up a call to the planning department to bring something to the planning commission and then to the counsel because the counsel is the one who can change the code. Variances aren't changing the code variances recognize that not every piece of property in the county is going to be related the same way with the same stuff. There are going to be things that happen, there are going to be pieces of property that were created. We just did a huge project showing all the different subdivisions and ones showing open pieces of

property and there are ones on there that are not going to meet current codes. We have to say to those people that come to us that say hey I bought this piece of property, and we must tell them the challenges, that they must connect the sewer, connect to the water, build the road. It is not always easy to have people that are crying, people that come up to the board of zoning appeals because their house is their house, and they can't move it, and you have to look away from the tears and to the information to the facts. And sometimes that's difficult.

Gary Alden asked: If he could bring a visor in for the lights or if we could use less lighting.

Allison Hardin asked: "If everyone received their packet for the meeting. And if everyone was familiar with Roberts Rules of Procedure and if all four of the members have been exposed to voting on a board before, so that we didn't have to go into the full Roberts Rules of Order. Our Attorney Ginny can give a refresher on Roberts Rules of Order if needed.

Chairman Deese asked: Does this follow the same basic format as some of the other boards?

Allison Hardin commented: For the Roberts Rules of Order, yes but for the actual activities it is considerably different. In the Board of Zoning Appeals the script that the Chairperson reads in the beginning in order to cover certain things that are by law under court cases you say. These are the people who are here, we are at this meeting there have been notices posted and sent out, these people that are attending there is a script that goes with that. There is a draft script in at the end of the Rules of Order that I provided a copy, it is from a previous board it talks about an agenda or the order of the agenda and gives instructions for the public and talks about everyone having to sign in because we have to keep good records at all times but for this one in particular if it becomes a court case in some cases we have to be able to identify all of the pieces of the meeting and that's extremely important to have their name and address and sign up to speak.

James Faulkenberry asked: What is expected from the board if we become sued?

Allison Hardin answered: The individual members are not sued, the board as a general is sued. You are covered under the tort law, you are covered under that as is any of the other boards, if we go to court, the county represents the county, so our county attorney represents the county. We would provide you with an additional lawyer for the board and in the past, it was Mr. Debose. We may have someone from that office do that but because when the board gets sued that's part of why we must keep the attorney from giving legal advice pertaining to the cases that you are going through because they may end up being part of a lawsuit in a different way. So, we must keep them separate.

Gary Alden: Do you have that in writing at all?

Allison Hardin: I don't but I can give you the example that came up in my experience.

Gary Alden: Here is what has happened to me. Having a business, general liability- the carrier found out that I was on board zoning appeals. He asked me what's going on with the board of zoning appeals? Are you indemnified? **Yes, I can provide that.** And to push on the thought what I wanted to ask was, what happens if a plaintiff decides to sue me civilly? In civil court for a

decision, I made while being a board member? The person I talked with asked me some great questions.

April Williams answered: So typically, the only way that you can personally be sued, if you do something so blatantly negligent that they can sue you personally. That is why Allison just went over all this stuff of all of the dos and don'ts. So, if you get up there and make some inflammatory or some inappropriate statements then you could be sued personally but we are training you to keep that from happening, so that should rarely ever happen. Almost never have I seen anyone become personally liable. Usually if they are suing on a board's decision, they are suing not because of the decision but on errors that were made during the hearing. And that's why Allison is going over in detail all the things that you can say that you can look at that you can talk about to take into consideration. Because if you step outside of what she is teaching you, that could give them grounds for an appeal to circuit court. If you maintain the record keeping the testimonies the procedures correct, they have a very hard time to sue regardless of the decision that you make.

Allison Hardin answered: But I will find out.

April Williams answered: There is always a chance for anything, but more than likely if you are sued then it would be thrown out but there is always a possibility.

Allison Hardin commented: I will also tell you last year when I went to a legal seminar. One of the things that stuck out in my mind is that the courts are not looking at whether you made the right decision based on the information you have but they are looking at the procedure, they are looking at the process. Did you admit information that is not material to this subject matter? Courts generally do not make land use changes or land use law decisions for local jurisdictions, but they can tell you if you did something improperly and send it back to you. Or you did this improperly and we are going to find someone else. Now my example that I will type up for you, from my community beforehand we had an appeal go before the board of zoning appeals that the elected officials were not happy about, they did not want this to be granted. The board of zoning appeals granted the variance, and the council directed the city attorney to sue their own BZA because of the decision. They thought that the BZA made the wrong choice, not that they thought that the BZA was doing the wrong thing, but they thought that the procedure was process went wrong. This is why your BZA needs a separate attorney than the county. Because if the county council really gets worked up about a decision that you made with the best effort that you, they can't tell you how to vote. Remember that too, no one can tell you how to vote for this. This has got to be your decision based on the facts, and because they can't tell you how to vote if they don't like it, their only avenue is to appeal, that's it. Once you have made your decision that's on record, they have 30 days to file an appeal from your decision once they receive it. So, it's important for us as staff to get your information together and get that out to them in a timely manner.

Gary Alden asked: So that would help me with chapter and verse.

Allison Hardin answered: Yes, the South Carolina Civil Remedies chapter 78 the tort claims that covers you as a board, but I am going to get you a memo.

Allison Hardin commented: "I love Google.

Gary Alden commented: I didn't know that we were allowed to Google.

Allison Hardin commented: When we are not on a case, but yes, the tort claims act covers everything as a board. I will add that the county covers you individually.

Allison Hardin commented: Also Mr. Alden reminded me in an email and I am bringing it up to the board so that everybody knows but there was a topic that was discussed at a prior BZA that I had promised to bring more information about and I have not yet, that will be on the March information, so thank you for that.

7. Other

Gary Alden asked: The procedure of feedback in the difficulties for our deliberations is that it might deal with the UDO if I had so relevance to counsel and that's all things that are going around the back of my head that there is some process that we have a learning curve. I feel like that we don't, that could be ignorance on my part but I feel like we don't. So, this was just a carryover thought but I think that it is relevant to what you were trying to say at that last meeting.

Allison Hardin commented: The information that I have gone over today is information that I have seen on other boards as well as this board and things that have given me pause and other boards as well. So, everything that I have talked to you about today directly is because of any discussions we have had on the board but there are plenty of examples, I have only been in this since 91 so I have had just a few years. I have lots of examples of what not to do and I want to make sure that I help you learn through my mistakes so that we don't make the same ones here.

Gary Alden asked: Is there a process where mutually agreed, we say wait a minute there is something wrong here, is there a process too?

Allison Hardin commented: Yes, like if you are getting variances of the same things over and over again is what you mean.

Gary Alden commented: Sure

Allison Hardin commented: Let's say even if you're not getting it over and over again. Let's say that you received a variance that gives you all concern- why is the code like that, it doesn't seem like it would fit. As a board member you can instruct me to bring back an evaluation that applies to other places if staff has seen problems with. I can go back to the zoning officials and ask if this has become a problem for you? And this is the first time it has come into BZA. As part of the UDO rewrite I can come to you and say these are the discussions that the subcommittees and the stakeholders and others have spoken about in this issue. I can bring to you a defense that this has become. But if you need that information, just ask me and give me a month to provide it at the next meeting.

Gary Alden asked: Is there a formal process for that or is that out of the goodness of your heart?

Allison Hardin commented: If it wasn't my job, I would direct someone else to do it. It is part of our job being staff support to you, if you need to know why that is there and you can make a better

decision, that is part of our job to give it to you. And this won't always be my job, there will be a time where I will have to pass on the BZA responsibilities to another staff member, so that I can get the UDO finished up and packaged up. And I would expect that my staff would also provide that kind of customer service to you. And if you would like a formal process, we will create one. If you would like it to be informal, email me. You can ask me anything you want about any code thing; it's not case related. You can email me about anything if it's not specifically related to a case.

James Faulkenberry asked: What is the UDO timeframe, and will it affect the things that we are doing here?

Allison Hardin commented: The UDO rewrite is in process and has been in process since 2021 with an assessment; 2022 staff worked on interim ordinances and the counsel did not eventually decide to pass. Since 2023 I have been working on the rewrite. Draft Module One (largely lot standards and such) is complete. We have just wrapped up module two which is on signs, parking, landscaping, lighting and the like. We are going into the administration section next and then the final one we are going to do in the summer will be on the infrastructure. If anyone of you would like to be at any of those meetings, I would be happy to provide that for you. We have a UDO subcommittee meeting every Thursday morning at 8:00 am through Teams which we must have a link to that anybody can get to its publicized through Facebook. A stakeholder committee was created, and we have been adding, and people have dropped out as we go so if the BZA wants to appoint someone to stakeholder committee we would be happy to do that.

Chairman Deese asked: So, the subcommittee that was appointed to the planning commission that you go to every week. Counsel is also meeting every week on the UDO?

Allison Hardin commented: Well, they were going to and then they decided that they were just going to do the work and turn it into me. And I would collect it.

Chairman Deese commented: Right, and it's probably a good thing that they are doing that then. My question was going to be- is the UDO subcommittee ahead of the meetings that the counsel is holding or are they getting mixed up.

Allison Hardin commented: They are and that was by design because there are three groups reviewing and then there is a quarterly meeting with the stakeholders. We have the staff going back to the final review and they are two weeks ahead of the UDO section the planning commission UDO committee is ahead and then counsel was getting that information by the week. At the last counsel meeting they decided to turn in their comments on the chapters every two weeks and we will finish with module two and I will collect all of that and get that back to them so that we can have one meeting to address their issues, instead of going page by page. Like how they first wanted to do it.

Allison Hardin commented: We will have a draft this fall

8. Adjournment:

With there being no further business, Gary Alden moved to adjourn; motion seconded by Mark Bolin. The motion was approved by unanimous consent. **Adjourned at 7:27pm.**