

The Smithfield Board of Zoning Appeals held its regular meeting on Tuesday, March 19<sup>th</sup>, 2019. The meeting was called to order at 7:30 p.m. Members present were Mr. Christopher Gwaltney, Chairman; Ms. Faye Seeley, Ms. Catherine Bowden, Mr. Robert Briggs and Mr. Gregory Brown. Staff members present were Mr. Brian Thrower, Town Manager; Mr. John Settle, Planning and Zoning Administrator; Mr. Joseph Reish, Planning Technician/Codes Compliance Officer; and Mr. William H. Riddick III, Town Attorney. There were four (4) citizens present. The media was not represented.

Chairman Gwaltney – I would like to call the March 19<sup>th</sup>, 2019 Board of Zoning Appeals meeting to order. I would like to welcome Mr. Brown. He is replacing Mr. Clem Batten who passed away. As is customary, I will turn the meeting over to the Parliamentarian, Mr. William Riddick, for the Election of Officers which occurs on the first meeting of each year.

Town Attorney – Members of the Board of Zoning Appeals, as Mr. Gwaltney said, tonight is your first meeting. The first order of business is the election of officers. There are three officers to be elected; the Chairman, Vice Chairman, and then the appointment of a Secretary. As long as I have been here, which is twenty-six years, the law provides that he/she may be appointed from the appointed members of the Board of Zoning Appeals or it can be some other person. If it is not a member of the Board then they are not entitled to vote of course. The only people that can vote are you. It has always been the custom of the BZA to permit the town staff and the Town Clerk to be responsible for transcribing the minutes. If any of you feel like you would like to take on that obligation, you are certainly permitted to do that but I would suggest that it is a pretty daunting thing to do. The Town of Smithfield, just so you know, transcribes the minutes verbatim. In some localities a secretary will condense and digest and summarize everything that people say and that is their minutes. It is actually easier to transcribe everything you say than it is to do that so that would be our preferred custom. When we get around to electing the secretary, you can elect the secretary from the five of you; but I would strongly recommend that you appoint the Town Clerk so she can continue to do this. Town staff does a wonderful job. We have a sample of the minutes from last time. So, the first point of order tonight would be the election of Chairman. I have some information that I think is important for you to have. Mr. Reish will pass it around. I will preface my comments by saying that you are entitled to elect a Chairman

from any of the five of you who are duly appointed members of the Board of Zoning Appeals. On February 25<sup>th</sup>, 2019 of this year, the Town Council adopted a resolution that found in their opinion that one of your members, Mr. Gwaltney, is engaging in conduct they believe to be improper conduct or malfeasance. The resolution before you states the reasons that they have made their decision. They have petitioned the Circuit Court with the county of Isle of Wight that he be removed. The case is set to be heard on July 30<sup>th</sup>, 2019. Once again, you can elect anybody you choose from your membership; but this is important information that you need to have available to you so that you can make an informed decision. With all that being said, the floor is open from nominations for Chairman of the Board of Zoning Appeals.

Ms. Seeley – I nominate Mr. Briggs.

Town Attorney – Mr. Briggs is nominated. Is there a second to that motion?

Mr. Brown – Second.

Mr. Briggs – Can I decline the nomination? My appointment runs out in June and I am not going to be reappointed. I would like to nominate Chris Gwaltney.

Town Attorney – Mr. Gwaltney has been nominated. Is there a second?

Mr. Gwaltney – I will second that.

Town Attorney – You cannot second your own nomination.

Ms. Bowden – Second.

Town Attorney – Mr. Gwaltney has been nominated as Chairman and seconded. Are there any other nominations? Nominations are closed. All those in favor of electing Mr. Gwaltney say aye, opposed say nay.

On call for the vote, five members were present. Mr. Gwaltney voted aye, Ms. Seeley voted nay, Ms. Bowden voted aye, Mr. Briggs voted aye, and Mr. Brown voted aye. There was one vote against the motion. The motion passed.

Town Attorney – Mr. Gwaltney is elected as Chairman. The floor is open for nominations for Vice Chairman.

Chairman Gwaltney – I would like to nominate Mr. Brown as Vice Chairman.

Town Attorney – Is there a second?

Mr. Briggs – Second.

Town Attorney – Are there any other nominations? The floor is closed for nominations. All those in favor of electing Mr. Brown as Vice Chairman say aye, opposed say nay.

On call for the vote, five members were present. Chairman Gwaltney voted aye, Ms. Seeley voted aye, Ms. Bowden voted aye, Mr. Briggs voted aye, and Mr. Brown voted aye. There were no votes against the motion. The motion passed.

Town Attorney – Mr. Brown has been elected as Vice Chairman. The next order of business is the appointment of a Secretary.

Chairman Gwaltney – Mr. Riddick, can I ask a question please?

Town Attorney – Yes.

Chairman Gwaltney – Would it be the town's preference to have the Town Clerk or Mr. Reish hold that position?

Town Attorney – I think Mr. Reish is the staff member in charge. He is responsible for the administrative portion of it; but the Town Clerk/Secretary is generally responsible for transcribing the minutes. We would recommend that you appoint Mrs. Lesley King, the Town Clerk. She has people that work with her. Angel Brown is very good at doing this but the Town Clerk is responsible for doing this.

Chairman Gwaltney – I guess my only concern was, and I am not familiar with all of it, customarily the Secretary would be at the meetings. Customarily, Mr. Reish is at the meetings. Mrs. King is not.

Town Attorney – As I explained, the fact that the minutes are transcribed verbatim is the most important thing. It is not that she needs to be here to summarize what people say. They will be transcribed verbatim.

Mr. Briggs – Is that from the recording?

Town Attorney – Yes. It is the purpose of the recording. So, I do not really see that it is a problem. She does this for all bodies; the Town Council, Planning Commission, and the Board of Historic and Architectural Review. I do not see any difference between the two.

Mr. Briggs – Would that just be a motion to maintain the status quo?

Town Attorney – It would be a motion to appoint Mrs. Lesley King as the Secretary for the Board of Zoning Appeals.

Mr. Briggs – I would like to make that motion.

Ms. Seeley – Second.

Town Attorney – A motion has been made and properly seconded. All in favor signify by saying aye, opposed say nay.

On call for the vote, five members were present. Chairman Gwaltney voted aye, Ms. Seeley voted aye, Ms. Bowden voted aye, Mr. Briggs voted aye, and Vice Chairman Brown voted aye. There were no votes against the motion. The motion passed.

Town Attorney – Mrs. King has been appointed as the Secretary for the Board of Zoning Appeals.

Chairman Gwaltney – Thank you, Mr. Riddick. That concludes item #1. Item #2 is a Public Hearing – Special Yard Exception (SYE) Application – 108 Tigers Eye – Jon & Linda Lubecki, applicants. The staff report, application, narrative, site plan, and elevations are enclosed in our packets. Staff, would you like to present your report?

Planning Technician – Thank you, Mr. Chairman. Before I begin the report from town staff, I would like to take a moment to introduce Mr. John Settle. He is our Planning and Zoning Administrator in case any of you have not met him. He came to us last October from Strasburg. We are glad to have him here. Although the applicant has provided an excellent timeline of events in the packet, I would just like to give a brief summary for the request for this Special Yard Exception for Lot 379 in Cypress Creek. Please be aware that this lot has not been built on as of yet. The applicant's surveyor contacted the Planning Department about a year or so ago to discuss building on Lot 379. At that time, it was noted that the one hundred foot state mandated resource protection area buffer greatly limited the building area. The applicants, their surveyor, the adjacent property owner, as well as town staff worked together to try to come up with a way for the applicants to construct a home on the lot. Several notable actions included reconfiguring the front of the lot to allow for more room for a front yard. However, due to the small size of the available building envelope even after reconfiguring the front of the lot and the date of which the lot was subdivided it was discovered that encroachment into the one hundred foot RPA buffer was not a viable option. What we have here today are the applicants seeking a 15.9 foot encroachment

into the required thirty-five foot front yard. If granted, this will allow for a reduced front yard setback of 19.1 feet and will allow for the construction of the home as presented without any RPA encroachment. This is in keeping with the Chesapeake Bay Act. Mr. Culpepper, who is with the Cypress Creek Development Company, is in support of the application. One thing, from a safety standpoint, I would like to point out is that Tigers Eye is a private driveway. It is at the end of a private drive so the possibility of this encroachment creating a site distance problem is very minimal. Thank you for your time. Feel free to ask myself or Mr. Settle any questions. He has worked with the applicant much more than I have. Feel free to ask us any questions you would like about this application. Thank you, Mr. Chairman.

Chairman Gwaltney – Are there any questions before we move to the applicant's presentation? Would the applicant like to come forward and make your presentation?

Mr. Lubecki – I thank everyone for attending tonight. As you can see, it was pointed out; it is quite an extensive narrative that I put down. I will be going on five years in April trying to resolve every issue that we have had moving forward. My wife is currently working or she would have been here right behind me or supporting both of us right now. She travels quite a bit for her job. To make a long story short, the biggest problem that we had moving forward was that when we purchased the lot we were sort of misled in a round-a-bout way. We thought we had a really nice buildable area that did encroach in the one hundred foot RPA. To our dismay, we found out while working with the town that it was a non-option. Our biggest obstacles, at this point, were that we had a thirty degree slope on one side which was the ravine which impacted us. The lot itself is, essentially, a pie shape which you can all observe from Item A or Item AA. The footprint of that lot being.... that we bought a premium lot we really wanted to build our dream home/retirement home moving forward. It is why we paid a premium price for this lot. Needless to say, there were a lot of frustrations moving forward that all-in-all we ended working with the seller. I actually had contacted the neighbor of mine which, essentially, gifted additional property to make that lot wider so we could put a new redesigned home. Mind you, we went through three different redesigns so we could get inside the one hundred foot and crunch this house down from 6700 square feet down to 6400 square feet. Now, we are down to about 6100 square feet. We elongated the

house to begin with so we could run along the perimeter or the backside of the one hundred foot RPA to get the most we could for the lot. Now, in turn, the neighbor granted/gifted us some of his lot. I called him and said I would do whatever he needed to do. The owner of his lot, in turn, turned around and gifted him some of the golf course side. What he had lost from us, he was gifted the additional. Plus, it made his lot also buildable. At that point, he was under the assumption that he could build in the one hundred foot RPA which was a falsehood. Needless to say, getting the house on the lot now with all the circumstances we had before us it looked like reduced house size and moving the house; obviously. There is a stipulation in the Homeowner's Association that you have to have a side entry for the garage. I already talked to the Architectural Review Board and that is not an issue since it is on a private road. It is going to have to be a front garage entry. Moving everything forward, I am trying to keep the wife appeased to get the house that she wants. It was a difficult situation to keep downsizing it. In turn, that garage had to encroach into that front thirty-five foot building set-back line. At this point, I think we have exhausted all avenues and would really appreciate your approval in this respect. Are there any questions for me?

Chairman Gwaltney – We will have a consideration section but if anybody has any questions right this minute; ask them before you forget about them.

Ms. Bowden – Is there a gas line?

Mr. Lubecki – It runs down the center of the private drive; the primary gas line from Columbia Gas. There is also water and sewer access on that lot as well. It will take a lot of digging to get to it.

Chairman Gwaltney – Thank you, sir. When we get to the consideration section, if we have some more questions for you, we will ask it then. I do not see any other members of the public; but I would like to open the public hearing for any citizens who would like to speak for or against this specific matter. Seeing none, we will close the public hearing at this time. Item #5 is the BZA consideration. Does anyone from the Board have any comments or questions before we go to a vote?

Town Attorney – Mr. Chairman, since Mr. Brown is new at this, I think it would be appropriate to explain to him the difference between a variance and an exception because there is a different standard. It might be a good primer for the rest of you or at

least a refresher. There are only certain things that the Board of Zoning Appeals can consider. One of them is a variance. A variance has a very high standard. When you apply for a variance, you are asking for the Board of Zoning Appeals to grant you relief from an ordinance that, effectively, precludes you from using your property. The regulations would, effectively, as applied deny you the use of your property. That is not what this is. It is a yard exception. One of the things that is permitted for consideration as an exception is a garage or other building accessory to a single family dwelling which building does not comply with the regulations of the district in which it is located. It is the case we have here. A portion of his house for which he is asking for an exception is his garage. The ordinance does not distinguish between detached or attached; but the garage is one of the things that can be considered. In considering this, the standard is not as strict as for a variance. I will read from this because it is a very good explanation of the test that you are to apply. It states: "if the Board finds that the proposed establishment or use will not adversely affect the health, safety, and welfare of persons residing or working on the premises or in the neighborhood, will not unreasonably impair an adequate supply of light and air to adjacent properties, nor increase congestion in the streets, nor increase public danger from fire or otherwise unreasonably affect public safety, nor impair the character of the district or adjacent districts, nor be incompatible with the general plans and objectives of the town's Comprehensive Plan, nor be likely to reduce or impair the value of buildings or property in surrounding areas; but that such establishment of use will be in the substantial accordance with the general purposes and objectives of this ordinance, the Board shall grant the exception and authorize the issuance of a Special Exception Permit." This is the standard that you apply. Like I said, it is much less strict than a variance because he is asking for an exception versus a variance. The last action you had last year with the Powell's was the same thing; a garage. It was a little bit different situation but it was a garage. So, that is what Mr. Lubecki is asking for as well.

Vice Chairman Brown – So all the living space would be back behind the setback.

Town Attorney – Yes. Exhibit C1 shows the encroachment area of 270 square feet and it is a portion of his garage.

Chairman Gwaltney – Thank you, Mr. Riddick that was well explained. Mr. Reish, you do not have to get into a whole lot of detail of what an RPA is but is there any small statement you can make explaining why it was a fifty foot RPA and now it is a one hundred foot RPA.

Planning Technician – Originally, when the Chesapeake Bay Act of 1989 was adopted by the state legislature, it was a fifty foot buffer that was mandated for new construction that had salt water or salt marsh frontage. At some point between now and then, the state changed it to increase it to one hundred foot. I think there may have been some type of data that came out saying the one hundred foot was better for reducing runoff and absorbing nutrients and that the fifty foot was just not cutting it. At some time, they changed it from fifty to one hundred feet. You see a lot of surveys, plats, and site plans that have a fifty foot RPA on them. It is quite misleading for property owners and real estate agents that see that. They see it and think that fifty foot will work but the reality is that state law is one hundred foot. We certainly have to adhere to state law.

Town Attorney – Mr. Chairman, with the fifty foot rule, there was a provision that allowed certain lots that were platted prior to a certain date that they could encroach within the one hundred feet down to fifty feet if they met certain criteria. There came a time when that does not apply to newly platted lots. This lot was platted after that date so they are not eligible for encroaching into the one hundred foot buffer. I did not get into Mr. Lubecki's negotiations but I think that is probably where the misunderstanding was with the realtor or whoever it was that sold him the property or made representations.

Chairman Gwaltney – Thank you. Are there any other questions from the Board members? If not, I will entertain a motion.

Ms. Seeley – I would like to make a motion that we accept the application as presented.

Mr. Briggs – Second.

Chairman Gwaltney – A motion has been made to accept the application as presented and properly seconded. Mr. Riddick, do you want to call the roll or just do an "aye" vote?

Town Attorney - All in favor signify by saying aye, opposed say nay.

On call for the vote, five members were present. Chairman Gwaltney voted aye, Ms. Seeley voted aye, Ms. Bowden voted aye, Mr. Briggs voted aye, and Vice Chairman Brown voted aye. There were no votes against the motion. The motion passed.

Town Attorney – For the record, the vote was unanimous.

Chairman Gwaltney – Action Item #2b is a Recommendation to the Town Council to Amend the BZA Bylaws Section II.1. It is a little bit of a typo but we can discuss it as it is written. It was written a little bit differently the way I had hoped to discuss it. Mr. Riddick kind of discussed it and as you all know there was a question as to whether or not we could meet and what the definition of business was and whether we were conducting business when we met. It was my concern that I felt there was a lot of “business” in my mind that we needed to discuss. The more I got into reading the bylaws and these types of things; I noticed that we were not exactly doing things the way the letter of the law said. One example, we have already seen today with the secretary. I felt like it was important to have a meeting when we all got together and we could just get....instead of trying to go to everybody’s house or call everybody on the phone and try to decide why we are going to have a meeting or if we needed to have a meeting....that in those circumstances we would just get together and that way the Board could express its opinion on whether they think a certain item is important or not. If the Board does not think an item is important then that is all we really need to know is that the Board does not think it is important. But without a mechanism by which to bring these items to the Board, I felt we were not necessarily performing all of our duties. As you may know, there is one item in the bylaws that came into question. Under Section II.1 it states: “regular meetings of the Board shall be held on the third Tuesday of each month at 7:30 p.m. in the Smithfield Town Council Chambers. In the event no cases or business are before the Board, the Board shall not meet. When a meeting date falls on a legal holiday, a new meeting date and time shall be determined by the majority of the Board.” The question that was a conflict between staff and myself was the part that says “in the event no cases or business, the Board shall not meet.” According to their interpretation it meant we could not meet until someone paid for an application and if

not then we would never meet. I considered that entirely too restrictive and not within the spirit of the enabling legislation which is the Zoning Ordinance of Smithfield. If you look at the second part, if you are following along, on the second page under section 3 which are amendments. It says "the bylaws may be amended by a two thirds vote of the entire membership of the Board." The second part says "the Board may temporarily suspend any of the bylaws by a unanimous vote of the members present." So, my request, and again, there has never been a desire to have unnecessary meetings every month. This is just in my opinion....and my intentions....is just a stop gap measure by which we can remove this one questionable section which will give us permission according to the bylaws to call a meeting basically when there is no case if there is some business that needs to be addressed. Again, in my report, I think we probably need to address these bylaws a little bit deeper; but it is not within the scope of this meeting. Right now, I am just asking the Board members if they feel so inclined to either introduce a motion to remove that section if we think we can get a two thirds vote or temporarily suspend that section if we believe we can get a unanimous vote of the members present. Is there any question about that?

Mr. Briggs – Before we have discussion, we need to have a motion. Right?

Town Attorney – No, not yet. I need to explain something. The Board of Zoning Appeals is unlike any other entity that is associated with the Town of Smithfield. It is not like the Council which is elected. The Planning Commission is appointed by the Town Council. The Board of Historic and Architectural Review is appointed by the members of the Town Council. You are appointed by the Circuit Court. The reason you are appointed by the Circuit Court is that you are a quasi-judicial body. You sit like a court. You are more like a Court of Appeals than anything. With court, there is generally a judge there; but a Court of Appeals is more than one judge. You have the authority to hear appeals. You have the authority to hear variances. You have the authority to hear exceptions like you did tonight. You can interpret question on zoning boundaries; but there are a very limited number of things that you are permitted to do. Once again, you are quasi-judicial. Your agenda is not really an agenda. It is a docket. In the state code, it is a docket; not an agenda. Dockets are what courts have and that is what you have. I have had lots of discussions with Mr. Gwaltney about this and we do not agree on this;

but courts do not sit when there are no matters to be heard before the court. You do not meet for the purpose of meeting. This is the first meeting in this year at which there is business. Mr. Lubecki had business. He brought it before you. It was the first opportunity to which business matters could be addressed such as the election of the Chairman and the Vice Chairman. The first time you meet, you do your business. You may meet next month. You may meet every month or you may not meet again this year. It is purely driven by the circumstances that citizens bring before the town staff. The Zoning Ordinance is applied. If it cannot be applied in a certain way that meets the needs of the citizens then sometimes they have the option of coming to the Board of Zoning Appeals. That is why you only meet when there are cases. We do not believe....the Town Manager is here....you can hear from him if you like. We strongly believe it is unnecessary and unwarranted for the Board of Zoning Appeals to meet unless you have business. Judges do not sit when they do not have cases and we do not think you should either. It is an expense. You can make light of this or not but it costs quite a bit of money in the form of salaries and staff time. More importantly, you are appointed to serve but you should not meet for the purpose of just meeting. Mr. Gwaltney believes otherwise. He has other items that he wants to bring to your attention and he can do that tonight because you are meeting. To call meetings when there are no active business items or matters to be heard before the Board of Zoning Appeals, town staff and Town Council believe that is unwarranted and would not recommend to you that you change your bylaws. I have been doing this for twenty-six years. There has never been a time when the Board of Zoning Appeals was not well provided with every piece of information and everything you might need to do your business. I do not expect that will ever change. That is the conflict that has been at the forefront of the matters that have been pending for about a year now. If you would like to hear from the Town Manager, he would be happy to explain his position as well.

Ms. Bowden – I would like to direct a question to Mr. Gwaltney. I have skimmed through the concerns from the town.

Chairman Gwaltney – Are you talking about the document that Mr. Riddick passed out?

Ms. Bowden – Yes. In reference to the concerns that the town had and listening to the explanation from the Town Attorney, do you, at this point, still feel there may be other instances where we might need to meet based upon what is in the bylaws?

Chairman Gwaltney – Yes. I am not doing this for my health. I would not have allowed anything to get to this point if I did not feel that it was very important that we meet. Here is the number one item right here which you did not get in your packet this time. This was something I just happened to find in my research which says what every Board member absolutely has to know about FOIA. FOIA is the Freedom of Information Act and there is a lot of information in here that I believe that you have not been exposed to. I believe that Mr. Brown has not been exposed to it. I believe that maybe Ms. Seeley has not been exposed to; maybe; I do not know. What I would like to do is have you exposed to this so that you do not get yourself in trouble. Let me just read for one second just because you asked. The beginning of this....and this is produced by the Attorney General's office.....what every Board member needs to know. It says: "do not underestimate the importance of the Virginia Freedom of Information Act. This is very serious business. Violations risk the validation of Board decisions and expose organizations and you personally to embarrassment, litigation, and civil penalties up to \$5,000.00."

Ms. Bowden – But couldn't you just have that packet copied and we could all read it on our own time?

Chairman Gwaltney – Sure. The question is if it is better for me just to send it to you or we sit down to lunch and eat or is it more productive just to get together. We could ask staff about whether the town has a formal FOIA policy and what do we need to know about it. It would be an interactive question and answer session as to whether we know what we need to know. These ancillary items that I call business are that these action regulations have been amended at General Assembly sessions. They are changed all the time. They add little tweaks to things like this that some people keep up with and other people don't. Again, not every meeting; but when stuff like this comes up. For instance, I could send this to you in an email and ask you what you think about it. You can look at it and say it is not news to you. Okay, great. If you say I do not

understand this then maybe we could talk about it. Okay, great, maybe we should have a meeting. Do you see what I am saying?

Town Attorney – Mr. Gwaltney that is not your job. It is just not. It is our job to provide you with all the resources and all the information that you need to do your job. We have a Freedom of Information Act Officer. We have an attorney. You will never be put in a position where you do not have the resources to respond to a Freedom of Information Act question. So, that is not relevant. It is our job to provide you with that information. We have circulated that information to you. All of this information is available to you if you ever have a question; all you have to do is open your mouth, pick up the phone, or send an email and you would get immediate attention on any of these matters. The law is very clear. There is a case called Adams Outdoor Advertising vs. The Board of Zoning Appeals of Virginia Beach. The law limits your jurisdiction. It says that the BZA is a creature of statute possessing only those powers expressly conferred upon it. The city may not change it and expand it in any way. You have opined that you wanted to be involved in matters concerning the Comprehensive Plan and zoning maps and things like that in the past. We have advised you repeatedly that is not an appropriate thing to be considered by the Board of Zoning Appeals. There are limited things that can come before you and that is why you only meet on a limited basis. The Planning Commission or the Town Council is much broader than that but you are only permitted to consider these specific things. Meeting for the purpose of meeting is, in our view, not warranted and not appropriate.

Chairman Gwaltney – What about the budget item?

Town Attorney – You have no budget. The Town Council provides you with adequate funding for everything that you need. There is no line item for the Board of Zoning Appeals. You are not entitled to a pot of money from which you can spend anything. If for some reason something really complicated came about and we were embroiled in some sort of litigation, the Town Council would fund whatever you needed. Those are the resources; but there is no line item budget for you. There never has been and unless there is a monumental shift in the way things are done there will never be a budget for the Board of Zoning Appeals. The Town Council's administrative budget provides for Mr. Reish, Mr. Settle, Mr. Saunders, myself, the Town Clerk, and the

people who opened this building. They pay for the lights. They pay for everything that you need to do your job. There is no budget for you and there will not be a budget for you and there is no need for you to concern yourself with that. It is not a matter to be considered. I know it is on your agenda. To consider it is an error in futility because there is nothing to consider.

Ms. Bowden – I have one other question. I do not want to feel to be a devil's advocate here. Mr. Gwaltney, I am looking over the concerns and the statement of what has arisen from the Town Council. They are concerned about your performance thus far as Chairman. I personally think that you can do the job. You do an excellent job as Chairman.

Town Attorney – Ms. Bowden that is another matter that is completely separate from the matter that he is asking you to consider right now. The Town Council has already adopted that and the petition has already been filed with the Circuit Court. That is on a completely separate track. You do not have to worry about anything right there. It is information that you needed to know because it is pending; but all these questions that are being raised right now are somewhat at the heart of that. There is an awful lot more and a lot of it is not in writing but that is another issue. The question before you right now is that Mr. Gwaltney would like to amend your bylaws so that you can meet when there are no matters of business before the Board of Zoning Appeals to be considered. That is what he is asking. You can amend your bylaws if that is what you want to do; that's fine. It is not going to change our opinion that you should not meet when there is nothing to be done. It would be at his prerogative as the Chairman to call the meeting and that is a problem. We think that is a problem.

Chairman Gwaltney – Would anyone like to make a motion? You can make a motion to move on if you would like. If there is anything a Board member would like to make a motion for then they can make a motion.

Ms. Bowden – I would like to make a motion that we do not amend the bylaws.

Ms. Seeley – Second.

Chairman Gwaltney – A motion has been made that we do not amend the bylaws and properly seconded. Why don't you call the roll Mr. Riddick?

Town Attorney – It is a motion not to amend the bylaws. Effectively, if you vote for this motion the bylaws stay as they are.

On call for the vote, five members were present. Ms. Seeley voted aye, Mr. Briggs voted aye, Chairman Gwaltney voted nay, Ms. Bowden voted aye, and Vice Chairman Brown voted aye. There was one vote against the motion. The motion passed.

Town Attorney – The motion passes 4 – 1. The bylaws are not amended.

Chairman Gwaltney – Item 3 is Upcoming Meetings and Activities. Is there anything we need to know about this Mr. Reish?

Planning Technician – It is just informative more than anything Mr. Chairman.

Chairman Gwaltney – We will move along to the Public Comments section. The public is invited to speak to the BZA on anything except scheduled public hearings which we already heard. Is there anybody who would like to speak at this time? Seeing no one, public comments are closed. Our next item is Board of Zoning Appeals Member Comments. Does anybody have any comments or suggestion that they would like to make at this time? Hearing no comments, we will move to the Chairman's Annual Report. Enclosed in your packets, I believe, is the annual report. I do not know if you guys got it or not. It came in late. As you know, Mr. Batten passed away this year and I was particularly impressed with him. There was a letter from the Town Council. You may have it in your packet. I do not know. It was a letter from the Town Council that stated: "On behalf of the Town of Smithfield, we would like to express our condolences to you and your family on the passing of your husband, Mr. Clem Batten. Clem was a joy to be around for the seventeen years that he served on the Board of Zoning Appeals. He will be greatly missed. Please know that our greatest compliment to someone who has passed is to live your life to their honor and keep their memory alive. Our thoughts and prayers are with you." I just felt it was important for somebody who served this Board for seventeen years....and even at that time I did not know how many years he had been on here in multiple capacities such as Chairman and Vice Chairman...that we just acknowledge on the record that he did pass this year. For myself, personally, it was a great loss. As a matter of fact, I think I was in the hospital when he passed away. If I had known he was down there, I would have gotten out of my

bed and gone down there to see him. That is how much I thought of him. He was a kind and gentle man; but a very astute man I thought. I just wanted to have the opportunity to say that on the record before this Board. The bylaws require an annual report that I have never seen before. I took it upon myself to make an annual report and basically outline the things I feel are important for us to talk about. Up until this time, this has never really been put on paper; but we will call it non-case business which I would like to see the Board consider in the future. I do not know if anybody wants to make a motion to forward this to the Town Council. I do not know if staff is going to forward this to Council. According to the Zoning Ordinance, Article 12C.7 which defines the BZA, it states: "the Board shall keep full public records of its proceedings and other official actions and submit a report of its activities to the Town Council at least once a year." If anybody wants to look at it, amend it, accept it, make a motion to forward it then do.

Vice Chairman Brown – I have a question. I guess with this annual report; would that be something the recording secretary would do normally?

Planning Technician – It is actually performed by staff. It is basically just a count of how many meetings the BZA has and the outcome of the cases. The 2018 report basically stated there was one case which was a Special Yard Exception for 226 Moonefield Drive and that it was approved. It is basically the rundown of an annual report. It is basically just the count. It is very simple; just a little chart. They are submitted to Town Council for public viewing. I believe it is on the website every year. I could double check for you Vice Chairman Brown.

Vice Chairman Brown – It sounds like that is being taken care of.

Planning Technician – Yes, sir.

Chairman Gwaltney – Moving ahead to Item #7, we have Approval of the Tuesday, January 16<sup>th</sup>, 2018 Meeting Minutes.

Town Attorney – Mr. Chairman and members of the Board of Zoning Appeals, I have reviewed the minutes. There is only one change. It is on the last page. Mr. Batten had said that he would like to make a motion to accept the application and I changed it to approve. We generally approve applications so I recommend that be changed from "accept" to "approve." With that change, I recommend the minutes be adopted.

Ms. Seeley – I make the motion to approve the minutes as corrected.

Mr. Briggs – Second.

Chairman Gwaltney – A motion has been made and properly seconded. All in favor signify by saying aye, opposed say nay.

On call for the vote, five members were present. Chairman Gwaltney voted aye, Ms. Seeley voted aye, Ms. Bowden voted aye, Mr. Briggs voted aye, and Vice Chairman Brown voted aye. There were no votes against the motion. The motion passed.

Chairman Gwaltney – Since all the business has been conducted this evening, I will close the meeting at this time.

The meeting adjourned at 8:17 p.m.

  
Mr. Christopher Gwaltney  
Chairman

  
Mr. Joseph Reish  
Planning Technician/Codes  
Compliance Officer