



**EDENTON-CHOWAN  
INSPECTIONS AND PLANNING DEPARTMENT**  
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**Chowan County Board of Adjustment  
September 13, 2016  
5:30 p.m.  
2<sup>nd</sup> floor training room  
Chowan County Public Safety Center  
West Freemason Street**

**Minutes**

Chairman Brian White called the meeting to order. He asked Planner Elizabeth Bryant to call the roll. Brian White, Shelli Simmons, Ron Andronowitz, and Sheri Hare were present. Tanya Parrish and Charles Britton were absent. Administrative Assistant Karen Castelloe and Board of Adjustment Attorney Ben Gallop were present.

Mr. White stated that the next item of business was the approval of the agenda but that a couple of new items needed to be added prior to the approval. He stated that Attorney Ben Gallop had requested some time to brief the Board of Adjustment on his role as the attorney for the Board of Adjustment and the role of the Board of Adjustment in appeal and variance proceedings. He stated that the Board of Adjustment members would need to be sworn and that the election of officers would need to be done as well.

Mr. Andronowitz moved to approve the agenda with the noted additions. Ms. Simmons seconded the motion. The motion carried unanimously. (4-0)

Ms. Castelloe administered the oath of office to the Board of Adjustment members that were present.

Mr. White noted the next item business, Election of Officers.

Ms. Bryant asked for any nominations for the role of Chairman.

Ms. Hare nominated Brian White to serve as Chairman.

There being no other nominations, Ms. Bryant called for a vote. Mr. White was elected Chairman unanimously. (4-0)

Ms. Bryant asked for any nominations for the role of Vice-Chairman.

Mr. Andronowitz nominated Charles Britton to serve as Vice-Chairman.

There being no other nominations, Ms. Bryant called for a vote. Mr. Britton was elected Vice-Chairman unanimously. (4-0)

Mr. White asked for any corrections or additions to the minutes from the March 17, 2015 meeting.

Ms. Simmons moved that the minutes be approved as submitted. Ms. Hare seconded the motion. The motion carried unanimously. (4-0)

Mr. White stated that Mr. Gallop had requested some time to review the role of the Board of Adjustment and how proceedings for appeals and variances were conducted.

Mr. Gallop stated that the Board of Adjustment was a five-headed judge. He stated that a majority vote was used to make decisions and that he would be the Board of Adjustment's legal counsel. He stated that he could not answer the questions for the Board of Adjustment and that his job was to guide the Board of Adjustment in making sure that they conducted things procedurally correct. He stated that in an appeal case the parties involved were the County, the applicant or owner of the property and that the Board of Adjustment would sit as a judicial body. He stated that as a judicial body the Board of Adjustment would need to be impartial. He stated that the Board of Adjustment needed to avoid conversations regarding the application with neighbors or people who may approach them and attempt to discuss the application with them. He stated that any Board of Adjustment member that has an undisclosed ex parte communication should make it a disclosed ex parte communication so that everyone is aware that the member had that conversation and what the conversation entailed. He stated that having a fixed opinion on an issue that cannot be changed would also be something that should be disclosed. He stated that having a close familial, financial or other associational relationship with an affected person should also be disclosed.

Mr. Gallop stated that the Board of Adjustment decided variances and appeal applications. He stated that an appeal was when County Staff had made a decision that someone doesn't agree with. He stated that the Board of Adjustment would be asked to decide whether or not the Staff decision was correct or not. He stated that the Board of Adjustment could uphold the decision, reverse the decision, or modify the decision. He stated that a variance was different in that there were certain criteria that the Board of Adjustment had to consider in making their decision. He stated that appeals or variances used to require a 4/5ths vote but that the statutes had changed and now appeals were decided by a majority vote. He stated that he was going concentrate on appeal hearings at this time due to the fact that the Board of Adjustment had an appeal application coming up soon. He stated that the Board of Adjustment would make their decision based on evidence presented at the appeal hearing. He stated that evidence should be limited to competent, sworn evidence that is not outside evidence. He stated that the facts presented should be applied to the laws of the Ordinance. He stated that the appeal hearing is treated as a trial or court session. He stated that anyone that has filed as a party would

have the opportunity to present witnesses and to cross-examine the other party's witnesses. He stated that the County would be the first to present evidence because the burden of proof would be on the County. He stated that the appellant would then present evidence in opposition to the decision rendered by the County. He stated at the end of the presentations he would recommend that all the attorneys summarize their evidentiary considerations and how that applies to the law. He stated that there may be a public comment period but that the public should also be sworn and should be told that they needed to provide evidence that relates to the issues at hand. He stated that it was not typical that the public be given the opportunity to cross-examine witnesses unless they had gone through a formal process of becoming a party. He stated that the Chairman may hear objections and they would decide whether to sustain the objection or overrule it. He stated that the Chairman needed to be sure that people speak into the microphone to ensure that all comments made got on the record. He stated that there was a possibility that someone would bring a court reporter in order to have a transcript faster. He stated that the Board of Adjustment would have the opportunity to ask questions to the people presenting evidence. He stated that the attorneys would not be sworn because they would not be presenting facts or evidence but that they were pulling the evidence together and arguing to the Board of Adjustment what it all means. He stated that after hearing arguments the hearing portion should be closed. He stated that he would recommend that if a Board of Adjustment member had a question for someone who was a fact witness after the hearing was closed that someone make a motion to reopen the hearing and to call the fact witness back to ask the question. He stated that the Chairman would ask for a motion to affirm, reverse, or modify Staff's decision. He stated that if the Board of Adjustment was affirming a decision a member should make a motion that they affirm and then list the reasons why they affirmed the decision. He stated that one way to handle if the decision was affirmed or reversed is to tell the party who won to draft an order that the findings of fact are consistent with the decision based on evidence presented and to share that with the other side and then to provide that to the Chairman through him (Board of Adjustment attorney) and that he would review it and get it to the Chairman and it could be signed that way. He stated that if the Board of Adjustment made that part of the motion and that the Board of Adjustment authorized that process then another meeting would not be needed. He stated that if someone objects to that or if the Chairman was more inclined to have a more detailed fact finding and would like the whole Board of Adjustment do it then he would suggest that someone prepare an order, set another meeting, and have them bring the order as a proposal and then have review, discussion, and adoption at the second meeting.

Mr. White asked for clarification on drafting the order.

Mr. Gallop stated that when attorneys were involved the Chairman would direct the side that won to prepare an order that matches with what the ruling was and to share it with the other side. He stated that if the two sides agree that the written order is correct then the order would be sent on to the Chairman. If the two sides do not agree on the order then the Chairman would direct the attorneys of each side to send in their orders and then the Board of Adjustment would decide which order to accept.

Ms. Simmons asked how a member should handle a conversation that is started by a neighbor regarding an application. She asked if the member informs that neighbor that they cannot discuss the application and walks away, if that needs to be disclosed.

Mr. Gallop stated that if there was no substance to the conversation then he would not say it needed to be disclosed. He stated that if there was any concern at all then it should be disclosed.

Mr. Andronowitz asked if it was acceptable to go out and look at the property in question.

Mr. Gallop stated that there was no risk if you didn't do it. He stated that there was a risk that if you did go out and view the property that you may rely on something that you perceived that wasn't part of the hearing. He stated that if a member went out and viewed the property and other members did not then that member would be making a decision based on information that the other members did not have access to. He stated that he did not recommend going out and looking at the property and that the parties should be in control of the evidence.

Ms. Simmons asked if their (the Board of Adjustment's) research should be limited to the County Ordinances and what the County Staff sent them.

Mr. Gallop stated that was correct.

Mr. White asked for any more questions for Mr. Gallop.

Mr. Gallop stated that the Board of Adjustment was not on anyone's side, that they should be fair and give everyone an opportunity to be heard.

Mr. White thanked Mr. Gallop for his time and information.

Ms. Bryant provided a demonstration on how to find the different County Ordinances on the County website and how to use the County GIS to look up properties.

Mr. Gallop stated that the Board of Adjustment also needed to set a date for the upcoming appeal application.

Ms. Simmons moved that Mr. White and Mr. Gallop have the authority to set a meeting date for the upcoming appeal application. Ms. Hare seconded the motion. The motion carried unanimously. (4-0)

After some discussion, the recommended date was determined to be October 25, 2016 at 5:30 pm.

Mr. Gallop stated that he would like to add that if any member was present and did not vote then their vote would be counted as an "aye" vote. He stated that if a member leaves the room and is not formally excused, if they are not present when the vote is taken then

their vote is automatically counted as an “aye” vote. He stated that there should be no e-mails other than one-on-one between Board of Adjustment members regarding County business. He stated that three or more members e-mailing each other could constitute an open meeting. He stated that even if the e-mailing was one-on-one and was regarding County business then it was a public record. He asked that the Board of Adjustment remember that anything that they put in writing could be read. He asked that, if he e-mails the entire Board of Adjustment, that no member “reply all”. He asked that they just reply to him. He stated that if a member responds back and uses “reply all” then someone could potentially argue that it is an open meeting with no public notice or minutes. He stated that the same goes for any e-mail communication with County Staff as well. He stated that if any member gets an e-mail from a neighbor, friend, etc. in an attempt to discuss an application to print the e-mail out and bring it in.

Mr. White asked if the Board of Adjustment had the right to recess the hearing if it ran very late.

Mr. Gallop stated that they had the right to do that but asked that a mini-recess be called first to consult with him on the proper procedure for recessing the hearing.

Mr. Andronowitz asked if there was any liability for the Board of Adjustment.

Mr. Gallop stated that there was no particular liability. He stated that monetary liability was infinitely low. He stated that as long as the Board of Adjustment was fair and balanced the liability was limited. He stated that what was more likely was that someone would appeal a decision and blame everything on how the Board of Adjustment did things.

Ms. Simmons asked what the rules were as far as interacting in the community after a decision has been reached.

Mr. Gallop stated that he would stay away from discussing how and why the Board of Adjustment ruled a certain way. He stated that it could come back to the Board of Adjustment for additional decision making and that those conversations would be considered ex parte communications and make things complicated.

Mr. Andronowitz asked when the members would be receiving their meeting packets.

Ms. Bryant asked Mr. Gallop if the Board of Adjustment members should receive their packets prior to the meeting.

Mr. Gallop stated that was fine as long as all the parties involved were provided copies of the meeting packet as well.

Mr. Gallop stated that he would prefer to handle all the correspondence between the attorneys. He clarified that he was the attorney for the Board of Adjustment and not the County.

There being no further business, the meeting was adjourned.