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# TOWN OF SMITHFIELD

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Wednesday, July 14<sup>th</sup>, 2021

TO: BOARD OF ZONING APPEALS (BZA)

FROM: TAMMIE CALRY, COMMUNITY DEVELOPMENT & PLANNING  
DIRECTOR

RE: BZA MEETING

The BZA will hold its organizational meeting on Tuesday, July 20<sup>th</sup>, 2021 at 7:30 PM at the Smithfield Center (220 N Church St, Smithfield, VA 23430).

Please call 1-(757)-365-4200 or email [tclary@smithfieldva.gov](mailto:tclary@smithfieldva.gov) with any questions.

Enclosures

cc: Town Council  
William H. Riddick, III, Town Attorney  
The Smithfield Times  
The Daily Press  
File

## SMITHFIELD BOARD OF ZONING APPEALS (BZA) MEETING AGENDA

Tuesday, July 20<sup>th</sup>, 2021, 7:30 PM

- 1) **2021 Election of Officers**
- 2) **Community Development & Planning Director's Report:**
  - Summit Design & Engineering Services, PLLC, our consultants for the 2020/2021 Comprehensive Plan update, have developed a website to assist in providing transparency in the comprehensive planning process. The website is accessible via the following link: <https://smithfieldva.comprehensiveplan.com/>. A draft existing conditions report and a draft summary report of the recent citizen survey are accessible via the link. We have surpassed our citizen participation target. Our consultants are currently working on a draft vision statement that has been posted on the comprehensive plan update website for feedback and are also working on Goals, Objectives and Strategies, and hope to have a preliminary draft for feedback soon.
  - Town staff recently received a formal written complaint on the former Taste Freeze located at 1400 South Church Street. A letter was sent via regular and certified mail on June 9<sup>th</sup>, 2021, in accordance with Section 22-2 "Removal or repair of dangerous buildings, spot blight abatement" of the Town Code. The owners have thirty (30) days from the date of the letter to respond with an abatement plan.
  - Wednesday, May 12<sup>th</sup>, 2021 was Community Development & Planning Director John Settle's last day with the Town of Smithfield. In his absence, Tammie Clary has accepted the role of Community Development & Planning Director. Additionally, Joseph Reish, Planning Technician & Code Enforcement Officer, and Tammie Clary serve as the staff liaisons for the BZA. John will be missed greatly, and is leaving large shoes to fill.
- 3) **Upcoming Meetings and Activities**
  - Monday, July 26<sup>th</sup> – 3:00 PM – Town Council Committee Meetings
  - Tuesday, July 27<sup>th</sup> – 3:00 PM – Town Council Committee Meetings
  - Tuesday, August 3<sup>rd</sup> – 6:30 PM – Town Council Meeting
  - Tuesday, August 10<sup>th</sup> – 6:30 PM – Planning Commission Meeting
  - Tuesday, August 17<sup>th</sup> – 6:30 PM – Board of Historic & Architectural Review Meeting
  - Tuesday, August 17<sup>th</sup> – 7:30 PM – BZA Meeting
- 4) **Public Comments**
- 5) **Board Member Comments**
- 6) **\*Public Hearing\* Special Yard Exception Application – Lot 99 Smithfield Blvd (TPIN:22E-01-099), Daniel & Lori Welch, applicants.** (Staff report, applications, and assorted attachments enclosed.)
- 7) **Approval of the Tuesday, July 21<sup>st</sup>, 2020 meeting minutes** (enclosed).
- 8) **Adjournment.**

\*\*\*ATTENTION\*\*\*

Owing to the pandemic, we are encouraging remote public comment on all land use applications, whether or not a public hearing is required. If you do not feel comfortable with attending a meeting in person, please submit your comments in writing to Mrs. Tammie Clary, Community Development & Planning Director. Your comments will be conveyed to the appropriate Board or Commission. Mrs. Clary can be reached via email ([tclary@smithfieldva.gov](mailto:tclary@smithfieldva.gov)) or mail at the address below:

Town of Smithfield Community  
Development & Planning Department  
ATTN Tammie Clary, Director  
PO Box 246  
Smithfield, VA 23431

**NOTICE OF INTENT TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA)**  
Reasonable efforts will be made to provide assistance or special arrangements to qualified individuals with disabilities in order to participate in or attend Board of Zoning Appeals (BZA) meetings. ADA compliant hearing devices are available for use upon request. Please call 1-(757)-365-4200 at least twenty-four (24) hours prior to the meeting date so that proper arrangements may be made.

**BOARD OF ZONING APPEALS (BZA) STAFF REPORT: SPECIAL YARD  
EXCEPTION (SYE)**

**PUBLIC HEARING: TUESDAY, JULY 20<sup>TH</sup>, 2021, 7:30 PM**

<b>Applicants</b>	Daniel & Lori Welch 17458 Longview Drive Smithfield, VA 23430
<b>Owners</b>	John Lamb & Mischelle Jackson 911 Smithfield Blvd. Smithfield, VA 23430
<b>Property</b>	Lot 99 Smithfield Blvd TPIN 22E-01-099 0.75 ac N side Smithfield Blvd. 565' corner of Barclay Crescent & Smithfield Blvd.
<b>Zoning</b>	Environmental Conservation (EC) & Neighborhood Residential (NR)
<b>Adjacent Zoning</b>	Ibid.
<b>Project Description</b>	The applicants have applied for a SYE for two various encroachments into the required (pursuant to Smithfield Zoning Ordinance (SZO) Section 3.B.F.2.A.1), thirty-five foot (35'), front yard setback. The first encroachment would be two feet, four inches (2'4"). The second encroachment is for seventeen feet eleven and a quarter inches (17'- 11 ¼"). The encroachments total approximately 330 square feet and is constituted by a portion of the front corner of the proposed single family dwelling, and the attached garage.
<b>Staff Comments</b>	Due to the large Resource Protection Area that encumbers this property, the only viable way to accommodate this proposed dwelling is to encroach into the front yard setback; therefore, staff recognize the obstacles present on this parcel and recommend the BZA make an accommodation for this parcel.

Please direct inquires to Tammie Clary at 1-(757)-365-4200 or [tclary@smithfieldva.gov](mailto:tclary@smithfieldva.gov).



# TOWN OF SMITHFIELD

310 Institute Street, P. O. Box 246 Smithfield, VA 23431  
(757) 365-4200 Fax (757)357-9933

### APPLICATION FOR:

Special Use Permit  Variance  Special Yard Exception

Special Sign Exception  Other

Applicant(s) Name: DANIEL K. WELCH / LORI JO WELCH  
Address: 17458 LONGVIEW DR  
City, State, Zip: SMITHFIELD VA 23430  
Phone Number(s): DAN 757-371-4712 LORI 757-373-7548

Property Owner(s) Name: DANIEL K. WELCH / LORI JO WELCH  
Address: 17458 LONGVIEW DR  
City, State, Zip: SMITHFIELD VA 23430  
Phone Number(s): DAN 757-371-4712 LORI 757-373-7548

Property Address: LOT 99, SMITHFIELD BLVD, SMITHFIELD VA 23430  
Tax Map Number(s): 22E-01-099  
Property Description: \_\_\_\_\_

Zoning: \_\_\_\_\_ Acreage: 2.63 Application Fee: 150.00  
Legal Reference: \_\_\_\_\_ Deed Book#: \_\_\_\_\_ Page#: \_\_\_\_\_

Proposed Use/Exception: TO ENCROACH UP TO 18FT INTO FRONT SET BACK AS WELL AS 5FT OR MORE INTO RIGHT SET BACK (TOWARDS EMPTY LOT)

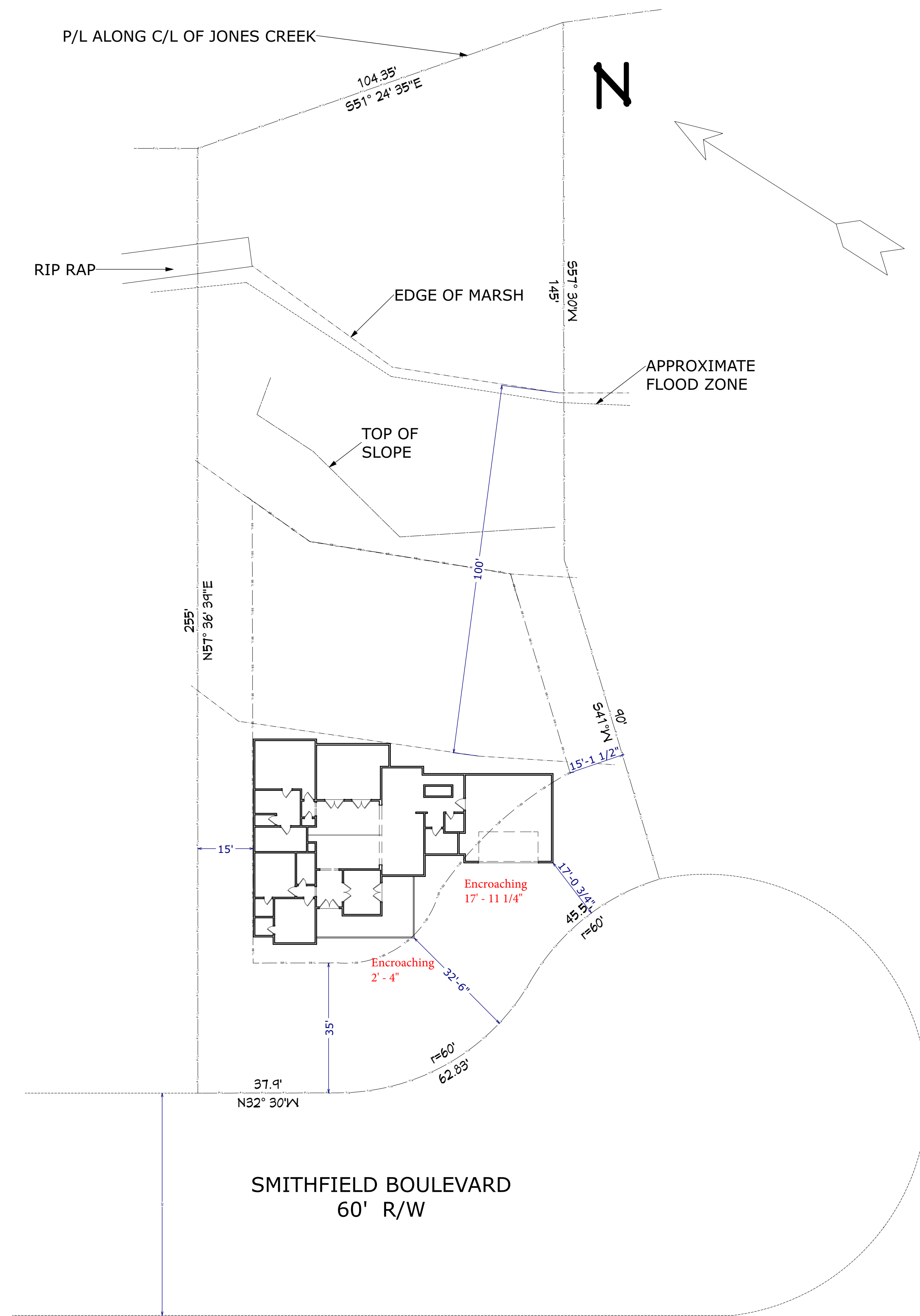
Lori Jo Welch  
Applicant(s) Signature

06-07-21  
Date

Daniel K. Welch  
Applicant(s) Signature

06/07/21  
Date

Paid  
2021-06-07



Unofficial Survey Overlay - FYI Only  
 Scale: 1" = 20'  
 (Surveyor to provide official record)

**CAUTION**  
 This layout was created as a sample only to ensure the footprint of the building can be placed within the setback lines. Final site plan must be provided by a license surveyor."



NO.	DATE	REVISION TABLE DESCRIPTION

Drawing comply with the 2015 IRC and the Virginia USBC.  
 Authority: 2018 Virginia Building and Fire Code Related Laws Package § 54.1-402.

PRELIM WORK SHEET (5)

DRAWINGS PROVIDED BY:  
**House Plans** by Design, LLC  
 Designer: Neil Wilson, Engineer  
 Phone: 757.621.7832  
 100 Windy Point Dr  
 Suffolk, Va 23435  
 www.HousePlansbyDesign.com

DATE:  
 6/17/2021

SHEET:  
**P-5**

The Smithfield Board of Zoning Appeals held its regular meeting on Tuesday, July 21<sup>st</sup>, 2020. The meeting was called to order at 7:30 p.m.

**Members present:**

Ms. Faye Seeley  
Mr. Gregory Brown  
Mr. Christopher Gwaltney  
Mrs. Catherine Bowden  
Mr. Gene Monroe

**Staff members present:**

Mr. John Settle – Community Development & Planning Director  
Mr. William H. Riddick III - Town Attorney  
Tammie Clary - Planner

There was one (1) citizen present. The media was not represented.

Chairman Gwaltney asked the Town Attorney if the meeting had been properly advertised with fifteen days prior notice. The Town Attorney stated that there are no public hearings before the Board of Zoning Appeals set for tonight's meeting. The meeting was advertised on the website and the press had been given notice. Tonight's meeting is a regularly scheduled meeting and meets at the same time every month when there are matters to be heard. It is a lawful meeting and the meeting can proceed.

Chairman Gwaltney called the meeting to order at 7:30 p.m. He explained that he has supplied the members with some housekeeping items that he plans to address first.

The Town Attorney explained that there is an agenda that was circulated to the BZA members. He stated that Mr. Gwaltney's term as the Chairman officially ended in March. Pursuant to the BZA bylaws, the Chairman serves a term of one year. The first order of business would be the election of officers.

Mr. Gwaltney stated that he did not think that was required as the first order of business.

The Town Attorney stated that it is the first order of business because he is not officially the Chairman.

Mr. Gwaltney stated that he thinks the bylaws state he can proceed himself until he is re-elected.

The Town Attorney explained that Mr. Gwaltney's term expired in March of 2020. He was allowed to call the meeting to order. The first order of business is the election of officers.

Mr. Gwaltney asked if he could change the order of the agenda.

The Town Attorney explained that he cannot since he is no longer the Chairman.

Mr. Gwaltney asked if that was the Town Attorney's legal opinion or his personal opinion.

The Town Attorney stated that it was his legal opinion. He explained that the bylaws require that a Chairman be elected at the first meeting. Essentially, the Town has a new BZA. Ms. Seeley has been re-appointed and has served for twenty years. He confirmed that Ms. Seeley has been sworn in. There is a quorum for the meeting. Her term had expired but she agreed to be re-appointed and the Town Council nominated her for re-appointment. Four judges have signed the order and she has been re-appointed by the court.

Mr. Gwaltney stated that, technically, as a point of order it would not matter because she is required to serve until she had been replaced according to the bylaws.

The Town Attorney stated that, according to the court's order, her term expired on June 30<sup>th</sup>, 2020. The courts order trumps the bylaws. The first order of business is the election of officers. There is information that he had been asked to provide the BZA members and it is important to know. The BZA members have been privy to a vast amount of email traffic in the last couple of weeks. Mr. Gwaltney has been busy with his inquiries and his demands of information. The Town Attorney corresponded with the new Town Manager and with the Community Development & Planning Director; John Settle. He hoped that everyone had read all of the emails. Last year, he read a resolution to the BZA from the Town Council. The Town Council adopted a resolution expressing their belief that Mr. Gwaltney has not been acting appropriately. He is acting inappropriately and they stated he should be removed. A legal action was brought in the Circuit Court to do that. It went through the courts and Mr. Gwaltney had counsel representation. There were some procedural problems with the case. In that type of action, the Commonwealth's Attorney is required to represent the Town in the matter. Since Mr. Riddick brought the suit, there was a hearing last year and the Town non-suited (dismissed) its case for the time being. In the meantime, Mr. Gwaltney has had to deal with a new Town Manager and the Community Development & Planning Director. He explained that in the past couple of weeks, Mr. Gwaltney has chosen to contact Mr. Settle's prior employer in Strasburg, Virginia to inquire about his performance. He also inquired with William Saunders who used to hold Mr. Settle's position inquiring about his performance. Mr. Gwaltney has expressed his written opinion that Mr. Settle is not doing a good a job. He can have his opinion about Mr. Settle's performance but he has no right to inquire into Mr. Settle's employment in prior positions. Mr. Settle is employed by the Town Manager at the Town Manager's will.

Mr. Gwaltney stated that he never contacted William Saunders.

The Town Attorney stated that he had the floor and that Mr. Gwaltney was not the Chairman so he planned to finish his comments. The Town Attorney stated that he has been directed to explain everything.

Mr. Gwaltney reminded Mr. Riddick that the meeting was being recorded.

The Town Attorney stated that every word is recorded and all comments will come around again.

The Town Attorney continued to explain that Mr. Settle is an extraordinary professional. He treats people fairly and is very attentive to his job. He is very careful in his decisions and has a wonderful demeanor. Mr. Riddick does not feel that criticism of Mr. Settle is well founded. The Town Council has made their will known that they will not tolerate abuse of their employees. He has been directed to make sure that does not happen anymore. He explained to the BZA members that they can vote for anyone they would like as the Chairman. The Town Attorney stated that the information he just provided is extraordinarily important. The Town Council does not have confidence in Mr. Gwaltney's ability anymore. Mr. Gwaltney has demonstrated that he does not use good judgement and he is abusive to Town staff. He seeks to do things that the Board of Zoning Appeals is not charged with doing. The Town Attorney stated that Mr. Settle has provided the BZA members with information on training. He explained that

the BZA is charged with four things: to consider and rule on variances, exceptions, disputes about the zoning map, and appeals from administrative decisions. These are the things the BZA has been given the power to do by the General Assembly. The BZA does not have the right to look at Comprehensive Plans or other things that Mr. Gwaltney has decided the BZA should do. It has been explained to Mr. Gwaltney. He has chosen to disagree and proceed in a different way. These are all things the BZA needs to know before it makes its decisions tonight. The BZA members are welcome to elect anyone they choose for Chair. The Town Council has expressed a vote of no confidence in Mr. Gwaltney. The Town Attorney stated that he has a meeting with the Commonwealth's Attorney in the next couple of weeks to take additional action in that regard. The first order of business is:

**Election of Officers – Chair:**

The Town Attorney opened the floor for nominations for Chair of the Board of Zoning Appeals.

Mr. Brown nominated Ms. Faye Seeley for Chair. The nomination was seconded by Mrs. Bowden.

Mr. Gwaltney nominated himself as Chairman. The Town Attorney asked if there was a second for Mr. Gwaltney as Chairman. Hearing none, the nomination failed.

The Town Attorney asked if there were any other nominations. Hearing none, Ms. Seeley has been nominated to serve as the Chair of the Board of Zoning Appeals. The nomination was properly seconded. All those in favor say aye, all opposed say nay.

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

**Election of Officers – Vice Chair:**

The Town Attorney asked for nominations for Vice Chair. Chair Seeley nominated Mr. Brown. Mr. Gwaltney seconded the motion. The Town Attorney asked if there were any other nominations. Hearing none, the floor was closed to nominations. All those in favor of Mr. Brown as Vice Chairman say aye, opposed say nay.

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

The Town Attorney turned the meeting over to the new Chair; Ms. Seeley.

Mr. Gwaltney asked about the election/appointment of a BZA Secretary. The Town Attorney explained that, in the past, the staff person attending the meeting serves as the liaison or staff support person for the meeting. The transcription of the minutes is required to be done after every meeting. The Town no longer does verbatim minutes. The minutes are now summarized. The decision was made by the Town Council for all Boards and Commissions.

Mr. Gwaltney asked if the Board controlled its own procedures and policies. He stated that, to his knowledge, it has never been brought up that the BZA would change its policy from verbatim minutes to summary minutes. He explained that Mr. Riddick's last statement pretty much explained why the BZA had verbatim minutes since it's like a judicial body. The courts usually transcribe things verbatim. The Town Attorney explained that matters before the BZA



are generally very simple in nature. They are usually documented very well with materials provided by staff. He does not think any Board member has ever been denied all the materials needed to make a careful and thoughtful decisions about the matters brought before the BZA. Staff has always been thorough and careful in providing information and answering questions. In the past, the Secretary for the BZA has been the Town Clerk. She is responsible for having the recording transcribed and turned into typed minutes. He explained that the BZA members could elect someone else as secretary if they choose; but the person would be responsible for transcribing the minutes. If you are inclined to name the Town Clerk as your Secretary, her name is Lesley King. He recommends her as the Secretary to the BZA.

**Election of Officers – Secretary:**

The Town Attorney asked for nominations for Secretary to the BZA. Mr. Gwaltney nominated Joe Reish because he has done it for a long time. He is a certified zoning official. Mr. Gwaltney has been impressed with his ability. He feels Joe Reish is the right person to do the job. The Town Attorney explained that Mr. Settle fills the function of the Town's staff person assigned to the BZA. Joe Reish is a Town staff person also; but is no longer assigned the responsibility of the BZA anymore. The BZA needs a clerk who would be responsible for transcribing the minutes and, in coordination with Town staff, getting out the BZA agenda to each member prior to the meeting. He explained that Mr. Gwaltney had nominated Mr. Reish. He asked if there was a second. Hearing none, the nomination failed.

Mrs. Bowden nominated Mrs. Lesley King. Vice Chairman Brown seconded the nomination. The Town Attorney asked if there were any other nominations. Hearing none, he closed the nominations. All those in favor of electing Lesley King as the Secretary to the Board of Zoning Appeals say aye, opposed say nay.

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

The Town Attorney turned the meeting back over to the new Chair. Chair Seeley announced the next item on the agenda.

**Community Development & Planning Director's Report:**

Mr. Settle introduced Tammie Clary as the new Town Planner. He is grateful to have her on staff. He informed the BZA members of training offered by Virginia Commonwealth University to Board of Zoning Appeal members and Planning Commission members throughout the state. It is not required to take the course but it is available to the Board members. The Town covers any and all expenses generated from the training. It is a very informative course. Details were provided in the agenda packet and a memo was sent out to everyone last week. Staff is uncertain if the course will still be offered when it is scheduled due to COVID-19. It may be transitioned to a web-based course. Any updates will be forwarded to the BZA members as they become known. He reminded everyone to stay after the meeting for the BZA group photograph.

Chair Seeley asked if the training itself would be paid for by the Town. Mr. Settle stated that the Town would cover the cost.

Mr. Monroe asked for clarification on the date. Mr. Settle stated that it is a two-day course. The first day is October 8<sup>th</sup>, 2020 where you receive materials to review at home. The second day is December 10<sup>th</sup>, 2020.

Chair Seeley explained that she has taken it before. They provide a book and you have to turn in the units you have read and the answers to them. After completion, you get your certificate. It may have changed over the years.

**Upcoming Meetings and Activities:**

Monday, July 27<sup>th</sup> – 3:00 PM – Town Council Committee Meetings

Tuesday, July 28<sup>th</sup> – 3:00 PM – Town Council Committee Meetings

Tuesday, August 4<sup>th</sup> – 6:30 PM – Town Council Meeting

Tuesday, August 11<sup>th</sup> – 6:30 PM – Planning Commission Meeting

Tuesday, August 18<sup>th</sup> – 6:30 PM – Board of Historic & Architectural Review Meeting

Tuesday, August 18<sup>th</sup> – 7:30 PM – BZA Meeting

**Public Comments:**

Mr. Gwaltney stated that he wanted to make a public comment. The Town Attorney stated that he is not a member of the public. He can make a Board member comment. Mr. Gwaltney stated that he was pretty sure he was a member of the public. The Town Attorney stated that was not accurate for the purpose of public comments.

Chair Seeley asked if there were any public comments. Hearing none, she moved to:

**Board Member Comments:**

Mr. Gwaltney stated that he sent paperwork to the BZA members. He is requesting the Board's assumption of his debt. According to the Town of Smithfield Zoning Ordinance, pursuant to Article 12 – Section A – Subsection 6 states: “within the limits of funds appropriated by Town Council via the annual budgeting process, the Board may employ or contract legal services, technical services, secretaries, clerks and other advisory services.” He requested that the BZA consider passing a resolution approving and accepting a bill for legal services for Thomas H. Roberts & Associates of approximately \$8,000.00 associated with the City of Suffolk Circuit Court at 9:00 a.m. in the month of November 2019 to defend a fellow member, the Chairman, from unfounded charges. It is Exhibit B in the paperwork provided by Mr. Gwaltney. He stated that the Town failed to provide adequate insurance to cover the cost incurred for his defense. Exhibits C & D come from the insurance company. As a result, he requests that the Board vote to accept the debt as a legitimate debt of the Board; all for one and one for all. This will result in no personal liability for any member and shall direct the Town Manager to act as necessary to affect the payment of the debt by the Town. Mr. Gwaltney stated that part of what the Town Attorney referred to as harassment was actually him trying to get the Town Manager to attend the meeting to explain how the insurance system works. He explained that he was under the impression that Board members had some type of professional liability insurance that would cover them. He has been trying to keep everyone up to date with what is going on; not harass everyone with emails. He stated that if it happened to any of the Board members he would take the same actions; all for one and one for all. It is a procedural matter but he asked the Chair to investigate this further and potentially allow a motion on the matter.

The Town Attorney explained that the action by the Town against Mr. Gwaltney was based on his conduct. It had nothing to do with any decision he has made in hearing matters before the BZA. He incurred legal expenses with a private attorney. His attorney sent the invoice to the Town of Smithfield and asked that the Town pay for it. It was at their request and submitted to our insurer which is the Virginia Municipal League. VML issued a ruling that the Town does not offer coverage for legal services incurred by a member who is subject to this type of action. It is, essentially, an action by the Town to have Mr. Gwaltney removed for his misconduct and behavior in his position as Chairman.

Mr. Gwaltney stated that was not true and to look at the paperwork.

The Town Attorney stated that he still had the floor.

Mr. Gwaltney stated that the Town Attorney had made an incorrect statement and he wants the Board members to know.

The Town Attorney stated that his statement was entirely correct. He explained that Mr. Gwaltney stated there is a budget for the BZA but there is not. The money is appropriated by the Town Council in its budget process every year to pay the salaries, training, cost of staff, and the cost for the Smithfield Center for meetings. There is no line item in the budget for the BZA. He explained that Mr. Gwaltney is asking the BZA to assume debt that they have no money for and no budget to pay for it. It would not be an appropriate thing for the BZA to do.

Mr. Gwaltney stated that the Town Attorney's statement that the payments were not made because of some behavior is actually not true. He did not believe it and eventually he had to call Town Council members and had personal conversations with them. He included paperwork that states explicitly that the conduct had nothing to with it. It also says that the BZA would never have had insurance coverage for this situation.

The Town Attorney explained that the Board members are covered if an applicant appears before the BZA for a decision. If the applicant does not like the decision, Board members are covered for that. The BZA serves in a capacity as an appointed member of the Board with sovereign immunity just like the Town Council. Board members are not subject to legal action for doing their job and making a decision. The Town's insurance covers that.

Mr. Gwaltney stated that Board members are absolutely not covered. He asked everyone to look at the paperwork and to call and verify for themselves.

The Town Attorney stated that the Board members are covered. They are not covered for misfeasance or malfeasance in their conduct. He explained that if they act inappropriately as officers, they are responsible for their own actions.

Mr. Gwaltney stated that the insurance company said the opposite. It is the reason he wanted to have the insurance company appear. He asked the Town Manager to have the insurance company appear so the Board members could ask questions. They can give you the truth of the matter; not through the Town Attorney's eyes; but through their eyes. Those actions and those requests have been continually refused and are part of the reason why we are where we are today. Staff continues to refuse simple requests. They continue to violate the law and tell the Board that they are not required to do the things that the law says that they are required to do. It is as simple as that. Mr. Gwaltney stated that he is at the point where he feels it needs to be presented in a meeting. He and Mr. Briggs went and tried to deal with it on their own and were

not successful. The best thing would be to have the insurance company at the meeting so Board members can ask their questions and get the answers in an impartial manner.

The Town Attorney stated that the Board meets to hear items that come before the Board of Zoning Appeals. When members come and make those decisions, they are doing their job. As long as everyone does that...

Mr. Gwaltney interrupted and stated "as long as you do what Bill Riddick tells you to do; you're fine but don't you dare not do what Bill Riddick says do. You will be sued."

Chair Seeley stated that the BZA does not have any money so it would have to go through the Town Council. Mr. Gwaltney stated that he was requesting that it go through the Town Council. He stated that if anyone had to pay \$8,000.00 to protect their integrity that they would assume that and expect to be paid for it. If a Board member expected to have insurance coverage to cover those expenses, they do not. If the Board had insurance coverage, the Board would have filed and the insurance would have paid it. However, the BZA does not have insurance coverage. He stated that he would like to be made whole. He was not found guilty. He never got his public hearing or his day in court. He explained that in the absence of a guilty conviction it is incumbent on this Board to attempt to make him whole. All that has to happen is an affirmative vote. He stated that the Town Attorney and his cohorts in the Town Council will decide whether they pay him or not. It is one formality among many that he has been dealing with.

The Town Attorney stated that the Town Council has already considered it and declined to pay.

Mr. Gwaltney stated that the Town Council has not been asked by the Board of Zoning Appeals to pay it yet. He explained to the Town Attorney that there are other steps, procedures, and ways to "skin a cat." He stated that he was just trying to skin it another way.

Chair Seeley stated that she was not here to skin any cats. She stated that it appears to her that it is a Town Council decision; not a decision for the BZA. She explained that the BZA does not need to second guess their decision. She asked the Town Attorney if she should ask for motions on this matter.

The Town Attorney explained that the BZA could make a motion; but whatever the Board says will not be binding on the Town Council. They have already made their decision.

Mr. Gwaltney asked if he could make the motion.

The Town Attorney stated that the Chair could entertain any motion she would like to entertain.

Mr. Gwaltney made the motion that the BZA vote to accept the debt of \$8,000.00 to Thomas H. Roberts & Associates as a legitimate debt of the Board; all for one and one for all. This would result in no potential liability for each individual member but shall direct the Town Manager to act as necessary to affect payment of the debt by the Town.

Mr. Monroe stated that no one steps into a position knowing how to do everything. He looks to Ms. Seeley and Mr. Riddick to see what everyone is supposed to say. Mr. Riddick is mentoring Ms. Seeley in her new position. Mr. Gwaltney had the position and he did not think he had the training. He did not really know what he was doing and found himself in a jam. He stated that somewhere along the way there needs to be forgiveness for learning how to do the job.

Somewhere along the way, there needs to be acceptance that you might be wrong. He does not know all that was said or done. He looks at it from being in a position that Mr. Gwaltney was unfamiliar with. He did not have the training and he made a mistake. Now, he has to pay out of his pocket. He is not sure if that is the right way to do it. He does not know all the details and \$8,000.00 is a lot of money; maybe there is somewhere in between.

The Town Attorney stated that all of it is the most unfortunate thing that he has been involved in for the past twenty-seven years. The BZA was the most peaceful, easygoing Board that anyone could possibly imagine which is, typically, the way BZA's operate. The BZA is charged with very limited things to do. There is an abundance of staff help available. No one ever knows what they are supposed to do; but there is the ability to get help. There is also the requirement that the Board not exceed its authority and there is no tolerance by the Town Council for abusive behavior by anyone in dealing with Town staff which is the bottom line.

Mr. Gwaltney stated that the bottom line is that it never happened and it has never been proven. The Town cannot produce any evidence. He stated that back in the harmonious days the Board had William Saunders and Joe Reish. Joe did an excellent job keeping the Board informed. He stated that he was not trying to say anything bad about Mr. Settle. He explained that when some of the stuff started going sideways it was in the timeframe in which Joe Reish was lost to the Board, William Saunders was lost to the Board, and Mr. Settle came onboard. He issued directives such as the Board not being allowed to have meetings. Other decisions were made and Mr. Gwaltney had no idea whether the Town Attorney told Mr. Settle to say certain things or if his supervisor told him to say certain things. He understands that a person has to do what their employer tells them to do. He did not want to disparage his name. He is fighting because his integrity has been impugned and he does not appreciate his integrity being impugned. Mr. Gwaltney stated that he does not impugn other people's integrity but he will bring up inconsistencies when he sees them. He expects to have a civil discourse about it and has not received a civil discourse about it. He explained that he was told the Board could not have a meeting because meetings have to be advertised and the next minute he was told that they could have a meeting because it did not need to be advertised. Those types of inconsistencies led him to not be very confident in the recommendations he was being provided. They do not make sense or add up. They do not add up as far as his interpretation of the paperwork. He has done all of the leg work to meet with people to try to understand. He pulled the regulations. He made copies and sent emails asking questions about the zoning ordinance that says there is a required fifteen day notice. He thinks it is a simple question to ask. It is the reason he has been trying to maintain the integrity of the Board of Zoning Appeals and not allow the Board to be railroaded, hijacked, and not following the established procedures, laws, and ordinances. All the way from the Commonwealth down to the Board's bylaws there is documentation on how everything is supposed to work. He stated that all he has gotten is resistance, accusations, and impugment of his reputation.

Chair Seeley reminded the Board that a motion was made by Mr. Gwaltney to ask the Town Council to pay his legal fees of \$8,000.00.

Mr. Gwaltney stated that if no one is willing to second the motion then the Board must want the same thing to happen to them. He stated that if there was a meeting every month,

members would only be paid \$300.00 a year. A term is five years totaling \$1,500.00 if a member came to every meeting. A member would have to come to twenty years of meetings to break even on \$8,000.00.

Chair Seeley explained that she has served for many years. She has dealt with staff and never had a problem. Mr. Gwaltney stated that she has not dealt with John Settle very much. Vice Chairman Brown recommended that the Board move on unless there were any other Board member comments. He was not willing to second the motion.

Chair Seeley asked if there was a second for Mr. Gwaltney's motion. Hearing none, the motion fails.

**BZA Bylaws Amendment – Town Staff, applicants:**

Chair Seeley asked if everyone had read the bylaws amendment. The Community Development & Planning Director, John Settle, stated that earlier this year, Town staff conducted an internal review of the bylaws of the BZA and came to the conclusion that there appears to be conflicting language between two sections of the bylaws. Section II.1 states: . . . *In the event no cases or business are before the Board, the Board shall not meet* . . . Further, Section II.3 states: . . . *Special meetings of the Board of Zoning Appeals shall be called at the request of the Chairman or at the request of a majority of the membership* . . . To remedy this, Town staff are proposing to include qualifying language distinguishing between regular and special meetings by suggesting the alteration of Section II.1 to read: . . . *In the event no cases or business are before the Board, the Board shall not hold a regular meeting* . . . To further avoid any future debate on the meaning of these two Sections, and to stress the importance of a special BZA meeting, Town staff is proposing the revision of Section II.3 to read: . . . *Special meetings of the Board of Zoning Appeals shall be called at the request of the Chairman with the concurrence of two other Board members* . . . After an examination of various other localities' BZA bylaws, this language was found in the City of Hampton's BZA bylaws. Town staff believes that this language is the most suitable for the Town. Staff anticipates making similar changes to the Board of Historic and Architectural Review's bylaws in the near future. Finally, to establish the July organizational meeting as a permanent fixture in the BZA's procedures, Town staff proposes the inclusion of the following language as Section II.6: *An organizational meeting shall be held each year on the date of the Board's July regular meeting. In addition to deciding whatever cases or business may be before the Board at that time, the Board will have the opportunity to hold its officer elections (if it has not occurred already in the preceding months), welcome new members, and address other organizational matters.* A red lined version of the bylaws amendment, as well as the signed BZA bylaws of the City of Hampton, Virginia, are included in the pages immediately following the staff report. Town staff recommends approval as submitted.

Mr. Gwaltney asked if changes to the bylaws require a special advertisement. The Town Attorney stated that they did not. Mr. Gwaltney stated that part of the fighting he had done for the improvement of the bylaws was the organizational meeting. He explained that staff has stated that they thought it was a good idea; but they fought him on it for several years. He wanted to give Mr. Settle credit for being a new staff member and taking a look at the importance of organizational meetings. Mr. Gwaltney had asked for the bylaws to be amended to be more in conformance with Isle of Wight County and the Town of Windsor. Mr. Gwaltney had requested

that the BZA create a Rules Committee to study it more in depth so that there could be a more comprehensive update. He explained that the bylaws have not been updated for quite some time. Isle of Wight County and the Town of Windsor updated their bylaws in 2015. He stated that the proposed changes do not seem to answer the questions that he had for the definition of “business.” He stated that it was important to the members whether they get paid or not for regular meetings. He recommended being careful on how the bylaws are changed. He does not understand why the BZA had a right to call a meeting by the Chairman but was not recognized by staff. Now, they are proposing that the BZA give up that right except when three members want to have a meeting. He would recommend that if a member does not want a meeting then the member does not need to show up. It is the best way to avoid having a meeting. The BHAR meeting that occurred prior to the BZA meeting did not achieve a quorum so they could not have a meeting. He recommends not making the changes at this time. Mr. Gwaltney stated that according to his reading of regulations this needs to be advertised in a particular way. He does not recommend affecting the changes at this meeting tonight. He would recommend further study and development of a sub-committee to evaluate the regulations and take into account some more local regulations such as Isle of Wight County.

Vice Chairman Brown made a motion to accept the bylaws amendment as written. Mrs. Bowden seconded the motion. Chair Seeley called for the vote.

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

#### **Approval of the December 19<sup>th</sup>, 2019 Meeting Minutes**

The Town Attorney recommended the minutes be approved as presented. Mr. Gwaltney stated that the minutes were not verbatim minutes. He had requested a copy of the recording if anyone wanted to review it. He feels very strongly that the BZA has always done verbatim minutes. He feels very strongly that the Town Attorney presented the rationale for it. He feels that the bylaws should be changed if the Board is going to change the procedure for minutes. At this time, he would recommend to the Board members not to approve the minutes and send them back for revisions to be prepared as verbatim minutes as has been done historically.

Vice Chairman Brown made the motion to approve the minutes as presented. Mr. Monroe seconded the motion. Chair Seeley asked all in favor to say aye, opposed say nay.

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

#### **2020-2021 BZA Group Photograph:**

Chair Seeley suggested adjourning the meeting first and then taking the photograph.

The meeting adjourned at 8:30 p.m.

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Ms. Faye Seeley  
Chair

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Mr. John Settle  
Community Development & Planning  
Director