COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 Fax (434) 972-4126

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD
LANE AUDITORIUM, 2:00 P.M
AGENDA
TUESDAY, FEBRUARY 4, 2020

1. Call to Order

2. Establish a Quorum

3. Public Hearings:
   A. Project Number: VA201900001 Bufton & Maus PLC Law Offices
      Property Owner/Appellant: Evelyn Bufton and John R. Maus
      Staff: Bart Svoboda/Kevin McCollum

   B. Rehearing of AP201900004 Bufton & Maus, PLC
      Appeal Number: AP201900004 Bufton & Maus TMP 50 - 49
      Property Owner/Appellant: Evelyn Bufton and John R. Maus
      Staff: Bart Svoboda/Kevin McCollum
      {This item was deferred from the October 29, 2019 meeting.}

4. Approval of Minutes
   A. January 7, 2020

5. Old Business
   A. Training Update

6. New Business

7. Adjournment

BOARD OF ZONING APPEALS MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) meeting. The following information is provided to help ensure the meeting proceeds as efficiently and effectively as possible. As a courtesy to others, please turn off all cell phones during the meeting.

General Information:

This meeting is recorded and later transcribed into minutes approved at a later meeting date.

Each item set for public hearing will begin with a presentation of the staff report. Next, the applicant or appellant for that item will be invited to speak. During the course of the process, the Chairman will open the public hearing to comments from the public. At the end of these proceedings the Chairman will announce that the public hearing is closed. Once the public hearing is closed, no further public comments will be allowed unless the Board asks for additional information from the applicant or appellant.

The BZA reserves the right to digress from these guidelines in any particular case.

To Members of the Public:

If you wish to address the Board, please raise your hand or stand when the Chairman asks for public comments for that item. When it is your turn for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording secretary. If you are with a group of people, you may want to have a spokesperson present your position to the Board.

In order to give all speakers equal treatment and courtesy, the Board requests that speakers adhere to the following guidelines:

- *Come forward to the speaker's podium and state your name;*
- *Address comments directly to the Board as a whole - open public debate is prohibited;*
- *State your position and give facts and other data to back it up – keep in mind that there is a **3 minute time limit for public comment**;*
- ***Give written statements and other supporting material to the Recording Secretary** (written comments are also welcome if you do not wish to speak).*

Additional Guidelines for Applicants and Appellants addressing the Board:

- *Please contact staff in Community Development ahead of the meeting to make any necessary arrangements for your presentation. **The Recording Secretary will also need copies of any handouts given to the BZA members for the official record of the meeting.***
- *Be clear in stating your position and do not repeat information that has been previously submitted to the Board.*
- *Stay on topic by addressing the questions in the application or by responding directly to staff's determination(s). Focus on presenting facts and data that support your position.*
- *Keep in mind there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.** The Board will ask any necessary follow-up questions to clarify points made during the presentation.*
- *Understand that the Board of Zoning Appeals cannot change County ordinances.*

The BZA reserves the right to place additional time limitations on speakers, as necessary.

Project Number: VA201900001 Bufton & Maus PLC Law Offices
Property Owner/Appellant: Evelyn Bufton and John R. Maus
Staff: Bart Svoboda/Kevin McCollum

FOR OFFICE USE ONLY VA # _____ SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $ 538 Date Paid 11/26/19 By who? Bufton & Maus Receipt # 119988 Ck# 1187 By: Onga

↳ Ck# 1187
App. Fee Rec # 120103

(12/4/19) - $435 adv. fee Ck# 1189

COPY

Application for Variance

☐ **Variance = $538 to be paid once application is deemed complete**

☐ **Initial notice fee to be provided in conjunction with an application, for preparing and mailing notices and published notice = $435**

FEES for re-advertisement and notification of public hearing after advertisement of a public hearing and a deferral is made at the applicant's request

➢ Preparing and mailing or delivering each notice after fifty (50)	$215
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.08 for each additional notice + actual cost of first-class postage
➢ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between $150 and $250)

Project Name: Bufton and Maus PLC law office

Parcel ID Number: 05000-00-00-04900 **Zoning:** Rural Areas (RA)

Physical Street Address (if assigned): 7382 Gordonsville Road, Gordonsville, Virginia 229442

Contact (who should the main contact about this project): John R. Maus
Street Address 7380 Gordonsville Road
City Gordonsville **State** Virginia **Zip Code** 22942
Phone Number 540-894-1006
Email jackmauslaw@gmail.com

Owner of Record: Evelyn Bufton and John R. Maus
Street Address 7380 Gordonsville Road
City Gordonsville **State** Virginia **Zip Code** 22942
Phone Number 540-894-1006
Email jackmauslaw@gmail.com

Applicant (if different from the owner): same as owners
Street Address _____
City _____ **State** _____ **Zip Code** _____
Phone Number _____
Email _____

RECEIVED
by fax
DEC 10 2019
COMMUNITY DEVELOPMENT MSA

Albemarle Coun

Community Development Department
401 M re Road Charlottesville, VA22902-4596
e : (434) 296-5832 Fax : (434) 972-4126

Planning Application

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 Owner(s): BUFTON, EVELYN & JOHN R MAUS

Application #: VA201900001

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: Rivanna

Land Use Primary: Residential -- Single-family (incl. modular homes

Current AFD: Not in A/F District

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

Entered By: Buck Smith 11/26/2019

Application Type: Variance

Project: BUFTON AND MAUS PLC LAW OFFICE

Received Date	11/26/19	Received Date Final		Submittal Date	12/02/19
Closing File Date				Submittal Date Final	
Revision Number					

Total Fees					
Total Paid					

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	BUFTON, EVELYN & JOHN R MAUS	P O BOX E	GORDONSVILLE	22942		

Signature of Contractor or Authorized Agent

Date

County of Albemarle

Geographical Data Services Division - Room 218

Parcel Property Information

TMP	05000-00-00-04900	Legal Description	ACREAGE
Parent TMP	- - -		
Tax Map	05000	Section	00
Block	00	Parcel	04900
GPIN	555050928191		
Major Subdiv.	Acreage	Total Acres	2.40
TMP Inactive?			

E-911 STREET ADDRESS INFORMATION

House Num	Street Name	Apartment /	City	State	Zipcode
7380	GORDONSVILLE RD		GORDONSVILLE	VA	22942
7380	GORDONSVILLE RD		GORDONSVILLE	VA	22942
7382	GORDONSVILLE RD		GORDONSVILLE	VA	22942

OWNER INFORMATION

Name	Street Address	City / State	Zip
BUFTON, EVELYN & JOHN R MAUS	P O BOX E	GORDONSVILLE VA	22942

ADDITIONAL PROPERTY INFORMATION

Agricultural Forest District:	Not in A/F District	High School District:	Monticello
Traffic Zone:	Not In TAZ	Middle School District:	Burley
Voter Precinct:	Keswick	Elem. School District:	Stone-Robinson
Magisterial District:	Rivanna		
Metro Planning Area?		Census Block Group:	2
CATS Area?		Census Tract:	104.01

Public Water Sewer:	No Service	Water Supply Protection Area?	
Watershed:	Happy Creek	Development Area?	
Other Rural Land?			

Historical Significance

World Heritage Site | National Historic Landmark | Virginia Landmark Register | National Register of Historic Places

Parcel Has Proffers

Parcel Has Easements

Current Land Use

		Number of Structures	Number of Dwelling Units
Primary:	Residential -- Single-family (incl. modular homes)	1	1
Secondary:	Open	0	0
Minor:	Unassigned	0	0

Comprehensive Plan Land Use

Plan Area: Rural Area 2

Primary:	Rural Area	Other2:	Unassigned
Secondary:	Unassigned	Other3:	Unassigned
Minor:	Unassigned	Other4:	Unassigned
Other:	Unassigned	Other5:	Unassigned

Zoning

	Current Zoning	Zoning Adopted 12/1980	Zoning Prior to 12/1980
Primary:	Rural Areas	Rural Areas	Agricultural
Secondary:	Unassigned	Planned Industrial Park	Scenic Highway Overlay
Minor:	Unassigned	Planned Industrial Park	Unassigned
Other:	Unassigned		

Airport Impact Area | Natural Resource Extraction Overlay | Flood Hazard Overlay | Entrance Corridor Overlay | Scenic Stream Overlay

ACTIVITY INFORMATION

PLANNING ACTIVITIES

ApplicationNumb	CurrentStatus	SpecialConditions
VA201900001	Under Review	
HO201900233	Denied	BUfton & Maus PLC
AP201900004	Overturned	

BUILDING ACTIVITIES

ApplicationNumb	CurrentPermitSt	SpecialConditions
B201800832OM	CO Issued	
B201702751OM	Completed - No	
B201702431NNR	CO Issued	
B201600608OP	Completed - No	
B201501553AR	CO Issued	

Printed On: Tuesday, November 26, 2019

FOR OFFICE USE ONLY VA # 20900001 SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $_____ Date Paid _____ By who? _____ Receipt # _____ Ck# _____ By: CMS

Application for Variance

☐ **Variance = $538 to be paid once application is deemed complete**

☐ **Initial notice fee to be provided in conjunction with an application, for preparing and mailing notices and published notice = $435**

FEES for re-advertisement and notification of public hearing after advertisement of a public hearing and a deferral is made at the applicant's request

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Project Name: Bufton and Maus PLC law office

Parcel ID Number: 05000-00-00-04900 **Zoning:** Rural Areas (RA)

Physical Street Address (if assigned): 7382 Gordonsville Road, Gordonsville, Virginia 229442

Contact (who should the main contact about this project): John R. Maus
Street Address 7380 Gordonsville Road
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Owner of Record: Evelyn Bufton and John R. Maus
Street Address 7380 Gordonsville Road
City Gordonsville **State** Virginia **Zip Code** 22942
Phone Number 540-894-1006
Email jackmauslaw@gmail.com

Applicant (if different from the owner): same as owners
Street Address _____
City _____ **State** _____ **Zip Code** _____
Phone Number _____
Email _____

Variance is defined as follows

A variance is defined as a reasonable deviation from those provisions regulating the shape, size or area of a lot, or the size, height, area, bulk or location of a structure when the strict application of this chapter would unreasonably restrict the utilization of the property, and the need for the variance would not be shared generally by other lots, and provided that the variance is not contrary to the purpose of this chapter, provided that a variance shall not include a change in use. (Albemarle County Code Chapter 18 Section 3)

REQUIRED ATTACHMENTS & OTHER INFORMATION TO BE PROVIDED for THE APPLICATION TO BE CONSIDERED COMPLETE AND OFFICIALLY SUBMITTED

☑ Nine (9) folded copies of any and all plans or additional information

☑ One (1) copy of a recorded plat or boundary survey of the property requested for the variance. If there is no recorded plat or boundary survey, please provide legal description of the property and the Deed Book and page number or Plat Book and page number.

☑ Drawings showing all existing and proposed improvements on the property, with all dimensions and distances to property lines, and any special conditions on the property that may justify the request.

☑ Written description of your request (include dimensions, measurements or sizes in feet). **This is to also include evidence as noted below**.

☑ As the owner/applicant I certify that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, which are owed to the County of Albemarle and have been properly assessed against the subject property, **have been paid.**

Please be aware that the board shall grant a variance if the evidence shows:

(i) That strict application of the terms of the ordinance **would unreasonably restrict the utilization of the property**;

(ii) That granting the variance would alleviate a **hardship due to**

a physical condition relating to the property or

due to improvements thereon at the time of the effective date of the ordinance; or

(iii) That granting the variance would alleviate a **hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability**

and

(iv) All of the following:

1. **Good faith acquisition and hardship not self-inflicted.** The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

2. **No substantial detriment.** Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

3. **Condition of situation not general or recurring.** The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

4. **Use variance prohibited.** Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.

5. **Special use permit or special exception not available.** The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

Please be aware that the evidence required above needs to be provided by the applicant and should be provided with the written description as noted above.

Owner/Applicant Must Read and Sign

I hereby certify that I own the subject property, or have the legal power to act on behalf of the owner in filing this application. I also certify that the information provided on this application and accompanying information is accurate, true, and correct to the best of my knowledge. By signing this application I am consenting to written comments, letters and or notifications regarding this application being provided to me or my designated contact via fax and or email. This consent does not preclude such written communication from also being sent via first class mail.

Signature of Owner/Applicant

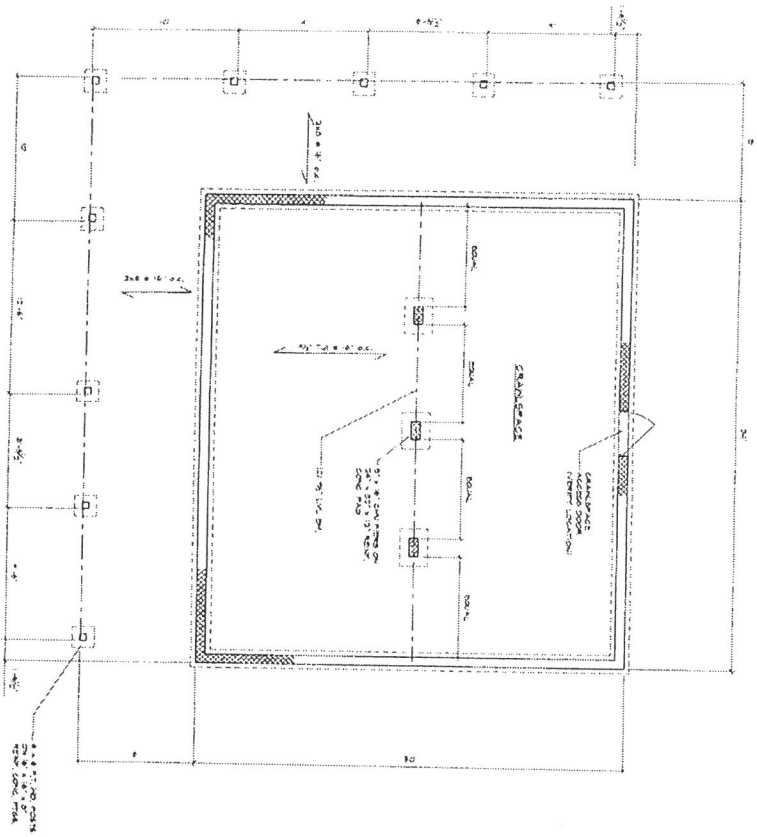
11/26/19
Date

John R. Maus
Print Name

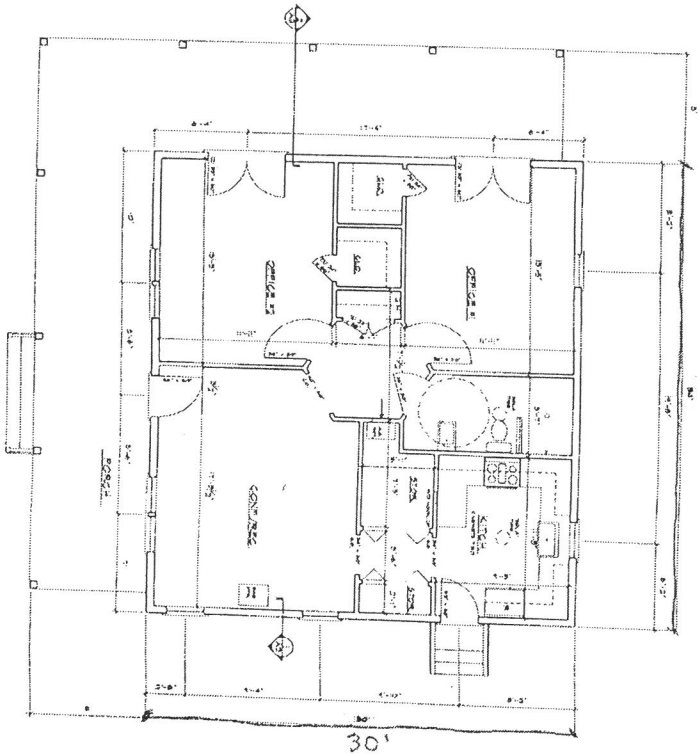
540-894-1006
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote: _____

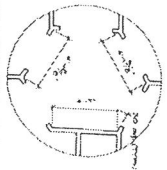
Board of Zoning Appeals Chairman's signature: _____ Date: _____



1 FOUNDATION PLAN



2 FLOOR PLAN



13 TYP. HALLWAY DETAIL

Gross square footage 34' x 30'
or 1020 SF

34'

30'

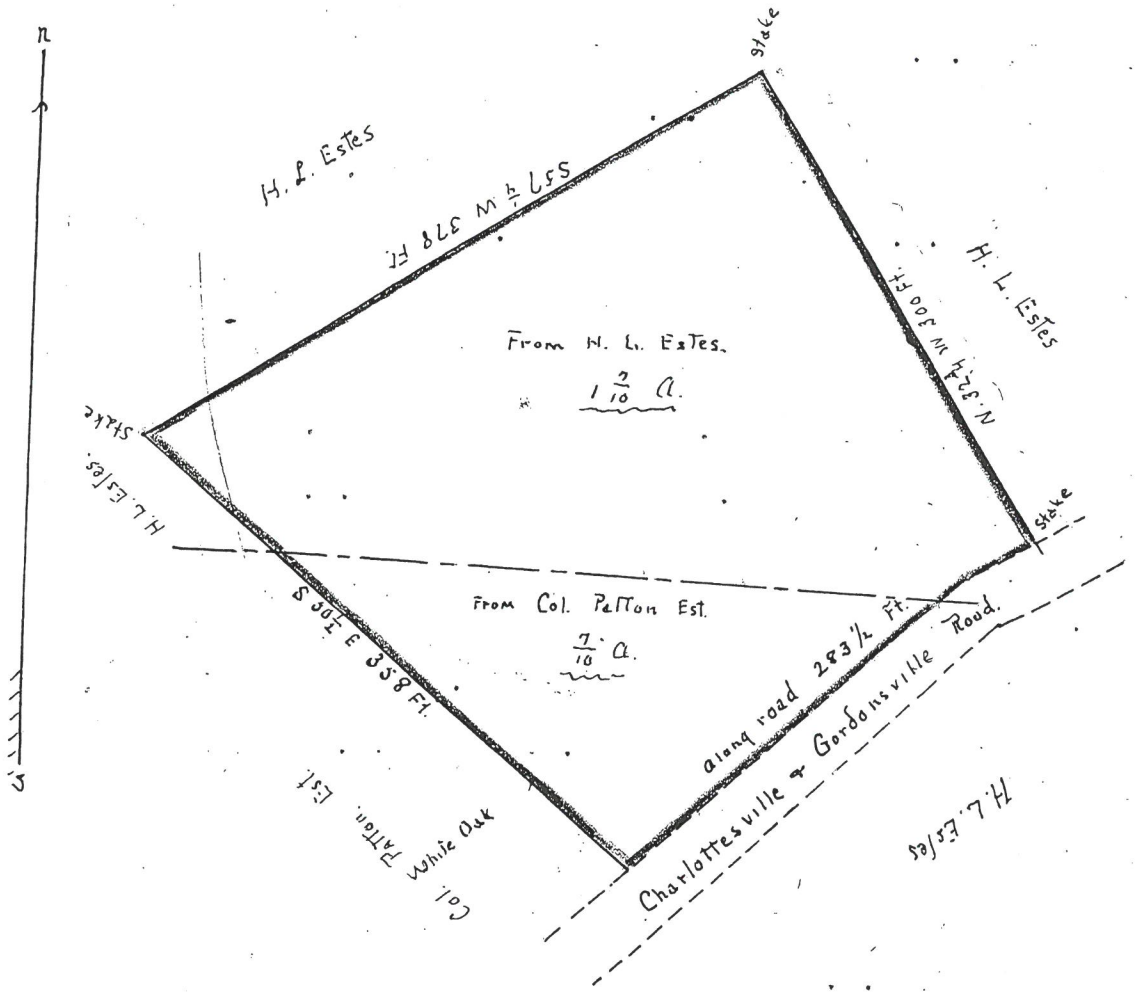
A1

ISSUED 10.2015

Plans

BUFTON & MAUS LAW OFFICE

Alexandria County, Virginia

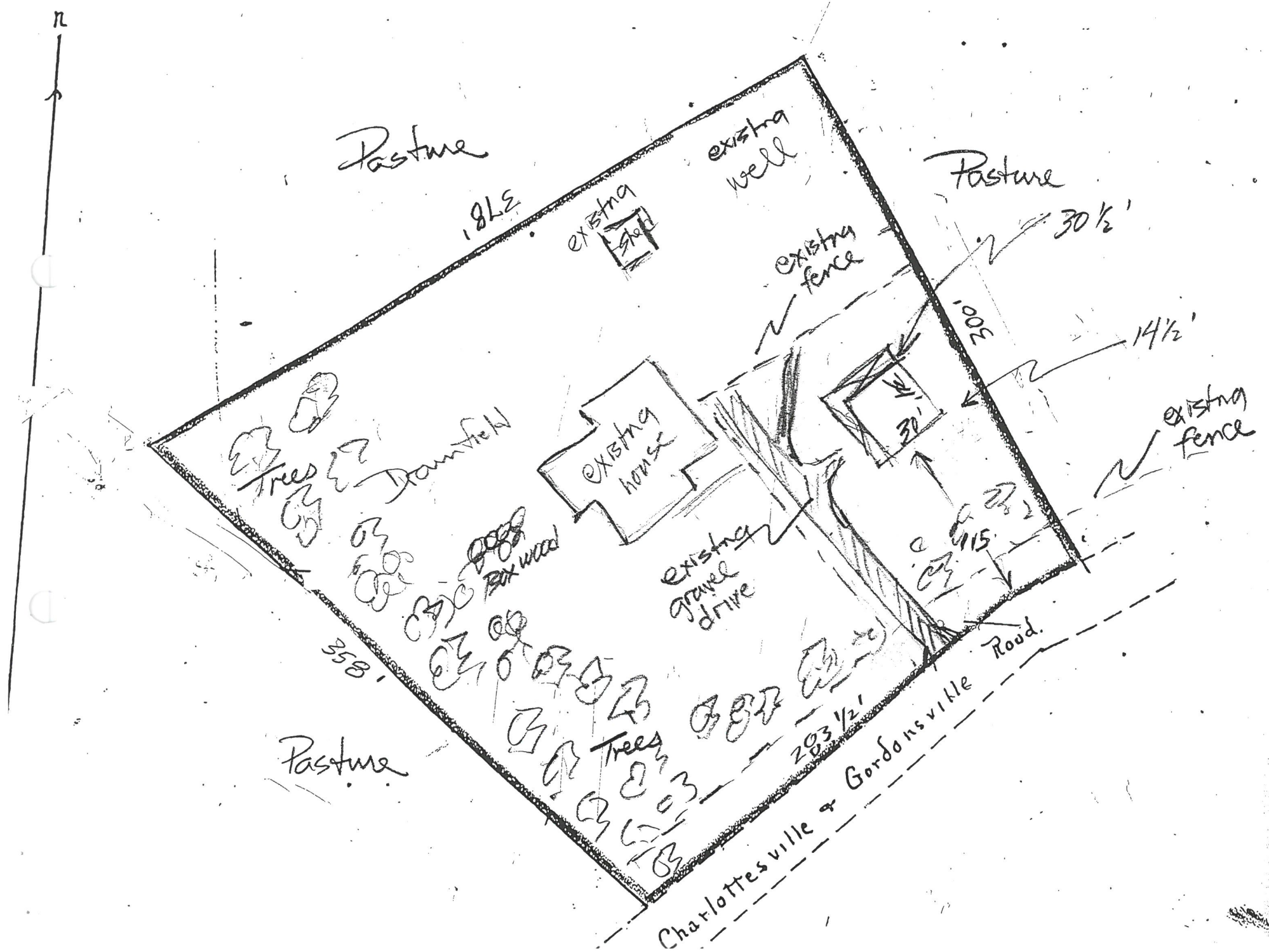


Scale 100 Ft. = 1 inch

In the Clerk's office of Albemarle Circuit Court Sept. 22, 1917.

This deed was presented to me in said office and with certificate annexed and plat attached admitted to record.

Teste: H. L. Maupin Clerk.


N
Pasture
existing well
existing shed
Pasture
378'
existing fence
300'
30½'
14½'
existing fence
existing house
existing gravel drive
Trees
Dawnfield
Boxwood
358'
Pasture
Trees
203½'
115'
Charlottesville & Gordonsville Road.

WRITTEN DESCRIPTION OF REQUEST FOR VARIANCE

The owners request a variance from any and all of the provisions of the Albemarle County Code that would prevent them from using the law office constructed on their property for a Major Home Occupation.

As far as the owners know, the applicable provisions of the Code are (1) Albemarle County Code §18-10.4, which provides that the side setback for primary structures in Rural Areas is 25 feet, and (2) Albemarle County Code §18-5.2A, which provides, in relevant part, that "[A]ny accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation."

There may be additional provisions of the Albemarle County Code on which the County Attorney's Office may rely on in order to oppose the owners' right to use their law office for the purpose for which it was always intended, namely to conduct a law practice that involved, among other things, meeting with clients and other professionals in their office.

At its nearest point to the side fence (which is presumed to be the property line), the owners' law office is 14½ feet from the property line. At its farthest point, the law office (which parallels the house rather than the property line) is 30½ feet from the side fence line.

Evidence in Support of Request for Variance

Under Sec. 34.4(i) of the County's Zoning Ordinance, the applicable criteria for the Board of Zoning Appeals to grant a variance are:

1. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property,
2. The property interests for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance,
3. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area,
4. The condition or situation is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance,

5. Granting the variance does not result in a use not otherwise permitted on the property, and
6. The relief or remedy sought is not available through a special use permit or special exception authorized by the Code.

The owners adopt all of the evidence that they previously submitted to the Board of Zoning Appeals on October 1, 2019 in connection with their appeal of the adverse decision of the Zoning Administrator denying them a zoning clearance for a Major Home Occupation. Furthermore, the owners state that:

1. It is self-evident that the owners' inability to use a 1020 square foot office building, the floor plans for which included a conference room and two offices as a place at which to meet clients and other professionals in connection with their practice of law, would unreasonably restrict the owners' utilization of their property,
2. As previously proven to the Board, the property interest for which the variance is being requested WAS acquired by the owners in good faith reliance on a building permit issued by Albemarle County. Any hardship was not created by the owners,
3. Granting the variance will not be a substantial detriment to the adjacent property or nearby properties. When the owners initially appealed to the Board of Zoning Appeals, notices were sent to all adjoining landowners and none voiced any objection to using the subject property for a major home occupation. The property on the other side of the fence to which the County alleges that the owners' building is too close is a cow pasture,
4. The condition or situation is the result of miscommunication with the County's Department of Community Development that the owners hope is not so recurring in nature that a general regulation should be adopted by amending the zoning ordinance,
5. Granting the variance does not result in a use not otherwise permitted on the property. The County has conceded that, if the owners' law office were no closer to the property line than 25 feet, the owners would be entitled to pursue a Major Home Occupation, and
6. The remedy or relief sought is not available through a special use permit or special exception.

STAFF: Kevin McCollum and Bart Svoboda
PUBLIC HEARING: February 4, 2020

STAFF REPORT: VA2019-001 Bufton & Maus, PLC

OWNER/APPLICANT: Evelyn Bufton and John "Jack" R. Maus
PARCEL ID: 05000-00-00-04900
ZONING: Rural Areas, RA
ACREAGE: 2.40 acres
LOCATION: The property is located in eastern Albemarle County and fronts on State Route 231 (Gordonsville Rd), an entrance corridor. There is one dwelling and one accessory structure located on the property at 7380 and 7382 Gordonsville Road, respectively. Please refer to the Map of the Property (Attachment A) for reference.

TECHNICAL REQUEST AND EXPLANATION: The applicants request a "variance from any and all of the provisions of the Albemarle County Code" that would prevent them from using the approved accessory structure constructed on their property for a Major Home Occupation (Attachment B). The applicable provisions of the Albemarle County Code are (1) § 18-10.4, which provides that the side setback for primary structures in the Rural Areas is 25 feet, and (2) § 18-5.2A, which provides that **"any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation."** Currently, the accessory structure does not appear to meet the applicable 25-foot side setback in order to be used for a Major Home Occupation, and the applicant is requesting a variance to do so.

BACKGROUND:
On October 17, 2017, the applicant applied for a building permit, B2017-02431-NNR (Attachment C) for an accessory structure. On December 7, 2017, the County issued that building permit for an accessory structure now located at 7382 Gordonsville Road, with the following accessory structure setbacks for the RA; Front - 75', Rear - 6', and Side - 6'.

On June 4, 2019, the applicant applied for a Major Home Occupation Clearance to use the accessory structure as a law office (Attachment D). After inspecting the property to verify that the proposed Major Home Occupation met all the applicable regulations, staff sent an advisory email on June 17 noting that the side setback did not appear to be met and informing the applicant that the proposed Major Home Occupation Clearance could not be approved until they could confirm that the structure met the applicable setbacks (Attachment E).

On July 30, 2019, staff wrote an official determination that the Major Home Occupation Clearance application could not be approved until staff determined that the accessory structure complied with the primary structure setbacks for the Rural Areas zoning district (Attachment F). On August 12, 2019, the applicant submitted an appeal of "the decision of the Zoning Administrator to deny them a Major Home Occupation approval" (Attachment G).

On August 15, 2019 a certificate of occupancy was issued for B2017-02431-NNR with a condition that the structure was for personal use only.

On October 1, 2019, the Board of Zoning Appeals (BZA) heard appeal AP2019-00004 Bufton & Maus. The BZA voted to overturn the Zoning Administrator's determination of July 30, 2019. On October 29, 2019, at the request of the Board of Supervisors, the BZA held a special meeting to rehear AP2019-00004 Bufton & Maus. At this public hearing, the BZA voted to defer the rehearing of the appeal to allow the hearing of a Variance if the applicant chose to apply.

QUALIFYING CONDITIONS:

Under Virginia Code § 15.2-2309(2) (Attachment H), the Board of Zoning Appeals may *"grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section."*

Virginia Code § 15.2-2201 defines a variance as a *"reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning."*

County Code § 18-34.4(i) (Attachment I) provides:

The board shall grant a variance if the evidence shows:
(i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or
(ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;

and all of the following:

1. *Good faith acquisition and hardship not self-inflicted. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.*

2. *No substantial detriment. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

3. *Condition of situation not general or recurring. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*

4. *Use variance prohibited. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.*

5. *Special use permit or special exception not available. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.*

STAFF ANALYSIS:
Staff has evaluated this application against the above variance standards.

Standard: The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property;

Staff: Strict application of the 25' side setback to structures used for Major Home Occupations does not unreasonably restrict the use of the property. The owners already enjoy reasonable use of the property through both the existing single-family residence and the new accessory structure, which may remain.

Or

Standard: Granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;

Staff: No physical condition of the property creates a hardship. The improvement (accessory structure, B2017-02431 NNR) was constructed in 2017, well after the effective date of *County Code* § 18-5.2A.

And

1. The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant for the variance.
   Staff: This application does not meet this standard. The property was acquired in good faith, but the hardship was created by the applicant. As outlined in the Background section, the proposal to use the accessory structure for a Major Home Occupation came after the initial application and issuance of the accessory structure. Because the applicants did not apply for a Major Home Occupation clearance at the same time as the building permit for the accessory structure, staff issued the building permit as if it met the standard accessory structure setbacks. Only after the accessory structure was under construction and close to completion was the application for the Major Home Occupation filed for County review. As stated above, the applicant then chose to appeal staff's decision rather than rectify the setbacks through alternative means.

2. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
   Staff: This application meets this standard.

3. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
   Staff: This application meets this standard.

4. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.
   Staff: This application does not meet this standard. The granting of this variance would in fact permit a use that is otherwise not permitted within the defined setbacks.

5. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.
   Staff: Though this application meets this standard, an alternate remedy is available by a boundary line adjustment plat.

STAFF RECOMMENDATION:
Because (a) the zoning ordinance does not unreasonably restrict the use of the property, (b) no physical conditions of the property create a hardship, and (c) not all five of the additional criteria required for granting a variance are met, this application does not meet the standards for variance approval.
Additionally, under Virginia Code § 15.2-2201, the BZA cannot approve a use variance. Since the accessory structure located on the property is currently not in violation of the ordinance, and the approval of this variance would allow for the additional use of a Major Home Occupation, this would be a use variance, which the BZA is not authorized to grant. Therefore, staff must recommend denial of this variance application. The applicant may still pursue a boundary line adjustment with the adjacent lot to allow the structure to meet the 25' side setback required for Major Home Occupations.

PROPOSED MOTIONS:
If the Board chooses to deny this variance (Staff's recommendation):

I move to deny the variance application VA201900001 Bufton & Maus

If the Board finds legal grounds to grant this variance:

I move to grant variance application VA201900001 Bufton & Maus

Attachments:

Attachment A: Map of the Property

Attachment B: Variance Application VA201900001 Bufton & Maus

Attachment C: Building Permit B2017-02431-NNR

Attachment D: Major Home Occupation Clearance Application

Attachment E: Staff Email to the Applicant dated June 17, 2019

Attachment F: Official Determination "RE: HO2019-00233 Major Home Occupation Clearance"

Attachment G: AP201900004 Application

Parcel ID 05000-00-00-04900

Attachment A: Map of the Property



Legend

(Note: Some items on map may not appear in legend)

Parcel Info

- Parcels



GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

January 15, 2020

Map elements may scale larger than GIS data measured in the map or as provided on the data download page due to the projection used. Map Projection: WGS84 Web Mercator (Auxiliary Sphere) (EPSG 3857)

FOR OFFICE USE ONLY VA # 201900001 SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $_____ Date Paid _____ By who? _____ Receipt # _____ Ck# _____ By: _____

Application for Variance

☐ **Variance = $538 to be paid once application is deemed complete**

☐ **Initial notice fee to be provided in conjunction with an application, for preparing and mailing notices and published notice = $435**

FEES for re-advertisement and notification of public hearing after advertisement of a public hearing and a deferral is made at the applicant's request

➢ Preparing and mailing or delivering each notice after fifty (50)	$215
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.08 for each additional notice + actual cost of first-class postage
➢ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between $150 and $250)

Project Name: Bufton and Maus PLC law office

Parcel ID Number: 05000-00-00-04900 **Zoning:** Rural Areas (RA)

Physical Street Address (if assigned): 7382 Gordonsville Road, Gordonsville, Virginia 229442

Contact (who should the main contact about this project): John R. Maus
Street Address 7380 Gordonsville Road
City Gordonsville **State** Virginia **Zip Code** 22942
Phone Number 540-894-1006
Email jackmauslaw@gmail.com

Owner of Record: Evelyn Bufton and John R. Maus
Street Address 7380 Gordonsville Road
City Gordonsville **State** Virginia **Zip Code** 22942
Phone Number 540-894-1006
Email jackmauslaw@gmail.com

Applicant (if different from the owner): same as owners
Street Address _____
City _____ **State** _____ **Zip Code** _____
Phone Number _____
Email _____

Variance is defined as follows

A variance is defined as a reasonable deviation from those provisions regulating the shape, size or area of a lot, or the size, height, area, bulk or location of a structure when the strict application of this chapter would unreasonably restrict the utilization of the property, and the need for the variance would not be shared generally by other lots, and provided that the variance is not contrary to the purpose of this chapter, provided that a variance shall not include a change in use. (Albemarle County Code Chapter 18 Section 3)

REQUIRED ATTACHMENTS & OTHER INFORMATION TO BE PROVIDED for THE APPLICATION TO BE CONSIDERED COMPLETE AND OFFICIALLY SUBMITTED

☑ Nine (9) folded copies of any and all plans or additional information

☑ One (1) copy of a recorded plat or boundary survey of the property requested for the variance. If there is no recorded plat or boundary survey, please provide legal description of the property and the Deed Book and page number or Plat Book and page number.

☑ Drawings showing all existing and proposed improvements on the property, with all dimensions and distances to property lines, and any special conditions on the property that may justify the request.

☑ Written description of your request (include dimensions, measurements or sizes in feet). **This is to also include evidence as noted below**.

☑ As the owner/applicant I certify that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, which are owed to the County of Albemarle and have been properly assessed against the subject property, **have been paid.**

Please be aware that the board shall grant a variance if the evidence shows:

(i) That strict application of the terms of the ordinance **would unreasonably restrict the utilization of the property**;

(ii) That granting the variance would alleviate a **hardship due to**

a physical condition relating to the property or

due to improvements thereon at the time of the effective date of the ordinance; or

(iii) That granting the variance would alleviate a **hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability**

and

(iv) All of the following:

1. **Good faith acquisition and hardship not self-inflicted.** The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

2. **No substantial detriment.** Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

3. **Condition of situation not general or recurring.** The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

4. **Use variance prohibited.** Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.

5. **Special use permit or special exception not available.** The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

Please be aware that the evidence required above needs to be provided by the applicant and should be provided with the written description as noted above.

Owner/Applicant Must Read and Sign

I hereby certify that I own the subject property, or have the legal power to act on behalf of the owner in filing this application. I also certify that the information provided on this application and accompanying information is accurate, true, and correct to the best of my knowledge. By signing this application I am consenting to written comments, letters and or notifications regarding this application being provided to me or my designated contact via fax and or email. This consent does not preclude such written communication from also being sent via first class mail.

Signature of Owner/Applicant

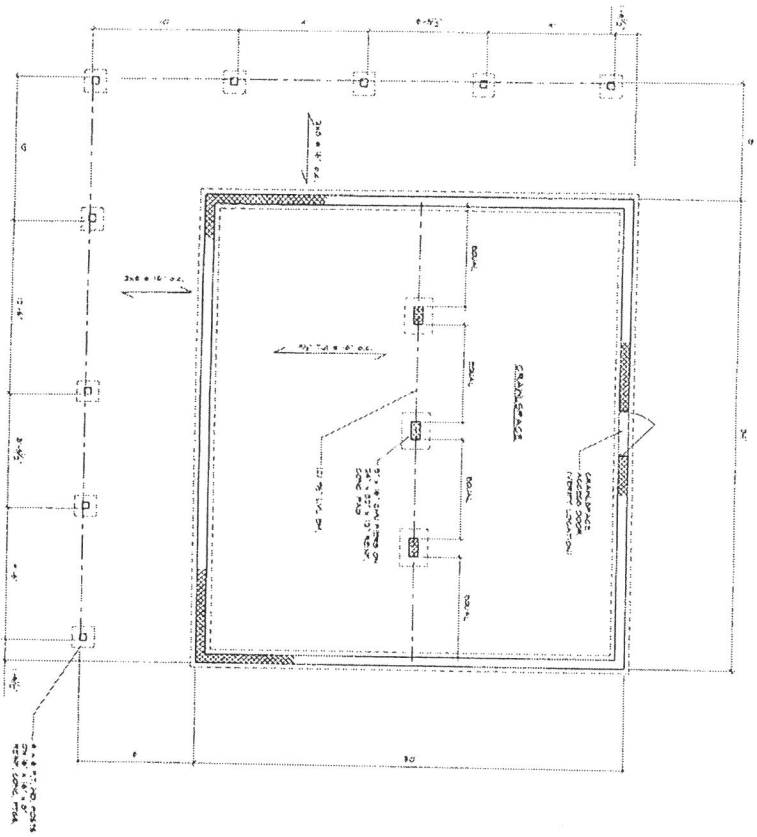
11/26/19
Date

John R. Maus
Print Name

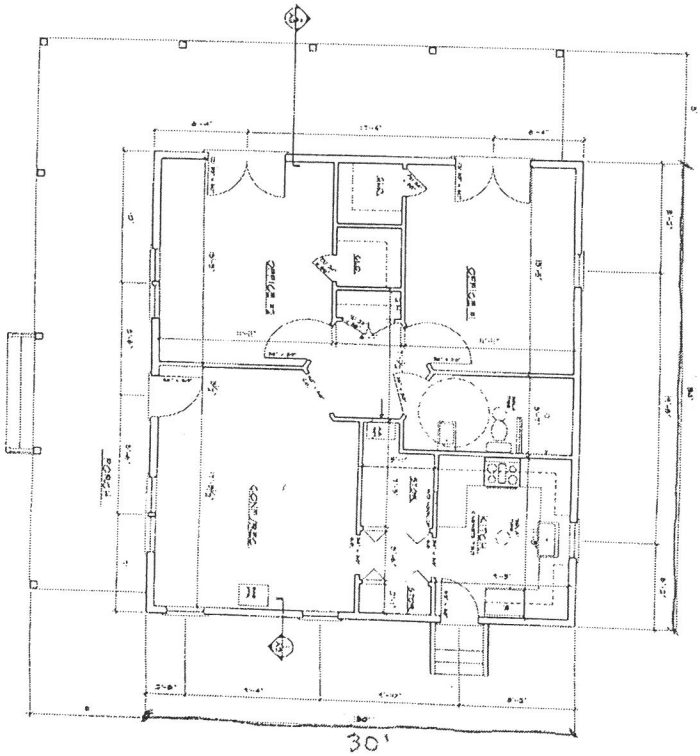
540-894-1006
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote: _____

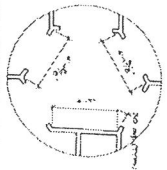
Board of Zoning Appeals Chairman's signature: _____ Date: _____



1 FOUNDATION PLAN



2 FLOOR PLAN



13 TYP. HALLWAY DETAIL

Gross square footage 34' x 30'
or 1020 SF

34'

30'

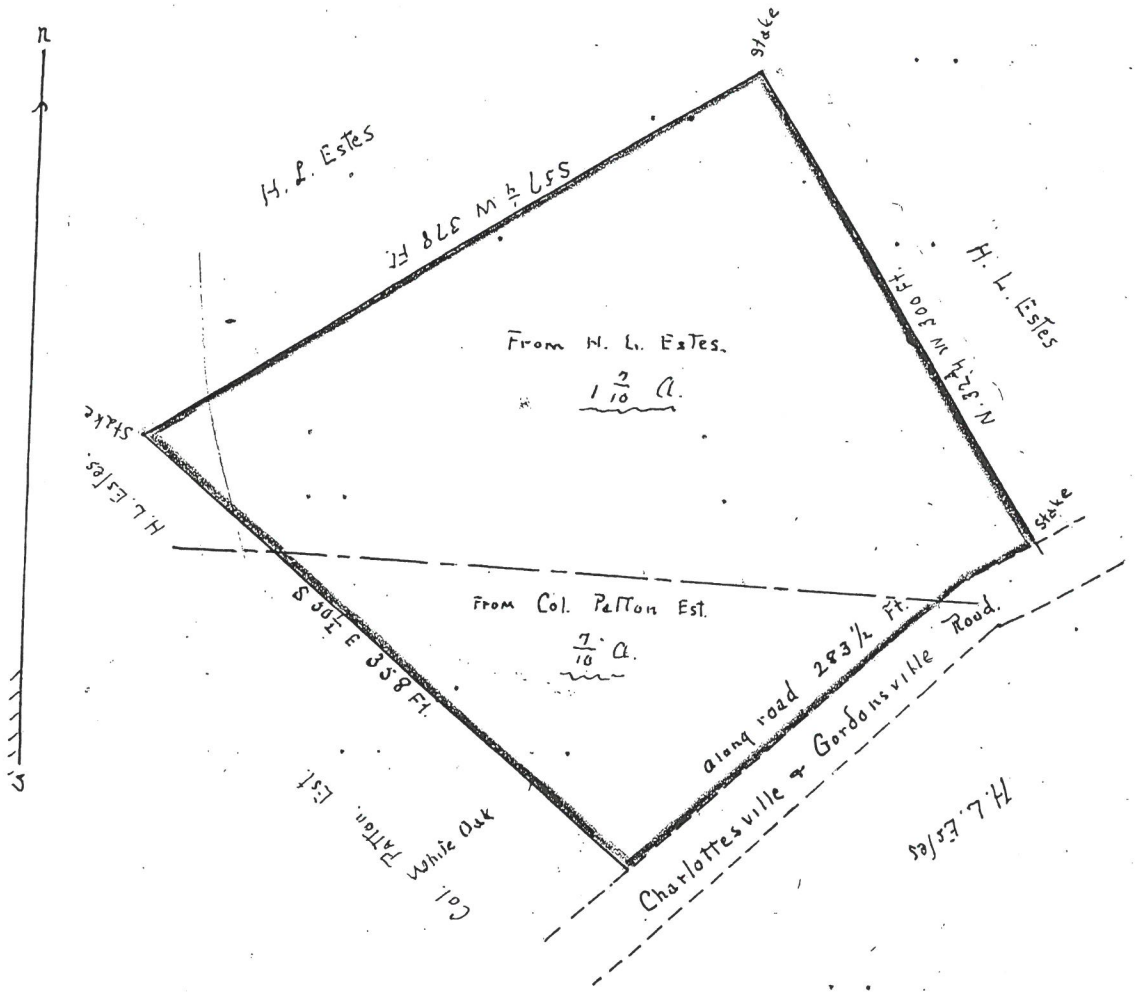
A1

ISSUED 10.2015

Plans

BUFTON & MAUS LAW OFFICE

Alexandria County, Virginia

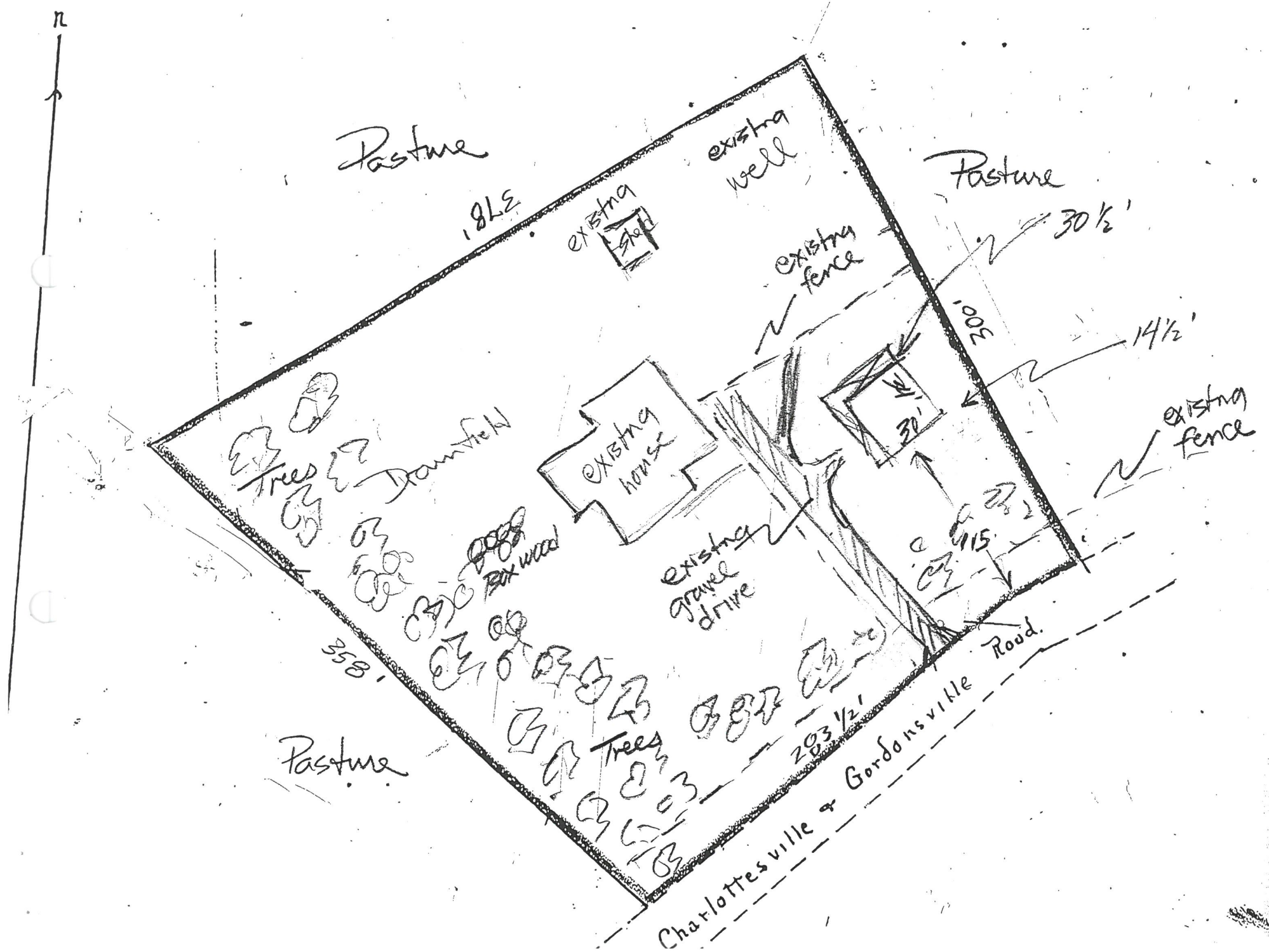


Scale 100 Ft. = 1 inch

In the Clerk's office of Albemarle Circuit Court Sept. 22, 1917.

This deed was presented to me in said office and with certificate annexed and plat attached admitted to record.

Teste: H. L. Maupin Clerk.


N
Pasture
existing well
existing shed
Pasture
378'
existing fence
300'
30½'
14½'
existing fence
existing house
existing gravel drive
Trees
Dawnfield
Boxwood
358'
Pasture
Trees
203½'
115'
Charlottesville & Gordonsville Road.

WRITTEN DESCRIPTION OF REQUEST FOR VARIANCE

The owners request a variance from any and all of the provisions of the Albemarle County Code that would prevent them from using the law office constructed on their property for a Major Home Occupation.

As far as the owners know, the applicable provisions of the Code are (1) Albemarle County Code §18-10.4, which provides that the side setback for primary structures in Rural Areas is 25 feet, and (2) Albemarle County Code §18-5.2A, which provides, in relevant part, that "[A]ny accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation."

There may be additional provisions of the Albemarle County Code on which the County Attorney's Office may rely on in order to oppose the owners' right to use their law office for the purpose for which it was always intended, namely to conduct a law practice that involved, among other things, meeting with clients and other professionals in their office.

At its nearest point to the side fence (which is presumed to be the property line), the owners' law office is 14½ feet from the property line. At its farthest point, the law office (which parallels the house rather than the property line) is 30½ feet from the side fence line.

Evidence in Support of Request for Variance

Under Sec. 34.4(i) of the County's Zoning Ordinance, the applicable criteria for the Board of Zoning Appeals to grant a variance are:

1. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property,
2. The property interests for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance,
3. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area,
4. The condition or situation is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance,

5. Granting the variance does not result in a use not otherwise permitted on the property, and
6. The relief or remedy sought is not available through a special use permit or special exception authorized by the Code.

The owners adopt all of the evidence that they previously submitted to the Board of Zoning Appeals on October 1, 2019 in connection with their appeal of the adverse decision of the Zoning Administrator denying them a zoning clearance for a Major Home Occupation. Furthermore, the owners state that:

1. It is self-evident that the owners' inability to use a 1020 square foot office building, the floor plans for which included a conference room and two offices as a place at which to meet clients and other professionals in connection with their practice of law, would unreasonably restrict the owners' utilization of their property,
2. As previously proven to the Board, the property interest for which the variance is being requested WAS acquired by the owners in good faith reliance on a building permit issued by Albemarle County. Any hardship was not created by the owners,
3. Granting the variance will not be a substantial detriment to the adjacent property or nearby properties. When the owners initially appealed to the Board of Zoning Appeals, notices were sent to all adjoining landowners and none voiced any objection to using the subject property for a major home occupation. The property on the other side of the fence to which the County alleges that the owners' building is too close is a cow pasture,
4. The condition or situation is the result of miscommunication with the County's Department of Community Development that the owners hope is not so recurring in nature that a general regulation should be adopted by amending the zoning ordinance,
5. Granting the variance does not result in a use not otherwise permitted on the property. The County has conceded that, if the owners' law office were no closer to the property line than 25 feet, the owners would be entitled to pursue a Major Home Occupation, and
6. The remedy or relief sought is not available through a special use permit or special exception.

County of Albemarle

BUILDING PERMIT - Page 1

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit #: B2017-02431-NNR ✓ EW

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or

Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

BUILDING WORK INFORMATION

Work Class	Frame Type	Water Supply Type	Sewage Disposal Type	Foundation Type
New	Wood	Cartesian Well	Private	Other

Work Valuation: $ 48,000.00 | Jurisdictional Area: No Service | Other Foot / Found. Desc.:

Work Description: NEW STRUCTURE FOR HOME OFFICE

Directions: 7380 GORDONSVILLE RD

Attachment B: Building Permit B2017-02431-NNR

Legal Description: ACREAGE

Use Group: | Construction Type:

Square Footages:

# of Stories	1	Porches	504	Unfinished Basement	
1st Floor	792	Decks		Other Unfinished	
2nd Floor		Garage		Total Unfinished Sq. Footage	
3rd Floor		Swimming Pool			
Finished Basement					
Other Habitable					
Total Habitable Sq. Footage				Total Building Sq. Footage	

Set Backs:

Front: 75 | Back: 6 | Left Side: 6 | Right Side: 6

Zoning Pre-Construction? | Land Use? | Fire Alarms Required? | Bldg Pre-Construction? | Fire Sprinkler NAPA Code/Year

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile\Prefab. Homes		Mobile Offices\Prefab. Units	
Carports		Bedrooms		Baths	1.0	Paint Spray Booths	
Garages				Kitchens		Swimming Pools\Hot Tubs\Spas (Res. Only)	
Other				Elevators\Escalators\Lifts			

APPLICATION CONTACT INFORMATION

Contact Type	Name	Address	City / State	Zip Cod	Work Phone	Cell
Owner/Applicant	bufton, evelyn & john r maus	P O BOX E	gordonsville va	22942	( ) -	
General Contractor	same/owner/agent				( ) -	

County of Albemarle

BUILDING PERMIT - Page 2

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

SUB-CONTRACTOR INFORMATION

Contractor Number	StateLicenseNumber	License Class

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for **BUFTON, EVELYN & JOHN R MAUS**, the Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address

P O BOX E **GORDONSVILLE VA** **22942**

within 10 days of today's date as required by Virginia Code § 15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.

Signature of Owner, Contractor or Authorized Agent — Date

Judy H. Mastei — 12/7/17

Signature of Building official or Authorized Representative — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building

Please initial here if you AGREE to receive and/or use electronic records and electronic signatures for Building Permit transactions.

Initials of Owner, Contractor or Authorized Agent

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

County of Albemarle

Community Development Department

Building Permit

Issued

BUILDING PERMIT #: **B2017-02431-NNR**

CONTRACTOR: **SAME/OWNER/AGENT**

MECHANICS LIEN AGENT: **NONE DESIGNATED**

SET BACKS:

FRONT	BACK	LEFT SIDE	RIGHT SIDE
75	6	6	6

CONTACT #: (434) 296-5832

MUST BE PRINTED ON YELLOW CARDSTOCK AND POSTED VISIBLE FROM THE PUBLIC WAY
FOR ALL BUILDING PERMITS ISSUED AFTER JULY 1, 2017

FOR OFFICE USE ONLY HO # A019-00033
Fee Amount $ 27.00 Date Paid 6/4/19 By who? J. Maus Receipt # 1152 Ck# 1152 By: J. Frazier

Application for Major Home Occupation Clearance
(Only for parcels in the Rural Areas Zoning District)

Major Home Occupation Clearance = $27.00 + applicable fees
This application may require additional review by the Fire Marshal. Fees in addition to those shown on this application may be required by the Fire Prevention Code Fee Schedule. A copy of the schedule is available from the Fire Marshal.

Home Occupation, Major: An occupation, not expressly prohibited by section 5.2A, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit and up to two (2) additional persons not residing within the dwelling unit, with or without the use of accessory structures; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit or to any accessory structure to engage in the occupation.

Applicant MUST HAVE the following information to apply:

1) Tax Map and Parcel Number (or Address) and a description of the Home Occupation.
2) A Floor Plan Sketch on the next page with the following:
   a) The total square footage of the dwelling;
   b) The square footage of area within the home being used for the occupation (note this cannot be more than 25% of the gross square footage of the dwelling).
3) If applicable, a survey, plat, or aerial map showing accessory structures and parking associated with the home occupation. The GIS Web enables easy viewing and printing of aerial maps.

Name of Business: Button + Maus, PLC
Type of Business: attorneys **Tax map and parcel:** 05000-00-00-04900

Contact Person (Who should we call/write concerning this project?): John R. MAUS
Address 7380 Gordonsville Rd. City Gordonsville State VA Zip 22942
Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com
Owner of Record Evelyn Button + John Maus
Address Same as above City State Zip
Daytime Phone ( ) Fax # ( ) E-mail

DESCRIPTION OF USE (If necessary, attach an additional sheet. Include information about the number of vehicles and number of employees associated with the use, hours of operation, use of accessory structures, etc.):

law office - 2-3 vehicles
- no employees

Each major home occupation authorized in the Rural Areas zoning district is subject to the following:

PLEASE CHECK EACH BOX SO THAT IT IS CLEAR THAT YOU HAVE READ AND UNDERSTAND THE REQUIREMENTS FOR THIS CLEARANCE

☑ **LOCATION & AREA**
This home occupation shall be conducted within the dwelling unit or accessory structures, or both, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative area used for the home occupation, including the gross floor area within the dwelling unit or any accessory structure and the area used for outdoor storage as provided in section 5.2A(g), shall not exceed one thousand five hundred (1500) square feet. Plants that are planted in the ground that are to be used for a major home occupation do not count toward the one thousand five hundred (1500) square feet limitation. **[Section 5.2A (b) (1)]**

☑ **EXTERIOR APPEARANCE**
There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of the home occupation, except that one home occupation sign may be erected as authorized by section 4.15. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a residential area and shall be specifically compatible in design and scale with other residential development in the area in which it is located. Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation. **[Section 5.2A (c) (1)]**

☑ **VISITORS & SALES**
Customers, clients and students are permitted to visit the property where the home occupation is conducted. Only goods that are hand-crafted on-site and goods that are directly related to the home occupation, including but not limited to tools for pottery making and frames for artwork are permitted to be for sale to customers who comes to the site.
[Section 5.2A (d) (1)]

☑ **TRAFFIC** How many trips per week? Avg. amount of customers?
The traffic generated by the home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site. **[Section 5.2A (e)]**

☑ **PARKING** Location of parking - how many spaces?
All vehicles used in the home occupation and all vehicles of employees, customers, clients or students related to the home occupation shall be parked on-site. **[Section 5.2A (f)]**

☑ **OUTDOOR STORAGE**
The storage of goods, products, equipment other than vehicles used in the home occupation, or any materials associated with the home occupation, other than natural landscaping materials such as mulch and plants, outside of an enclosed structure is prohibited. **[Section 5.2A (g)]**

☑ **HOURS OF OPERATION** What're the typical hours?
The home occupation may operate up to six (6) days per week and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients or students visiting the site.
[Section 5.2A (h)]

☑ **NUMBER OF VEHICLES**
The number of vehicles that may be used in the home occupation that are parked or stored on-site shall not exceed two (2) motor vehicles and two (2) trailers. **[Section 5.2A (i)]**

☑ **NUMBER OF HOME OCCUPATIONS**
More than one home occupation is permitted on a parcel, provided that the area occupied and the traffic generated by the home occupations shall be considered cumulatively and all requirements of this section shall apply. **[Section 5.2A (j)]**

☑ **PERFORMANCE STANDARDS**

The home occupation shall comply with the performance standards in section 4.14. **[Section 5.2A (k)]**

Does the use involve procedures, machinery or chemicals that may cause the following?

	YES	NO
NOISE		
VIBRATION		
GLARE		
HEAT		
AIR POLLUTION		
WATER POLLUTION		
RADIOACTIVITY		
ELECTRICAL DISTURBANCE		
NON-DOMESTIC WASTE DISCHARGED TO A SEPTIC FIELD OR SEWER		

If YES, then applicable standards must be addressed with a Certified Engineer's Report (available from staff).

☑ **PROHIBITED USES**

(1) any use requiring a special use permit under section 10.2.2
(2) animal rescue centers
(3) automobile graveyards
(4) restaurants

(5) storage yards
(6) gun sales, unless the guns are made on-site by one or more family members residing within the dwelling unit
(7) on-site pet grooming
(8) body shops
(9) equipment, trailers, vehicles or machinery rentals
[Section 5.2A (l)]

(10) shooting ranges

(11) commercial stables
(12) rummage or garage sales other than those determined by the zoning administrator to be occasional
(13) veterinary clinics or hospitals
(14) pyrotechnic (fireworks or bomb) device manufacturing or sale
(15) Any other use not expressly listed that is determined by the zoning administrator to be contrary to the purpose and intent of section 5.2A.

☑ **NOTIFICATIONS & INSPECTIONS** I will be sending this out shortly

Written notice that an application for a zoning clearance for a major home occupation has been submitted will be sent to the owner of each abutting parcel under different ownership than the parcel on which the proposed home occupation would be located. The notice will identify the proposed home occupation, its size, its location, and whether there is a request for a waiver or modification. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed at least five (5) days prior to the action on the zoning clearance as provided in section 32.4.2.5. In addition, a public notice sign will posted on the property for the duration of the review. **[Section 5.2A (n)]**

☑ **SIGNAGE** Any signage?

One sign that does not exceed four (4) square feet in sign area and only states the name of the person occupying the dwelling and identifies the product or service offered by the home occupation is permitted. No additional permit is required for this sign, however, it must not exceed 6 ft. in height and must be setback at least 5 ft. from the public road right-of-way. **[Section 4.15.2 (25) and 4.15.8]**

☑ **ADDITIONAL IMPROVEMENTS AND REVIEWS FROM OTHER AGENCIES**

A zoning clearance shall not be issued if, after review of any site, additional improvements are necessary to protect public health or safety. **[Section 31.5 (c)]**

Other state and local resources, including but not limited to the Health Department, Virginia Department of Transportation, Building Official, and County Engineer are commonly asked to comment on Home Occupation applications.

WAIVERS OR MODIFICATIONS MAY BE SOUGHT ONLY FOR THE FOLLOWING:

AREA

The area requirements in section 5.2A(b) may be waived or modified, provided that the waiver or modification shall not authorize the home occupation to occupy more than forty-nine (49) percent of the gross floor area of the dwelling. In granting a waiver or modification of the area requirement, the commission shall make the following findings in addition to those findings in section 5.1: (1) the nature of the home occupation requires storage or additional space within the dwelling unit to conduct the home occupation; (2) the primary use of the dwelling unit as a residence is maintained; and (3) the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
[Section 5.2A (m) (1)]

TRAFFIC

The traffic limitation in section 5.2A (e) may be waived or modified. In granting a waiver or modification of the traffic limitation, the commission shall find, in addition to those findings in section 5.1, that the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
[Section 5.2A (m) (2)]

REVIEW PROCESS AND ADDITIONAL FEES

WITHOUT WAIVER REQUEST ($27 + notice fees)	**WITH A SPECIAL EXCEPTION ($27 + $457 + notice fees)**
1. Submit Home Occupation application ($27). 2. Staff will review for completion and mail abutting owner notification (Fee varies based on number of letters). 3. Staff will visit property to post public notice sign, review parking areas, proposed location of sign, and storage areas (if applicable). 4. Staff will approve application if requirements have been met and pick-up public notice sign.	1. Submit Home Occupation application and Waiver application ($25 + $457). 2. Staff will review for completion and mail abutting owner notification (Fee varies based on number of letters). 3. Staff will visit property to post public notice sign, review parking areas, proposed location of sign, and storage areas (if applicable). 4. Staff will coordinate date of next available Planning Commission meeting to process special exception 5. Staff will approve application if requirements have been met and pick-up public notice sign.

Owner/Applicant Must Read and Sign

I hereby apply for approval to conduct the Home Occupation identified above, and certify that this address is my legal residence. I also certify that I have read the restrictions on Home Occupations, that I understand them, and that I will abide by them. This certificate, in conjunction with a business license, represents zoning approval to conduct the Major Home Occupation identified above.

Signature of Applicant _____ **Date** 6/4/15

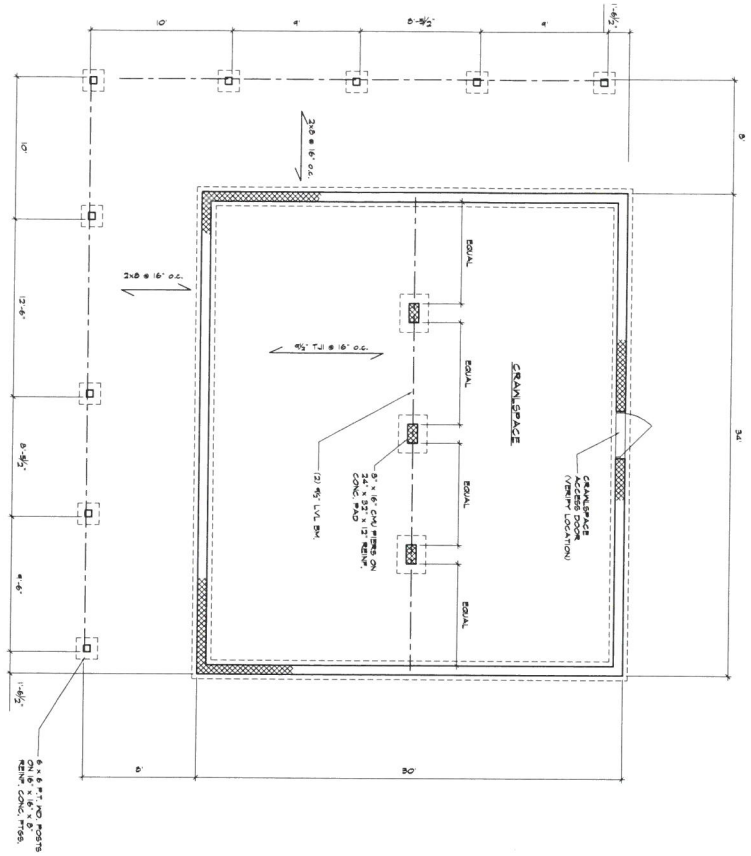
Other Official _____ **Date** _____

Building Official _____ **Date** _____

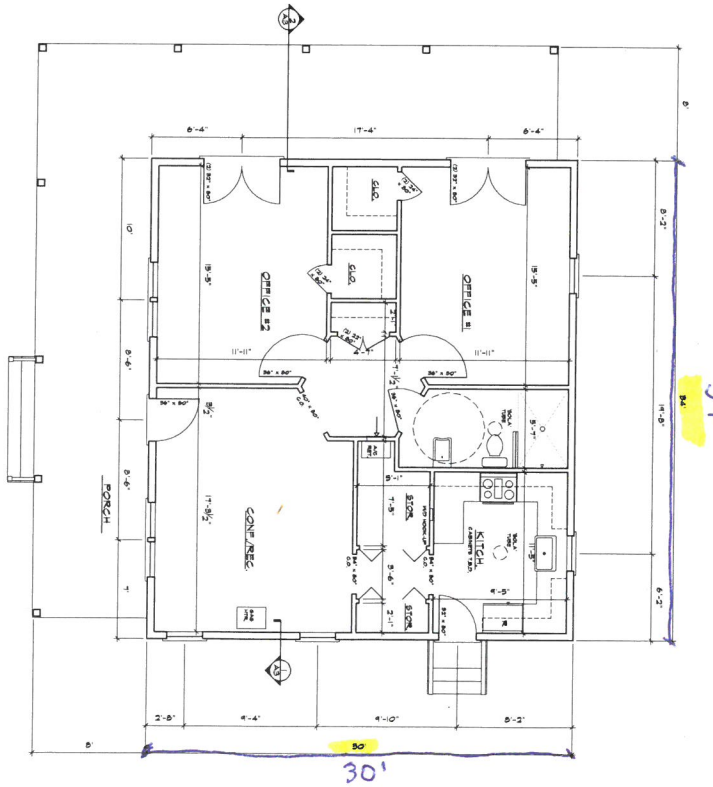
Zoning Official _____ **Date** _____

ENGINEER'S REPORT ATTACHED: YES _____ NO _____

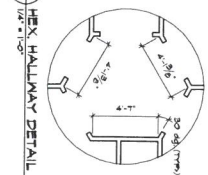
CONDITIONS: _____



1/A1 FOUNDATION PLAN
1/4" = 1'-0"



2/A1 FLOOR PLAN
1/4" = 1'-0"



3/A1 HEX. HALLWAY DETAIL
1/4" = 1'-0"

Gross square footage 34' x 30'
or 1020 SF

A1	JULY 31, 2018	Plans	BUFTON & MAUS LAW OFFICE Albemarle County, Virginia

Kevin McCollum

From: Kevin McCollum
Sent: Monday, June 17, 2019 8:25 AM
To: Jack Maus
Cc: Rebecca Ragsdale; Keith Bradshaw
Subject: Major Home Occupation Clearance

Jack,

Thanks for allowing us to come out and visit the property again on Thursday. Since then, Keith and I have met with the Zoning Administrator, along with the County Attorney's office, and have concluded that the Major Home Occupation Clearance cannot be approved until we can confirm that the structure meets the applicable setbacks, which are:

Front – 75'
Side – 25'
Rear – 35'

We can confirm that these setbacks are met by either seeing a physical survey that shows the location and distance of the structure to the property line or visibly seeing the property line in the field by clearly marked stakes. If the structure does not meet the required 25' side setback a boundary line adjustment is a possible solution to the bring the structure into compliance with the required Major Home Occupation side setback.

The Building Permit (B2017-02431-NNR) was correctly approved given the information we were given at the time. The building was permitted as an accessory structure and no Major Home Occupation clearance was submitted alongside the building permit. Therefore, the setbacks were front – 75, side – 6, and rear – 6.

Kevin McCollum
Planner, Zoning
Albemarle County
Community Development
kmccollum@albemarle.org
434-296-5832 x 3141

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 **Fax (434) 972-4126**

July 30, 2019

John R. Maus
7380 Gordonsville Rd
Gordonsville, VA 22942

RE: HO2019-00233 Major Home Occupation Clearance - Bufton and Maus, PLC
Parcel ID 05000-00-00-04900 (2.40 Acres) (the "Property"), 7380 Gordonsville Rd, Gordonsville, VA 22942

Mr. Maus:

In response to your request for a Major Home Occupation Clearance for the above referenced Property in the Rural Areas, please be advised of the following:

Based on the information provided with the application and the site inspection conducted on June 13, 2019 the accessory structure on the Property, proposed with building permit B2017-02431NNR, does not meet the applicable setback and yard requirements for primary structures required by Section 5.2A(c). Thus, the noted accessory structure cannot be used for the proposed Major Home Occupation until it is determined to comply with the primary structure setbacks for the Rural Areas zoning district. Therefore, in accordance with *Albemarle County Code* § 18-5.2A(c) and *Albemarle County Code* § 18-31.5(b) the above referenced Major Home Occupation Clearance cannot be approved at this time.

Additionally, if the proposed Major Home Occupation operates on the Property without an approved Zoning Clearance it will be considered in violation and subject to *Albemarle County Code* § 18-36.

If you are aggrieved by this determination, you have a right to appeal it within thirty (30) days of this notice, in accordance with *Virginia Code* § 15.2-2311. If you do not file a timely appeal, this determination shall be final and unappealable.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with *Albemarle County Code* § 18-34.3, along with a fee of $258. Additionally, a separate fee is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at www.albemarle.org/cdapps. This form applies to the appeal of a decision of the zoning administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance. They may be reviewed online at www.albemarle.org/countycodebza.

(Please note that our online documents are in Adobe Acrobat PDF format and must be viewed with the Adobe Acrobat Reader or an equivalent. A link to download the free plug-in is available at the bottom of www.albemarle.org/cdapps.)

Please contact me if you have questions or require additional information.

Sincerely,



Kevin McCollum
Planner
Authorized Designee to the Zoning Administrator

Attachments:
Links shown can be copied and pasted into web browser

Albemarle County Code § 18-5 (See Section 5.2A for Major Home Occupation requirements)
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning05_Supplement_Regulations.pdf

Albemarle County Code § 18-31 (See Section 31.5 for Zoning Clearance requirements)
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning31_Admin_Enforcement.pdf

Albemarle County Code § 18-10 - Area and Bulk Regulations Sec. 10.4 (“applicable setback and yard requirements for primary structures” ref. 5.2A(c))
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning10_Rural_Areas.pdf

Albemarle County Code § 18-36
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning36_Violations.pdf

Albemarle County

Planning Application

Cor
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 Owner(s): BUFTON, EVELYN & JOHN R MAUS

Application #: AP201900004

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: Rivanna

Land Use Primary: Residential -- Single-family (incl. modular homes

Current AFD: Not in A/F District

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

Application Type: Appeal of Zoning Administrator's Determination

Entered By: Buck Smith 8/12/2019

Project: EVELYN BUFTON AND JOHN R MAUS

Received Date: 08/12/19

Received Date Final:

Submittal Date: 08/12/19

Submittal Date Final:

Total Fees: 258

Total Paid: 258

Closing File Date:

Revision Number:

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	BUFTON, EVELYN & JOHN R MAUS	P O BOX E	GORDONSVILLEV	22942		
Primary Contact	JACK MAUS	P.O. BOX E	GORDONSVILLE	22942	5408941006	
Applicant	EVELYN BUFTON AND JOHN R MAUS					

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 201900004 SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $ 258 - Date Paid 8/12/19 By who? Du Four + Maus PLC Receipt # _____ Ck# _____ By: _____

Application for Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $258**

FEES to be paid after staff review for public notice:

Appeals of the Zoning Administrator require a public hearing by the Board of Zoning Appeals. Virginia State Code requires that notice for public hearings be made by publishing a legal advertisement in the newspaper and by mailing letters to adjacent property owners.

The total fee for public notice will be provided to the applicant after the final cost is determined and must be paid before the application is heard by a public body. Staff estimates the total cost of legal advertisement and adjacent owner notification to be between $350 and $450. This estimate reflects the average cost of public notice fees, but the cost of certain applications may be higher.

➢ Preparing and mailing or delivering up to fifty (50) notices	$215
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.08 for each additional notice + actual cost of first-class postage
➢ Legal advertisement (published twice in the newspaper for each public hearing)	Actual cost (averages between $150 and $250)

Contact Person (Who should we call/write concerning this project?): Jack Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

Owner of Record Evelyn Bufton and John R. "Jack" Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (804) 432-0920 Fax # (540) 406-5911 E-mail ebuftonlaw@gmail.com

Applicant (Who is the Contact person representing?): Evelyn Bufton and John R. Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

County of Albemarle Department of Community Development
401 McIntire Road Charlottesville, VA 22902 Voice: (434) 296-5832 Fax: (434) 972-4126

Project Name: Bufton & Maus Law Office

Tax map and parcel: 050000-00-00-04900 **Zoning:** rural

Physical Street Address (if assigned):
7380 Gordonsville Road, Gordonsville, Virginia 22942

Location of property (landmarks, intersections, or other):
Rt. 231 approximately 2 miles north of the intersection with Lindsay Road - across from Fielder's Choice Farm

The following information shall be submitted with the application and is to be provided by the applicant:

1) Completed application including subject of appeal.
2) Justification for applicant's position, including error in Zoning Administrators determination. You may use the space below to provide this information or submit an attached sheet.
3) If applicable, a copy of the latest deed for the property involved, and the approved and recorded plat.
4) If applicable, the appropriate drawings showing all existing and proposed improvements on the property and any special conditions for the situation that may justify the appeal.
5) Reference to the relevant Zoning Ordinance section or other applicable regulations or case precedence to justify the appeal.
6) Appropriate fee made payable to the County of Albemarle.

Explanation of error in determination and justification of applicant's position:

As further explained on the attachment, the jusitification for applicants' position is that (1) they fully disclosed to the Department of Community Development their intended use for the building, (2) the Department issued a Building Permit approving the placement of the building, (3) the applicants relied on the Building Permit in locating the building, and(4) the applicants' reliance on the Building Permit and their expenditure of substantial funds to construct the building is to their detriment if they are unable to use the building for its intended purpose.

Owner/Applicant Must Read and Sign

I hereby certify that the information provided on this application and accompanying information is accurate, true and correct to the best of my knowledge and belief.

Signature of Owner or Contract Purchaser, Agent

Date: 8/12/19

John R. Maus

Print Name

540-894-1086

Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

Board of Zoning Appeals Chairman's signature: _____ Date: _____

ATTACHMENT TO APPLICATION FOR APPEAL OF ZONING ADMINISTRATOR'S DETERMINATION

Background

When the applicants applied for a building permit, they submitted a copy of the architectural plans for the structure, which called for a building of approximately 1000 square feet with 2 offices, a conference room, a bathroom and a small kitchenette. The applicants' clear intention was to use the building as a law office and to meet there with clients and other professionals incidental to their law practice. The Department of Community Development (hereinafter, "the Department") issued a building permit that required the building to be set back only 6 feet from the side property line. A copy of the building permit is attached as Exhibit 1.

The foundation for the building was staked out so that it is parallel to the residence rather than the side property line. So, at its nearest point, the building is set back 14 feet away from the side property line. At its furthest point, the building exceeds the 25 foot side setback requirement.

When the foundation was staked, the applicants asked the Department to send a representative to visit the site to make sure that the stakes were properly placed. When that representative said that the location was correct, the applicants constructed the building in that precise location. The building was constructed in full compliance with the Statewide Building Code as enacted by Albemarle County and has passed the final inspection. The applicants have been told by the Department of Community Development that they are entitled to a Certificate of Occupancy.[1] Indeed, within hours after the final construction inspection was done, the County's Tax Assessor visited the property to ascertain its effect on an increased property tax assessment. Now, the Zoning Administrator has determined that he cannot approve a Major Home Occupation Clearance because the entire building is not set back 25 feet from the side property line.

---

[1] The Department has indicated to the applicants that, although the building has been completed in full compliance with the building code, the Department has, at the time of filing of this Application, withheld the Certificate of Occupancy because it did not want to influence the zoning process. Those are two entirely different issues and the Department's refusal to issue a Certificate of Occupancy under these circumstances is arbitrary and capricious.

Case Precedent to Support the Appeal

The applicants have been unable to find any legal precedent that precisely deals with this situation. However, there are other legal precedents that are instructive about the appropriate resolution of this appeal.

The law in Virginia is clear that, if one person relies on the representations of another to their detriment, the person making the representation is prevented (or estopped) from later taking a different position. Allowing one party to change positions under certain circumstances would be unfair. That's why the doctrine is called "equitable estoppel."

In *Stewart v. Lady*, 251 Va. 106, 465 S.E.2d 782 (1996), the Supreme Court of Virginia said:

> To establish equitable estoppel, it is not necessary to show actual fraud but only that the person to be estopped has misled another to his prejudice (internal citation omitted) or that the innocent part acted in reliance upon the conduct or misstatement by the person to be estopped. *Khoury v. Memorial Hospital*, 203 Va. 236, 123 S.E.2d 533 (1962) ....Elements necessary to establish equitable estoppel, absent a showing of fraud and deception, are a representation, reliance, a change of position, and detriment. 251 Va. at 112-113, 465 S.E.2d at 785.

All of those elements necessary to prove equitable estoppel are present in the applicants' case:

- There was a representation (that the side setback was only 6 feet),
- The applicants relied on the representation,
- The applicants changed their position (they spend over $120,000.00 to build the office where it was permitted), and
- The applicants have suffered a detriment (that the County will not allow them to use the building for its intended purpose).

The principle of equitable estoppel applies to zoning issues as well. In *Chapel Creek, Ltd. V. Mathews County*, 12 Va. Cir 350 (1988), a developer had acquired a parcel of land on which he intended to build a 6-unit apartment building. He received approval for that and, when he learned that the County was going to enact an ordinance that prevented expansion

of that project, took additional steps to increase the size of his project before the ordinance became effective. When the Zoning Administrator denied the building permit for the expanded project, the developer sued and lost. However, the Court said this:

> The doctrine of equitable estoppel provides that the right to use or develop land cannot be infringed upon by legislative action when the owner or developer of such land has in good faith relied upon some act or failure to act by a governmental body and made a substantial change in position. (Internal citations omitted) ...[A] property owner may acquire a valid nonconforming use or acquire a vested right to complete construction of a nonconforming building where, in good faith and in reliance upon a validly issued building permit, the property owner has begun substantial construction or has incurred substantial expenses relating directly to the construction. (internal citations omitted) The most obvious missing link in petitioner's case is the threshold government act, the issuance of a building permit. 12 Va. Cir. At 353.

Unlike the developer in *Chapel Creek*, the applicants in this case had a validly issued building permit and constructed the building in accordance therewith. The applicants have finished construction of the building as it was permitted and, as indicated above, have spent in excess of $120,000.00 to do so. As a result, Albemarle County is estopped from denying the applicants a zoning clearance.

Furthermore, the Supreme Court of Virginia, in *Lee v. City of Norfolk*, 281 Va. 423, 706 S.E.2d 330 (2011) applied language from *Jones v. Board of Governors*, 704 F.2d 713 (4th Cir. 1983) in which that Court said:

> [S]ignificant departures from stated procedures of government and even from isolated assurances by governmental officers which have induced reasonable and detrimental reliance may, if sufficiently unfair and prejudicial, constitute procedural due process violations. 281 Va. at 436.

The decision of the Zoning Administrator is so unfair and prejudicial that it violates the applicants' due process rights under both Article I, §11 of the Constitution of Virginia, and under the 5th Amendment to the Constitution of the United States as made applicable to the States through the 14th Amendment.

Finally, it appears that the Zoning Administrator takes the position that the setback requirements in Code §18-10.4 are mandatory. However, the heading at the top of the setback table merely says that "Area and bulk regulations within the RA, rural areas, zoning

district are as follows:" That's not enough to make the setback requirement mandatory. Even if the word "shall" could be inferred from the ordinance, the Supreme Court of Virginia has recently ruled that "shall" is not always mandatory, but that it can also be directory. *Rickman v. Commonwealth*, 294 Va. 531, 808 S.E.2d 395 (2017). In fact, the Court said that:

> Under Virginia law, the use of the term "shall" in a statute is generally construed as directory, rather than mandatory, and, consequently, no specific, exclusive remedy applies unless the states manifests a contrary intent. (internal citations omitted). 294 Va. at 539.

In fact, one of the decisions cited in *Rickman*, was *Tran v. Board of Zoning Appeals*, 260 Va. 654, 536 S.E.2d 913 (2000). In *Tran*, the Board of Zoning Appeals issued a ruling outside of the 90-day period prescribed by Virginia Code §15.2-2312. The Supreme Court of Virginia ruled that the word "shall" in the statute was directory, not mandatory so that a BZA decision outside the 90-day limit was valid.

As indicated above, the County Assessor has determined that the structure adds value to the property. The Department of Community Development recently visited the property and assigned the office building a separate 911 address. The applicants were told that, so long as the building was going to be visited by third parties, it needed a separate 911 address in case of an emergency. The applicants don't understand why the County needs to plan for the presence of third parties if the applicants are not allowed to have them in the building.

In summary, for all of the reasons set forth above, the applicants submit that the decision of the Zoning Administrator to deny them a Major Home Occupation approval was incorrect and should be reversed by the Board of Zoning Appeals.

County of Albemarle

BUILDING PERMIT - Page 1

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900

Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40

Primary Zoning: Rural Areas

Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit #: B2017-02431-NNR ✓ EW

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or

Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

BUILDING WORK INFORMATION

Work Class	Frame Type	Water Supply Type	Sewage Disposal Type	Foundation Type
New	Wood	Cartesian Well	Private	Other

Work Valuation: $ 48,000.00

Jurisdictional Area: No Service

Other Foot / Found. Desc.:

Work Description: NEW STRUCTURE FOR HOME OFFICE

Directions: 7380 GORDONSVILLE RD

Legal Description: ACREAGE

Use Group:

Construction Type:

Square Footages:

# of Stories	1	Porches	504	Unfinished Basement	
1st Floor	792	Decks		Other Unfinished	
2nd Floor		Garage		Total Unfinished Sq. Footage	
3rd Floor		Swimming Pool			
Finished Basement					
Other Habitable					
Total Habitable Sq. Footage				Total Building Sq. Footage	

Set Backs:

Front	75	Back	6	Zoning Pre-Construction?	Land Use?
Left Side	6	Right Side	6	Fire Alarms Required?	Bldg Pre-Construction?
				Fire Sprinkler NAPA Code/Year	

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile\Prefab. Homes		Mobile Offices\Prefab. Units	
Carports		Bedrooms		Baths	1.0	Paint Spray Booths	
Garages				Kitchens		Swimming Pools\Hot Tubs\Spas (Res. Only)	
Other				Elevators\Escalators\Lifts			

APPLICATION CONTACT INFORMATION

Contact Type	Name	Address	City / State	Zip Cod	Work Phone	Cell
Owner/Applicant	bufton, evelyn & john r maus	P O BOX E	gordonsville va	22942	( ) -	
General Contractor	same/owner/agent				( ) -	

County of Albemarle

BUILDING PERMIT - Page 2

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

SUB-CONTRACTOR INFORMATION

Contractor Number	StateLicenseNumber	License Class

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for **BUFTON, EVELYN & JOHN R MAUS**, the Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address

P O BOX E **GORDONSVILLE VA** **22942**

within 10 days of today's date as required by Virginia Code § 15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.

Signature of Owner, Contractor or Authorized Agent — Date

Judy H. Mastei — 12/7/17

Signature of Building official or Authorized Representative — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building

Please initial here if you AGREE to receive and/or use electronic records and electronic signatures for Building Permit transactions.

Initials of Owner, Contractor or Authorized Agent

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

County of Albemarle

Community Development Department

Building Permit

Issued

BUILDING PERMIT #: **B2017-02431-NNR**

CONTRACTOR: **SAME/OWNER/AGENT**

MECHANICS LIEN AGENT: **NONE DESIGNATED**

SET BACKS:

FRONT	BACK	LEFT SIDE	RIGHT SIDE
75	6	6	6

CONTACT #: (434) 296-5832

MUST BE PRINTED ON YELLOW CARDSTOCK AND POSTED VISIBLE FROM THE PUBLIC WAY
FOR ALL BUILDING PERMITS ISSUED AFTER JULY 1, 2017

County of Albemarle
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902

AUG -7 2019



DATE: 08/05/2019
TO: BUFTON, EVELYN & JOHN R MAUS
P O BOX E
GORDONSVILLE VA 22942
CC: Post Office, GORDONSVILLE
FROM: Geographic Data Services (GDS)
www.albemarle.org/gds
434-296-5832

SUBJECT: Physical Address Notification - NEW CONSTRUCTION
TMP: 05000-00-00-04900
PERMIT#: B2017-02431NNR
PHYSICAL ADDRESS: **7382 GORDONSVILLE RD**

As of the date of this letter, the physical address located at the above Tax Map Parcel (TMP) and/or Building Permit# is currently in our addressing system.

To ensure proper location by emergency service providers, timely mail delivery, and the accuracy of other County records, please do the following:

- If applicable, contact your telephone company to ensure this physical address is associated with your landline telephone number;
- Post the address for this structure in accordance with Albemarle County's Road Naming and Property Numbering Ordinance and Manual;*
- To receive mail using this address, contact your post. If this is an address change and you didn't physically move, do not submit a Change of Address form with the USPS. Any questions about mail delivery, zip code information, and determining where a mailbox should be installed, will be handled by the post office;
- If applicable, ensure that your records are up to date with Voter Registration (434-972-4173), School Transportation (434-973-5716), and the County's Finance Department (434-296-5851);
- Alert other County and non-County entities (e.g. credit card, utilities, etc.) as necessary.

Note: any change in your physical address does not require the deed to your property to be re-recorded at the courthouse.

*The County's Road Naming and Property Numbering Ordinance requires that this physical address number be posted so it is easily visible from the named street or road. **The number must be posted at the driveway entrance.** If the mailbox is not located directly on the above named street or road, the address number *and* road name must appear on the mailbox. The numerals displayed should be at least three inches in height on a contrasting background and any previously displayed numbers, which could be confused with or mistaken for the address assigned, shall be removed from the mailbox and property.

If you should have any questions regarding this physical address, please do not hesitate to contact our office.

Rehearing of AP201900004 Bufton & Maus, PLC
Appeal Number: AP201900004 Bufton & Maus TMP 50 - 49
Property Owner/Appellant: Evelyn Bufton and John R. Maus
Staff: Bart Svoboda/Kevin McCollum
{This item was deferred from the October 29, 2019 meeting.}

GREG KAMPTNER
COUNTY ATTORNEY

ANDREW H. HERRICK
DEPUTY COUNTY ATTORNEY

COUNTY OF ALBEMARLE
Office of County Attorney
401 McIntire Road, Suite 325
Charlottesville, Virginia 22902-4596
PHONE (434) 972-4067
FAX (434) 972-4068

RICHARD A. DELORIA
AMANDA E. B. FARLEY
SUSAN BAUMGARTNER
ANTHONY R. BESSETTE
SENIOR ASSISTANT
COUNTY ATTORNEYS

Marsha Alley, Recording Secretary
Albemarle County Board of Zoning Appeals
401 McIntire Road
Charlottesville, Virginia 22902

Re: Motion for Rehearing of Bufton & Maus appeal (AP201900004)

Dear Marsha:

Please find enclosed a Motion for Rehearing of the Board of Zoning Appeals' October 1 decision in the Bufton & Maus appeal (AP201900004). This Motion is being filed pursuant to Rule 5(J) of the BZA's Rules or Procedure, on behalf of the Albemarle County Board of Supervisors. Though this decision has not yet been appealed to the Circuit Court, we strongly suggest that the Chair call a special meeting of the BZA, pursuant to Rule 2(C), before October 31.

Though *Virginia Code* § 15.2-2308.1 precludes BZA members from certain direct communications with County staff, I'd welcome any questions that you or counsel may have. Thank you for accepting the Board of Supervisors' filing of this Motion.

Sincerely,

Andrew H. Herrick
Deputy County Attorney

Enclosure

Cc: James M. Bowling, IV, Esq.
John R. Maus and Evelyn Bufton

RECEIVED

OCT 0 8 2019 Stephanie

COMMUNITY DEVELOPMENT Barton

VIRGINIA: BEFORE THE ALBEMARLE COUNTY BOARD OF ZONING APPEALS

IN RE: BUFTON & MAUS LAW OFFICE APPEAL AP2019-00004

MOTION FOR REHEARING

Pursuant to Rule 5(J) of Rules of Procedure of the Albemarle County Board of Zoning Appeals (the "BZA"), the Albemarle County Board of Supervisors (the "Board"), by counsel, respectfully moves for a rehearing of the BZA's October 1, 2019 decision in the above-captioned appeal. In support of its Motion, the Board respectfully states that the BZA (a) lacked any factual evidence that the proposed home occupation use in fact complied with the applicable (25 foot) setbacks, and (b) lacked any legal authority to waive those setbacks. In further support of its Motion, the Board further states as follows:

1. The Board incorporates by reference the materials previously submitted on its behalf, including (but not limited to):
   a. letter of Kevin McCollum, designee of the Zoning Administrator, to John R. Maus, dated July 30, 2019 (the subject determination of the present appeal);
   b. staff report of Kevin McCollum and Bart Svoboda, dated October 1, 2019; and
   c. memorandum of the undersigned counsel, dated September 19, 2019.

Lack of Evidence/Burden of Proof

2. Under *Virginia Code* § 15.2-2309(1): "The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence." [emphasis added]

3. Because the appellants failed to produce any evidence that the proposed home occupation use in fact complied with the applicable (25 foot) setbacks, the BZA should have affirmed the administrative determination, rather than insisting that the Zoning Administrator bear the burden of proving the appellants' non-compliance.

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OCT 0 8 2019

COMMUNITY
DEVELOPMENT

Stephanie
Banton

Lack of "Written Order, Requirement, Decision or Determination" Subject to Change

4. Though the BZA relied heavily on the "remedial nature" of *Virginia Code* § 15.2-2311(C), the BZA failed to identify any specific "written order, requirement, decision or determination made by the zoning administrator or other administrative officer" that was being changed or restored.

5. Because no zoning administrator or other administrative officer was seeking to change, modify or reverse any such order, requirement, decision or determination, there was no such order, requirement, decision or determination for the BZA to restore.

6. Because all such orders, requirements, decisions and determinations remain unchanged, *Virginia Code* § 15.2-2311(C) simply does not apply to the subject appeal.

Change in Relevant and Material Conditions or Situations

7. The BZA's October 1 decision on this appeal has not already been appealed to the Circuit Court.

8. However, following the BZA's October 1 decision, the Board has indicated its strong concern and intent to further appeal the BZA's October 1 decision by October 31 unless the BZA first takes corrective action.

9. This change in one or more relevant and material conditions or situations bears on the BZA's original decision and justifies a prompt rehearing.

WHEREFORE, the Albemarle County Board of Supervisors respectfully requests that the BZA promptly rehear its October 1, 2019 decision in the above-captioned appeal.

Respectfully Submitted,

ALBEMARLE COUNTY
BOARD OF SUPERVISORS

By Counsel

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OCT 0 8 2019
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Stephanie Bantow

Greg Kamptner, VSB # 33788
Andrew H. Herrick, VSB #37236
ALBEMARLE COUNTY ATTORNEY'S OFFICE
401 McIntire Road
Charlottesville, Virginia 22902
(434) 972-4067
FAX (434) 972-4068

October 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2019, a true copy of the foregoing Motion for Rehearing was sent by first-class mail, postage prepaid, to:

James M. Bowling, IV, Esq.
St. John, Bowling, Lawrence & Quagliana, LLP
416 Park Street
Charlottesville, Virginia 22902

John R. Maus and Evelyn Bufton
Post Office Box E
Gordonsville, Virginia 22942

Andrew H. Herrick

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OCT 0 8 2019
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DEVELOPMENT

Stephanie Banton

BUFTON & MAUS, PLC

Attorneys at Law

Post Office Box E
7380 Gordonsville Road
Gordonsville, Virginia 22942

Evelyn Bufton
John R. Maus

phone: (540) 832-6172
fax: (540) 406-5911

October 11, 2019

BY EMAIL TO MALLEY3@ALBEMARLE.ORG

Ms. Marsha Alley, Recording Secretary
Albemarle County Board of Zoning Appeals
401 McIntire Road
Charlottesville, Virginia 22902

Re: County's Motion for Rehearing of Bufton & Maus appeal (AP201900004)

Dear Ms. Alley:

Enclosed herewith is our Objection to the County's Motion for Rehearing. Because (1) Mr. Herrick chose to send our copy of his motion by the slowest means available (i.e., by US Postal Service), rather than by fax or email, each of which addresses he had, (2) Mr. Herrick suggests that the BZA must act quickly on the County's motion and (3) we are about to enter a 3-day holiday weekend, I am sending a copy of this letter and our Objection to the BZA chairman, John Shepherd.

Thanking you for your continuing courtesy, I remain

Very truly yours,

John R. Maus

Enclosure

Cc: Mr. Herrick (by first class mail)
Mr. Bowling (by first class mail)
Mr. Shepherd (by email)

VIRGINIA:

BEFORE THE ALBEMARLE COUNTY BOARD OF ZONING APPEALS

In Re: Bufton & Maus Law Office Appeal No AP2019-00004

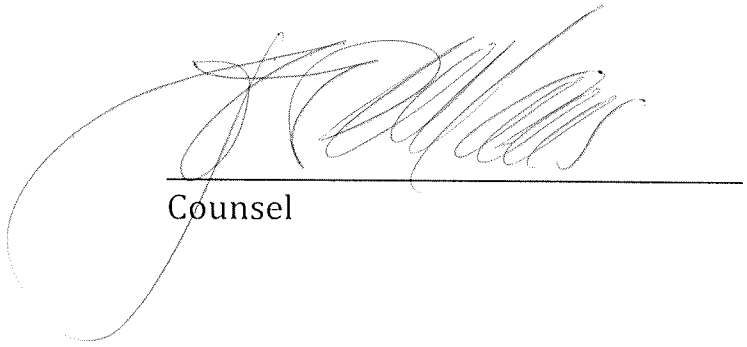
Objection to Motion for Rehearing

Applicants respectfully move the Albemarle County Board of Zoning Appeals (hereinafter, "the BZA") to deny the motion of the Albemarle County Board of Supervisors for rehearing pursuant to Rule 5(J) of the BZA's rules and, in support hereof, state that:

1. Rule 5(J) provides that the BZA **may** grant a motion for rehearing provided that an appeal has not been taken to the Circuit Court **only** if:
   A. new evidence can be presented that, in the opinion of the BZA, is relevant and material to the decision but could not have been presented at the original hearing, or
   B. in the opinion of the BZA, one or more relevant and material conditions or situations have changed so as to bear on the BZA's original decision.
2. On its face, the County's Motion for Rehearing does not allege that new evidence has been discovered that could not have been presented at the original hearing, nor does it allege that there has been any change of circumstances since the BZA hearing and decision.

3. Instead, the County's Motion for Rehearing suggests that the BZA acted improperly by:
   A. Shifting the burden of proof from the Applicants to the administrative officer, and
   B. Misinterpreting the application of Virginia Code §15.2-2311(C).
4. Neither of the grounds set forth in paragraphs 3A and 3B above is grounds for rehearing under Rule 5(J).
5. The Motion for Rehearing also curiously – and incorrectly - alleges that the County's decision to question the BZA ruling somehow constitutes a change in relevant and material conditions or situations.

WHEREFORE, Applicants respectfully move the Board of Zoning Appeals to deny the County's Motion for Rehearing.



Counsel

John R. Maus, Attorney at Law
Virginia State Bar No. 13420
Bufton & Maus, PLC
Post Office Box E
Gordonsville, Virginia 22942
Phone: 540-832-6172
Fax: 540-406-5911

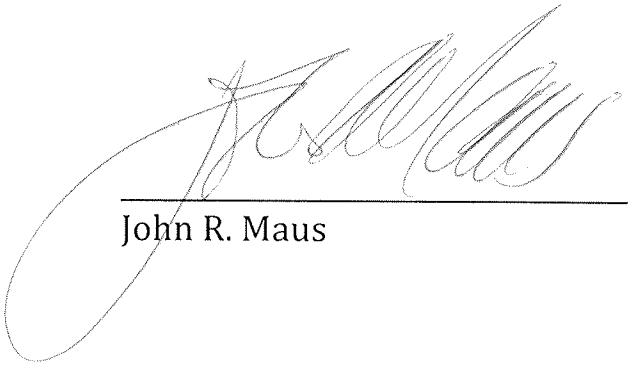
Certificate

I certify that, on October 11, 2019, I sent a copy of the foregoing pleading by first class mail, postage prepaid, to:

Andrew W. Herrick, Deputy County Attorney
Albemarle County Attorney's Office
401 McIntire Road
Charlottesville, Virginia 22902

And

James M. Bowling, IV, Esq.
St. John, Bowling, Lawrence and Quagliana, LLP
416 Park Street
Charlottesville, Virginia 22902



John R. Maus

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD – LANE AUDITORIUM
TUESDAY, OCTOBER 1, 2019 – 2:00 P.M.

Board Members:	Marcia Joseph Ed Robb David Bowerman John Shepherd Randy Rinehart, absent
Staff Members:	Bart Svoboda, Zoning Administrator Marsha Alley, BZA Clerk and Recorder
County Attorney:	Andy Herrick, Deputy County Attorney

1. Call to Order
The meeting was called to order at 2:01 p.m. by Chairman John Shepherd.

2. Establish a Quorum
The BZA established a quorum, with four members present. Chairman Shepherd reminded everyone that in order to overturn a determination by the zoning administrator, it would require a majority of the members of the board, which in this case would mean three.

3. Public Hearings:

MR. SHEPHERD: So, with that, I would like to call the public hearing to order. Just – I feel like I'm talking to a large room with a small crowd here. Sometimes we go through the rules and procedures, but basically what we're going to do is, with a public hearing, we'll start with a staff report that's going to last for 15 minutes. We have a timing system that we do want to adhere to. You'll see the green light on when your time is wide open. The yellow comes on – Marsha, at the one-minute warning? So, when you see the yellow light come on, try to wrap it up, and when the red light comes on, bring it to a conclusion. This is more important when you have a large crowd and people are waiting to get through the process, but even so, this is what we want to do.

Of course, after hearing from both the parties, we would hear from the public if there's anyone that wants to speak. Then, the – have a time for a wrap-up/rebuttal summation. We'll start with the staff and end with the appellants. Then, we'll discuss it, make a decision.

Also, I'll briefly just say this is our second meeting with Jim Bowling, second time we've had an attorney representing us. So, appreciate your being part of this. It's helpful and good, and I appreciate it. Thank you. Just want to say, so far, so good. But it does create a slightly different dynamic for us that I think is very positive and good.

So, with that, I guess we can just start, if – Bart, Kevin, are you guys ready to go?

DRAFT

MR. SVOBODA: I'm Bart Svoboda, Zoning Administrator for Albemarle County. This is Appeal 201900004. I'm going to give you a brief history. I'll speak for a moment, and then Mr. Herrick will finish up. This property description is Tax Map 50, Parcel 49. It contains 2.4 acres. It's located in Eastern Albemarle County along State Route 631.

MR. ROBB: Mr. Chairman, can you ask him to speak up?

MR. SHEPHERD: Bart, could you speak up a little, or just get closer to the mic?

MR. SVOBODA: Is that better?

MR. SHEPHERD: Yep.

MR. SVOBODA: Okay, sorry about that.

MR. SHEPHERD: Thanks.

MR. SVOBODA: Again, this is Tax Map 50, Parcel 49, 2.4 acres. It's located in the Eastern Albemarle County along State Route 631. There's one dwelling and one accessory structure located on the property. The address is 7380 and 7382 Gordonsville Road, respectively. The property fronts on State Route 631, which is an Entrance Corridor, and is zoned Rural Areas. Because this is a residential application, the Entrance Corridor does not come into play here.

The drawing I will show you is a drawing that was submitted with the building permit. If you go back one slide, you can see the existing house on the drawing. The existing house is to the center, and the proposed, or now current, structure is located in the corner of the lot, on the northeast corner.

This is a brief history or summary of how we got here. On September 29 of 2017, the applicant had contacted the county and asked questions regarding a home occupation. We responded with an email, which included the 25-foot side property line for this home occupation – for a home occupation permit and a building permit. So, in the email, it was explained the process. So, in that process, we did specify setbacks. We did indicate that there was a home occupation permit required and also a building permit.

On October 18, the appellants applied for that building permit for an accessory structure. On December 7, the building permit for an accessory structure was issued, which authorized the construction. It did note that the rear and side setbacks were 6 feet, which is consistent with an accessory structure. There's a difference between an accessory structure and an accessory structure that's used for a home occupation.

On June 4, 2019, the appellant applied for the home occupation clearance, which was after the permit was issued and the inspections were final. We went out to check to see if the accessory structure met the primary structure – the 25 feet – as mentioned in the 2017 email. It was identified that it does not meet those requirements, so we could not approve the home occupation permit.

On July 30, that was communicated to the appellant in writing on official determination, which denied the appellant's application for a major home occupation; and August 12, the appellant filed the present appeal.

The language you see in this next slide is the zoning ordinance, which is 5.2.a, C1. And if you look at the highlighted section in the middle of the screen – so the red square is just a blowup and it indicates an accessory structure that does not conform to the applicable setback and yard requirements for the primary structure, so not

to use for a home occupation. And the chart below that is Section 10.4, which is the Rural Areas portion of the ordinance, which indicates that the side setback would need to be 25 feet.

This particular drawing is our GIS map that has identified approximately where the structure is. Again, these maps are used primarily for tax purposes, and this measurement of 14 feet is what was measured out in the field by county staff. I will note that the property line has not been surveyed. The fence that's out there was identified as the approximate line by the property owner, so that's what we're using for our information.

That's all that I have from the zoning perspective and that brief history, and I'll let Mr. Herrick take over from here.

MR. HERRICK: Mr. Chair, members of the board, it's a pleasure to be here this afternoon. I'm Andy Herrick, on behalf of the County Zoning Administrator. The matter before the board this afternoon is an appeal of the denial of a home occupation clearance that was sought by the appellant.

Again, as Mr. Svoboda has indicated, the applicants applied for and received a building permit for the accessory structure in 2017, and as the presentation indicated, the rules for accessory structures are that they may be within 6 feet of the property line. Staff advised applicants of the home occupation requirements back in 2017, when the building permit was first applied for, and Ms. Ragsdale's email to the applicant can be found at Attachment G to the staff report, again, in which she outlines what the requirements are, the fact that a home occupation clearance is needed. That was sent to the applicant at the time.

However, the applicants applied for the home occupation clearance only after the construction of the building, after the building was completed in recent months here in 2019. And unlike accessory structures, home occupations must occur within primary setbacks, which are 25 feet. So as a result, the home occupation clearance was denied, and what's before you today, again, is the applicant's appeal. That's the only matter that's before the board today. And again, the options for the board are to either affirm, modify, or reverse the determination made by the Zoning Administrator, that this property did not qualify for a home occupation clearance.

So as outlined in my memo – which you all should have received as a part of the package – there's a difference between structures and uses, and it's unfortunate that there was a misunderstanding on the applicant's part. I think that there was a misunderstanding that it was one application and that getting the building permit was sufficient in order to basically clear the way for all types of uses on the property. And unfortunately for the applicants, that's just not the case.

There are separate requirements for building permits on the one hand, and for uses on the other. The building permit requirements are for the structure's conformance with the uniform state-wide building code, structural soundness – these sorts of things. And again, structures – accessory structures – sheds, small accessory buildings – can be located within 6 feet of a property line in the rural areas.

And I would suggest that both applications were correctly processed – that the application for a building permit was correctly processed and that the accessory structure was approved, because it met all the building code requirements. It met the lesser setback requirements for accessory structures, but then also, the application for a home occupation clearance was also properly processed because that comes with a separate and higher bar that it must be located – or that any use of that accessory structure – must be within the primary setback, which is 25 feet. So again, it's a higher bar for the home occupation use, and again, unfortunately for the applicant, that building simply doesn't meet that higher bar for the intended use.

There are a few points that were made in the appellants' submittal that I'd like to address. First of all, there was no promissory estoppel in this case, as I outlined in my memo. A promissory estoppel involves some sort of misstatement or misleading to where one party sort of misleads another party. That other party relies on the misleading statement to their detriment. In this case, there was no misleading statement by the county. The county, again, correctly processed the building permit application, informed the applicant of the need to apply for a separate home occupation clearance, correctly processed the home occupation clearance.

So again, aside from the unfortunate misunderstanding on the part of the applicant, the county, again, properly processed and properly communicated the requirements at every step of the process. And for that reason, the Rhoads case that I understand has been cited also doesn't apply in this case. The Rhoads case involves a clear mistake by county staff, which county staff – again, in the Rhoads case – gave more permission or gave greater approval than they could under their zoning ordinance and then tried to walk it back, basically. And the court said no, you can't do that – that once you've made that approval, even a mistaken approval, the county after a certain time can't revoke or pull back.

And again, that's not what the facts are here. The county is not seeking to withdraw or reverse the building permit. The county is still fine with the building permit and isn't seeking to revoke that building permit because, again, the accessory structure in that location is still appropriate. Each permit's been processed correctly.

The other thing – as I indicated at the outset – only the appeal of the Zoning Administrator's determination is before the board today. There's not a variance application. The board can't, on its own initiative, award a variance. The BZA is limited to the application that is before it today, and the application that's before it today is an appeal of the determination by the Zoning Administrator for which the three options are, again, to affirm, modify, or reverse. Again, a variance is not an option, based on what's before the board today.

So again, I would suggest that this was an unfortunate misunderstanding, but it was a misunderstanding on the applicants' part, and that's simply not grounds for a reversal of the correct determination of the Zoning Administrator. I think the applicants deserve some sympathy or empathy for the situation which they find themselves, but they don't deserve a zoning clearance. And again, we'd ask the board to uphold the finding of the Zoning Administrator. Thank you.

MR. SHEPHERD: Thank you. Mr. Maus?

MR. MAUS: Thank you, Mr. Shepherd, members of the board. My name is Jack Maus. I am one of the applicants. My law partner, my wife – Lyn Bufton – is seated here in the audience.

Much of the history that we will be going over to start with is similar to what the county has given you. Again, we know Virginians love our history. The history was that on October 18, that Lyn submitted this applicant for a building permit. It was processed that day – I think it was paid – and then we waited. Waited for the county to do something.

Almost two months later, we received from the county – without any question about whether or not we misunderstood, whether there was some kind of misrepresentation – we received a building permit from the county that said that we could build this law office that we had asked for within 6 feet of the side setback. And of course, this was the wintertime, so we started clearing the property in the spring, summertime it was ready, and October of 2018, we began construction, and we finished it in May of this year.

A final inspection was done, and although the County Attorney's office says, well, the purpose of a Certificate of Occupancy and the building permit is to ensure that the building is safely done, and this building passed

every one of the tests. The county refused to give us a clean Certificate of Occupancy because there may subject to only our personal use because it was pending zoning matters. They try to tell you, well, they're really different, but they've connected those two as far as what we're able to do with this property.

What you see in front of you is a picture of the building that we constructed, pursuant to the building permit. I'd say right now, it's a 30 by 34 law office. Here is the picture of the back of the property. Mr. Svoboda mentioned 14 feet from the drainpipe there to Mr. Hallow's fence – that is approximately 14 feet, no question about it. A view of the same building from the road that you can see – there's an open field behind it. We're not going to be looking into anybody's windows or to any private areas. It's very rural.

Now, when we initially filed the appeal – of course, you have a very limited time in which to do that. And case law – you know, we've cited to the board what we knew at the time, which as any good trial lawyer will tell you, your legal research continues up to the time you walk into the courtroom. And so, since that time, we've had some more opportunity to research [inaudible 2:19:16], and the County Attorney has mentioned to you the Rhoads case, which we're going to get to in a minute.

But in 1994, the Virginia Supreme Court decided a case called Snow vs. Amherst County Board of Zoning Appeals. Now, in that case, what happened was the Snow got approval of a variant to setback variance. I think the current ordinance provides for 150 feet, they've got one for 100. They didn't act on it, and then what happened was the county changed the ordinance. Instead of being 150 feet, it went to 200. They applied and were told no.

So, they appealed to the Board of Zoning Appeals there in Amherst. The board denied it. The property owners sued to the Supreme Court of Virginia, and the Supreme Court of our state – or the Commonwealth – said that the property owner only has a vested right in a zoning decision under the following circumstances: 1) there must have been a significant government act, 2) the land owner must have diligently pursued the use authorized by the permit, and 3) the land owner must have incurred substantial expense in good faith. Now in that particular case in 1994, the Supreme Court said, well, we don't think a variance is a significant government act and the Snows really didn't pursue their project diligently, so they lost on appeal of the state Supreme Court.

That was September 1994. Well, the next time the General Assembly met – 1995, January 25, several months later – Dick Saslaw introduced the Senate Bill 10.79 intended to fix the problem that was raised in the Snow case. That statute, that bill, would have amended 15.2-2311 by adding a Section C. That bill was sponsored by 17 of Virginia's 40 senators and passed the Virginia Senate by a vote of 39-0. It went over to the House and passed that body by a vote of 96-3 – overwhelming support in both houses. The governor signed it in March 20 of 1995.

So, Virginia Code Section 15.2-2311(C) says that in no event shall a written order, requirement, decision, or other determination made by a Zoning Administrator be subject to change, modification reversal, by any Zoning Administrator or official after 60 days have elapsed from the date of the written order. Where the person agreed to materially change his position in good faith reliance on the actions of the Zoning Administrator or the administrating officer unless you can prove malfeasance – not just misfeasance – malfeasance of the Zoning Administrator or administrative officer, or through fraud. There's another sentence in that section, which really doesn't apply here. It says the 6-day limitation does not apply in any case with the concurrence of the attorney for the governing body. You have clerical or non-discretionary errors. Clearly, the granting of a permit saying a side setback line is a discretionary function.

In recent case law, this is what the County Attorney's office is referring you to – Board of Supervisors of Richmond County vs. Rhoads. This is just two years ago, 2017. Latest Supreme Court of Virginia case

interprets this – the court said, "The plain language of the statute says it is intended to eliminate the hardship property owners suffered when they relied, to their detriment, on erroneous or void zoning decisions." The court said the statute was remedial in nature, and that's kind of a code word that says it's meant to be liberally construed so the purpose intended may be accomplished.

So what did the court in Rhoads say? If you look at page 3 of the Rhoads decision, which I submitted through Marsha yesterday, that it be a written order requiring a decision or determination made by a Zoning Administrator. At least 60 days must have passed from then, and then a material change in good faith reliance on the act of the Zoning Administrator.

So what do we have here? Building permit definitely constitutes a written decision or determination by the Zoning Administrator. More than 60 days have passed since that building permit was issued in December of 2017, and we indeed changed our positioning – good faith reliance – on where the county told us we could put this building. Now, staff report – they agree that they issued a building permit allowing it to be built where it is. They agree they we relied on that permit in locating it there. But what they disagree with is that the intended use of the structure was fully disclosed of the department, and they disagree that if we can't have people in there – we can't have clients in there, we can't have other professionals in there – that we are, in some way, not going to be harmed.

So, here's what we think. If you look at the paperwork, when we submitted the application for the building permit, we never used the words, "storage building/accessory structure." That was something that the county added at some point, and we don't know when because again, we submitted the application in October 2017. We got the permit in December. We don't know how many hands, or whose hands, that went through in those two months. Those words were added by someone in Community Development between the time we submitted the application and the time the building permit was issued.

The building permit application, if you look at it, clearly describes it as a new structure for home office, and it says it includes a bathroom and a little kitchen. Now, I understand the difference between a shed and a home office, but you're not going to be putting a bathroom and a kitchen in an accessory shed, alright? There was no misunderstanding on our part what we were asking the county for.

When we filled out the application, the initial square footage was for a 900-square-foot building, 30 by 30, and we subsequently expanded a little bit to 34 by 30, but somewhere along the way – and again, we don't know where this happened within the Department of Community Development – but the square footage on the application was changed from 900 to 792. And then the part of the partial building application permit that's in your package – the one that Jennifer Smith entered on October 18 – is blank in the area "setbacks." It wasn't until we got that in December that the 6-foot side setback line appeared.

So bottom line is, we never said – we never did – anything that misled the Department of Community Development. Our intended purpose was always to use this building as a law office and a place where we could meet with clients, be with other persons related to our practice, whether it's court reporters, whether it's other lawyers, other professionals. That's what it was always intended for. The floor plan we submitted with the application for the building permit included a conference room, a bathroom, and a kitchenette. Now, tell me why you would have a conference room if the intention was not to have people there. We made our intentions clear the entire time, and if we can't meet with clients or we can't meet with their parties for our practice then, yeah, we suffer a detriment. That'll be pretty obvious.

Now, the package also mentions to you that Albemarle County – but of course, the day the final inspection was done, within an hour, the tax people were out saying, alright, your property is worth more now. And within a

couple weeks, 911 came out and said, well you have the structure that people are going to be occupying, and so because we want rescue personnel to know where to go to, we have to sign your separate 911 address. Clearly, inconsistent with what the department is now saying is that the office was only intended, ever, to be used as a shed, which it seems strange now a copy of the floor plans were done in October of 2017, when the plans were submitted.

In the lower righthand corner is, where my arrow is, the cursor's going, that says, "Conference/Reception." You've got two offices on the left side, bath, and a kitchen. This is the conference room as it is today. That's what it's always meant to be. It's got a conference table, it's got chairs. It's got a place for people to meet. This is my office. You can see it's got client chairs here. Trial practice involves meeting with clients, meeting with witnesses. It's an integral part of what we do. It's what we always told the county from the get-go we wanted to do.

So in conclusion, what we're asking the board to do is to reverse the decision of the Zoning Administrator, grant us a zoning clearance for major home occupation.

Okay, so that concludes my presentation. I still have a couple minutes left, so if you have any questions, I'd be glad to answer them.

MR. SHEPHERD: Thank you.

MR. MAUS: Alright. Thank you, sir.

MR. SHEPHERD: Other questions, at this point?

MR. MAUS: No questions? Good.

MR. SHEPHERD: Not at this point, but there's – there will be discussion, and we may have questions as we get into it.

MR. MAUS: Okay. I'd be glad to answer any questions.

MR. SHEPHERD: But for now, thank you.

Is there anyone from the public who wishes to speak? Is there anyone from the public here?

Okay. So…that, I guess, we are now – the matter is before us. For starters, does anyone have any questions for staff or the appellant?

MS. JOSEPH: Yes. Mr. Svoboda...when someone is building a shed in the rural areas, when does the zoning clearance occur?

MR. SVOBODA: It depends on the use, so there's difference between a shed and an accessory structure. Well, a shed IS an accessory structure. A pool house is an accessory structure.

MS. JOSPEH: Right.

MR. SVOBODA: A garage with a rec room above it is an accessory structure. So when we talk about accessory structures, we're not just talking about storage buildings. It can be any of those things.

MS. JOSEPH: But when is the clearance done? I guess I always assumed it was done as the footers were put in.

MR. SVOBODA: The zoning inspection is done –

MS. JOSEPH: The zoning inspection, not the clearance.

MR. SVOBODA: Not the clearance.

MS. JOSEPH: Okay.

MR. SVOBODA: The preliminary zoning inspection is done when you locate the building, which is –

MS. JOSEPH: Okay. And that was done.

MR. SVOBODA: Yes.

MS. JOSEPH: Okay. And the other thing that really confuses me – that years ago, an accessory structure couldn't have a kitchen in it because then it would be considered another kind of dwelling, and this is only two acres, and it's in the rural areas. So I'm kind of confused about that.

MR. SVOBODA: So to be a dwelling unit, a structure has to have a place for cooking, a place for sleeping, and a place for sanitation. This particular structure has two of the three, but not all of the three – not a place for sleeping.

MS. JOSEPH: Okay.

MR. SVOBODA: So it would not qualify as a dwelling unit.

MS. JOSEPH: Okay.

MR. ROBB: Mr. Chairman, I'd like a question of our counsel. Would you describe and explain, in layman's terms, simply and completely, exactly what this board is being asked to rule on.

MR. BOWLING: In layman's terms and in professional terms, this is a mess. And what you're being asked to do is to, by the applicant, is to give relief for this mess.

MS. ALLEY: Excuse me, Mr. Bowling? Could you speak into your mic?

MR. BOWLING: Yes. What you're being asked by the applicant to do is to give him relief in this particular case, and what he's hanging his hat on – at least as I heard it – he's not hanging his hat on the memorandum that he prepared for you, which I think was in your packet arguing about equitable relief, and I agree with the Deputy County Attorney's comments concerning equitable relief. I think he's correct on that. He's asking, as I hear it – he's asking you to give him relief under 15.2-2311(C) – the statutory language of which is before you. And then he's provided you with reference to a recent Virginia Supreme Court case saying that that statute is to be considered liberally and is designed for this precise situation to provide relief for an applicant under what he says is his particular circumstances.

DRAFT

His point is that, at all times during this effort, he identified what he was to do as a home occupation, and it was clear on his face that he was going to build a home occupation. Staff, on the other hand – as I interpret staff's position, and I hope I'm doing this correctly – they can pipe up and correct me if I'm wrong – is that from the beginning in this, through Ms. Ragsdale's email, the applicant was informed that the applicable setback in this particular case was not 6 feet – it was 25 feet. That's in the record and in the packet that you received.

During the course of this proceeding, a building permit was issued, which muddied the waters considerably and which – if you want to analyze it this way – is the root of the cause of the problem. By that, the application from the building permit, from the applicant's eyes, stated that, clearly, I'm going to be using this for a home occupation. Instead, the building permit was issued with a setback for 6 feet, which is for an accessory use only. There is the root of this problem.

Staff says you cannot give relief under the requested statute, or under any sort of equitable theory that's been advanced by the applicant. Staff has also pointed out that this is not a variance situation that's before you. One, the applicant hasn't requested a variance; two, he hasn't applied for a variance. So you're only left with the application. The official's decision in this case was correct, and you should uphold the Zoning Administrator's decision.

Now, I don't know if I've been clear, because this not one that's so easy to state clearly, but I think I've laid out the two positions for you – or at least, I hope I have.

MR. ROBB: Mr. Chairman, not unusual, but I'm confused. I'm looking here at a building permit, page 1. A copy of the building permit for the particular structure in question, and it says, "Work description: New structure for home office." I can't understand what is hard to follow with that description.

MR. BOWLING: That's clear, but somewhere else on that building permit, on page – further back, I believe, and the other members can correct me, or staff can correct me – there's some notice that says – that refers to the application differently. Am I correct on that?

MR. SHEPHERD: I see that. It says, "Sub-application type: Storage building/accessory building." And then it's blank.

MR. BOWLING: Right, and that's the mess part that I pointed out to you.

MR. ROBB: Right, but down below, in bold letters: "Work description: New structure for home office."

MR. BOWLING: Undeniably, that's what it says.

MR. ROBB: Now, that causes me some heartburn. I understand – and that's why I asked for clarification exactly what we're being asked to deal with. I'm not sure that I still understand. I'm not sure what you could say that would make it more clear for me, so let's just move on with where we are.

MR. SHEPHERD: If I could, I'd like to sort of state – state the question you have in a slightly different way, and the way I'm seeing this. I clearly understand the difference between the approval of a structure, which is done with a building permit, and the approval of a use, which is done with a clearance. That's very straightforward to me, and I understand it. But I used to work in the Zoning Department, so I just sort of take that as clear to me because I know the process.

DRAFT

However, when I look at the building permit, I'm seeing – the words that come off the page to me are, "New structure for a home office," and I see the building plans that were approved – you know, that were part of that – which had conference areas. I'm just repeating, but I think they're salient points. Conference room, reception areas. There's two offices. It shows a handicapped ramp, which just implies that the public is going to be there. So I inferred from that – and one thing that's difficult about this situation is that you're sort of up here trying to be mind readers, which we are not. But I inferred from that that, at least from the appellant's standpoint, that they were clear in what they were asking for. I get that, and I think – if you look at the page before you put your glasses on, you're seeing a home office.

I know that there's a difference between a home office and a major home occupation, per Supplemental Reg 5.2a, or whatever the code section is. Technically, I understand that that is correct. But somewhere along the line, I think there's a – I wonder about the process for flagging that obvious problem with the building permit. There's a – the building permit was reviewed and approved, and that process took quite some time. There's a preliminary zoning approval of that. There's a final zoning approval of that. I don't understand how – I mean, I – from the county side, that it wasn't flagged somewhere to just say – when you see the way the permit was set up, that that shouldn't have been a red flag that would've said, hold everything, we have to get this clarified.

I think there is some – I could argue this – I'm really, in my own mind, hung on the horns of this dilemma. For me, it's clear both ways. But I – I'm concerned about – I wonder about the process that let it get this far, with a permit – with those things that, to me, clearly indicated an office – a commercial-style office – as well as just a description of it in the larger font. And clearly, the applicants' words – it's a home office, where the – I think it's called a "subcategory." I mean, that's really – I guess that's a building code designation that is a class of building and it would establish what building code was controlling it.

MS. JOSEPH: John, can I ask a question too? Because it is – it is connected with what you were just saying because there is a lot of confusion. One of the requirements for the building permit is a plat, right? Or a legal description of the property. Is that something that you received? Because that would – and I guess the other thing that you showed us was this sewage disposal site plan that shows 45 feet from the sideline. Did the Building Department, did Zoning, accept this as a part of the building permit that was required by having a plat submitted?

MR. SVOBODA: That is the sketch that was in the file that located the structure on the parcel.

MS. JOSEPH: Okay.

MR. SVOBODA: It was the Health Department information.

MS. JOSEPH: So that came from the Health Department. It wasn't part of the requirement that staff received as part of the building permit package.

MR. SVOBODA: It is part of the required paperwork that we use to review the permit.

MS. JOSEPH: Right, but it is called a "sewage disposal site plan." It's not the plat. So I guess what I'm trying to figure out – was that used when staff looked at this and said, okay, the setback is correct for this?

MR. SVOBODA: The individual who reviewed the permit no longer works for the county. When we go back through these files, we go based on what is located in the file, and so it would be my understanding that, based on what we have in the file, that those documents were used to review and issue this permit.

MS. JOSEPH: Okay, and that was the person that signed this – Judy?

MR. SVOBODA: No. For zoning, the young lady's name was Emily.

MS. JOSEPH: Okay. Okay. So that was were received and accepted?

MR. SVOBODA: Yes.

MS. JOSEPH: Okay, thank you.

MR. ROBB: Mr. Chairman, as I started this discussion with focusing on the piece of evidence here, Building Permit Copy, I'm troubled by what it says related to "Sub-Application Type: Storage Building/Accessory Structure (New Off –" What is that? What does it say? It's not complete. And then we go down till we see, "Work Description." Clearly, bold print: "New structure for home office." We go to the next page. It doesn't – page – it doesn't have a number, but it says, "Building application…" so forth, identifying it. And then it goes down in printed – hand-printed by somebody. I'd have to presume it was hand-printed. I'm going to ask who hand-printed that. But it says, "New structure for home office."

If this is a piece of evidence that we're supposed to evaluate, then how can we get an – we need an explanation for it, if we're going to be asked to support the – hold the finding of the Zoning Administrator.

MR. MAUS: *[Away from the mic]* Mr. Chairman, I can explain that. I mean – my wife filled out the application. She would tell you -

MR. SHEPHERD: You have to get…step to the mic.

MS. BUFTON: Hello. How are you? My name is Evelyn Bufton. I am the law partner of Mr. Maus and also his wife.

MS. ALLEY: Can you also please pull that down and speak into it?

MS. BUFTON: Sure, absolutely. Is that better?

MR. ROBB: Yeah.

MS. ALLEY: Thank you.

MS. BUFTON: I am the one that came into the county to get the permit, and so on this permit, where you can see that handwriting on that. Pardon, on the application, yeah. I filled that out, and I filled it out at the desk at the County Planning Office.

I had never heard a home occupation anything. I didn't even understand that term, and I had never heard that term until the zoning folks came out and told us that we needed – that corner, one corner of the office we built already was at 14 feet. The other corner at the back is over 25 feet.

The reason that the property – I had it situated – and I did the, kind of the managed all the construction – and the reason that it was set out that way is so that it was parallel with the house so that it looked correct because the property lines kind of go like this and the house kind of goes like this. So the back side of the office is 14 feet on one corner and over 25 feet on the other corner.

But I'm the one that filled this information in. I put the 900 on there – that writing on there that says 792, that is not my writing. And the writing on the side, over on the righthand side, is not my writing. But the rest of it is.

MR. SHEPHERD: Thank you.

MS. BUFTON: If there are any other questions, I'd be happy to answer them.

MR. SHEPHERD: Mr. Herrick, I know you've been trying to hop in there.

MR. HERRICK: So, Mr. Chair, just to remind the members of the board, under the Board of Zoning Appeals rules and procedure, each side is entitled to five minutes for rebuttal, and so I'd like to take advantage of what the rules allow. I'd like to use that time to address many of the questions that have been raised during this time.

First of all, during his remarks, Mr. Maus indicated that the county hadn't given him a clean Certificate of Occupancy, and I have the Ceriticate of Occupancy that I believe you all received as well. And I think what he refers to as not being a clean Certificate of Occupancy is that the county did issue the certificate, but it specified that it was for a detached personal home office, and there's a statement in there, "Special Conditions or Modifications for Personal Use Only." And I think that there's a critical distinction here – that there can be such a thing as a "Personal Home Office" without being a "Home Occupation." An example of what one might do in a personal home office would be to complete one's taxes, balance one's checkbook, do things not for compensation – perform one's own personal business, like a study, for instance. And in that case, again, there was nothing wrong with conducting – having a personal home office – not for profit, not commercial – a personal home office as an accessory structure. There's nothing wrong with that. So I would say that the Certificate of Occupancy was correctly issued.

We also heard Mr. Maus invoke the Snow vs. Amherst Board of Zoning Appeals case and the resulting change in the statute that took place to 15.2-2311(C), and I'd like to read that for your benefit. It reads, "In no event shall a written order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer be subject to change, modification, or reversal by any Zoning Administrator or other administrative office after 60 days have elapsed from the date of the written order, requirement, decision, or determination." And then it goes on from there, but I'd like to just focus on that as the relevant portion.

For the first thing, the determination that seems to be discussed here is the building permit which, in fact, is not a determination by the Zoning Administrator. It was issued by the Building Official. It's also been more than 60 days since that was issued. That is not before the Board of Zoning Appeals today. All that's before the Board of Zoning Appeals today is the home occupation clearance.

The county isn't seeking to change, modify, or reverse the building permit. So 2311C in the Rhoads case might applicable if the county were seeking, at this point, to somehow revoke the building permit because the building permit has been issued and has been out there for more than 60 days. And if the county had said, "Oops, we didn't mean to issue that building permit. Sorry, we'd like it back now," that would be a similar fact pattern to what existed in the Rhoads case, and that would not be allowed under 2311C.

But we're not seeking to change, modify, or reverse the building permit. We think the building permit is still valid and was correctly issued. We think the zoning clearance was correctly denied. So again, I think that the notion that relief can somehow be granted under 2311C is wrong because again, we're not seeking to change, modify, or reverse anything. Thank you.

MR. SHEPHERD: Thanks.

MR. MAUS: Mr. Chairman, one thing – and I meant to say this earlier. During his presentation, Mr. Svoboda said several times –

MR. SHEPHERD: Give me one moment. Make this a rebuttal? Give him 5 minutes?

MR. MAUS: We can do that if you want to.

MR. SHEPHERD: Give him 5 minutes? Is that the rule?

MR. MAUS: That'd be fine. Mr. Svoboda several times in his presentation that this property is located on Route 631. That is incorrect. It is located on Route 231, which is the Gordonsville Road – the road that runs from Shadwell to Gordonsville.

Now, those who are familiar with zoning matters, land use matters, may say, okay, we understand the difference between a building permit and the zoning clearance, the structure and the use. We're not those people. I primarily do criminal defense law, and some other – general law. My partner does domestic relations work. We don't know.

What we do know – what we do know is that we applied for a permit to build our office, our law office, in Albemarle County, and we told them – we told the county what we wanted to use it for. And they gave us a permit that said, yes, you can put this 6 feet from the property line. We didn't go that close – we went 14 feet. When we staked that thing out – I was there when my wife and another person staked it out – they called the county and said, "Come out and tell us if we can put this building here." And a county official came out and said, "Go for it." And that is exactly what we did. Exactly what we did.

Now, the County Attorney would have you believe that, well, the building permit was properly issued, but you can still deny them the right to use it. What good does that do if we cannot use this office as a place to meet clients? We might just – you might just as well revoke the building permit. We don't understand the nicety between the use and the structure. We built it, we built it according to code. It was inspected every step of the way. And when the county Building Official said, eh, no, that's not exactly right, you need to fix that, we did it.

It cleared the final inspection, and to say that it is only suitable for habitation for our personal use is shameful. And it would be a shame for this board to say that the county – that's okay, you can create this confusion, you can have this, this process break down somewhere – but we're not going to hold the county accountable for it, we're going to hold the individuals – the landowners – accountable for it. That's what they're asking you to do, and that's wrong. We applied for the structure, we clearly said we want to put our office there, we give them the plans, showed them what it's going to be like, and they gave us a building permit almost two months after we applied.

Now, I'll tell you, after the building was completed, Kevin came out and he called me up on the phone and said, "Jack, we need to know the size of your house. Square footage of your house." I said, "Kevin, why do you need to know that?" And he said, "Well, because the way I read the regs, your office can't be more than 25% of the size of your house." And I said, "No, that's not right, Kevin. Look at it. It's 25% if the office is in the house. 1,500 square foot otherwise." "You know, you're right." So it wasn't what Kevin said first that counted, it was what Kevin said second that counted, because he realized that he had start off and corrected assumptions.

So did Ms. Ragsdale send me an email in September of 2017 to say, "Well we think it's 25 feet"? Yes, she did. But when we applied for the building permit, and the county comes back and says, "You can put that building 6 feet from the property line," it's what they said second that counts. That's what we relied on.

There's been talk about misunderstanding and mistake. Well, maybe there was, but it was done by the people who are professionals in this who knew the difference. We did not. We relied in good faith on what the county told us we can do. We built the building exactly as we proposed it, and we believe that the only way that justice can be done is for the Board of Zoning Appeals to overturn Mr. Svoboda's decision and say, "Look, you've got to give these people a major home occupation clearance." Thank you.

MR. SHEPHERD: Thank you.

MR. ROBB: As Ms. Joseph points out, the plat – the fact that there is no plat plan noted on this, on – the document we have don't show a plat plan, period. Now, do you have a plat plan? Is there a plat plan that exists?

MR. MAUS: I don't understand, Mr. Robb – I don't understand what the term "plat plan" means.

MR. ROBB: The accurate measurements – the survey – of the property. Do you know for sure that it is more than, or less than, 25 feet from that property? That fence doesn't mean that that's the –

MR. MAUS: It does not mean that, but the only way for us to find out is for us to incur the additional expense of hiring a surveyor to go out and search the land records. The only plat that we have of that property is an old plat that was done back when General Patton's family contributed half of what the Hallows had. The Wilsons contributed half, and there was 2.5 acres on which was placed the old Edgeworth School, which was a public school operated by Albemarle County from the 1910s to the 1940s. There have been no more current plats since then.

MR. ROBB: So it's entirely possible that that building – can the county prove that that building is, in fact, less than 25 feet from the property line?

MR. MAUS: As far as I know, they cannot prove it.

MR. ROBB: So it's all – this is all just, "Maybe." We're asked to make a decision related to what's important to you and is financially important to you, based on a "maybe"?

MR. MAUS: Right. I think everybody is assuming – but we don't know for sure – that the fence represents a property line. And so what the county wants us to do, in addition to putting up that building there and paying for the appeal process here, is to hire a surveyor to go back and look at all the land records, figure that out and if it is correct, that they want us to buy property from our adjacent landowner.

MR. ROBB: Can the county – that's my question – can the county identify the exact property line that you're measuring from?

MR. SVOBODA: Is that a question for me?

MR. ROBB: Yes.

MR. SVOBODA: The property line is as indicated by the owner. We do not go out and do surveys.

MR. ROBB: I'm not hearing. Repeat that part.

MR. MAUS: He can't hear you.

MR. SVOBODA: The property line is identified by the property owner under his assumption that that is the correct location for that property line, so we are going by the property owner's say-so.

MR. ROBB: So, we are assuming, then, that that fence is the property line.

MR. SVOBODA: Yes, that is according to the property owner.

MR. ROBB: I think, next question – my next point is I'm still concerned, going back to the building permit where it says, "Storage building/accessory structure (New or -)" What?

MR. MAUS: See, Mr. Robb, we don't know that because when Lyn submitted the application on October 18, there's no such subtype identified in the application.

MR. ROBB: It could say – it could say, excuse me – it could – is it possible that it could say, "New or Office Space?" Or it could say, "New or Old Shed?" It could say lots of things.

MR. MAUS: You're exactly right, Mr. Robb. There are a lot of possibilities.

MR. ROBB: That's the official document that we're dealing with here, and I'm sorry, I – I think there's too many things that we don't know about, and we're dealing with. And over here, I'm really – I'm troubled by, you know, handwrittens – that we know, I guess it was a lady there – "New structure for home office." That's clear.

MR. MAUS: Exactly.

MR. ROBB: So regardless of what it says, you know, up in that section. Excuse me for my rambling, but I'm seriously very bothered by the determination that was made based on assumptions – things that we don't know – that matter to you.

MR. MAUS: Right.

MS. JOSEPH: The complication, as we're looking at building requirements just for the structure itself, and then the use. And that's where it gets really murky because the uses is requiring that the setback be the same as the residence itself, so it meets the 75-25-35. So that's where the complication gets in, and the communication is lacking is that there are groups of people just looking at the structure itself and thinking that it was a "man cave" or a "she-shed" or something. And then, there were other people who, when it came to looking at the home occupation, decided that it was a major and that it needed to meet the required setbacks. So that's where the communication sort of fell apart, I think.

MR. SHEPHERD: I wonder, from the standpoint of the – I'm thinking of the legal case, and I'm also thinking of the Rhoads case. Is the building – is the building permit considered – I forget the legal term, but a significant determination – is that – it would be understood –

MR. BOWLING: I think you have to – you look at words with their common meaning, and is a building permit a written order? Gives you permission to build something. Is it a requirement or decision? I think it is, one of

those. And is it made by another administrative officer? I think the Building Official can be seen as an "other administrative officer." But the dilemma with interpreting this statute is to do that with any full accuracy. I'd need to be a judge. You'd need to have a nice bunch of decisions, and you don't have the luxury of that. The only luxury that we have available to use is some statutory language that the statute – or actually, decisional language from the Supreme Court that the statute is clearly remedial. What that means is that it's to be liberally construed to carry out its remedial purpose. And you, as the quasi-judicial body, the Board of Zoning Appeals, are to decide how to do that.

MR. SHEPHERD: So, is there an implied sort of delegation of authority from the – or between the Zoning Administrator and the Building Official in the course of reviewing and approving permits? So, I mean, I know the preliminary zoning is just going out there and staking the building, but –

MR. BOWLING: I don't know what ultimately a court of law will do. Will they see a link in this? I don't know. It's certainly possible you can argue that both ways. You could say yes and you could say no. But we don't have the luxury of saying, "Well let's just go up and take this to the Supreme Court of Virginia and find out." We need some guidance, we need some clearance.

You're left with this murky mess, and that's what you're here for, and you need to make a decision. Certainly, if you think that this statute – if it's within what you think, as you interpret the Building Official doing as part of this process, was led to a mistake, then so be it. You can make that ruling. If the county disagrees with you, their remedy is to go forward and appeal the thing. And we're not going to get any better than that. We can sit here and talk about this for a long time.

MS. JOSEPH: Well, is there any other remedy for this applicant?

MR. BOWLING: Well, he's mentioned a couple. He's mentioned that he could have gone to his neighbor and said, "Well, can I get some extra square feet?" Okay. And we talked – I think the Deputy County Attorney talked at the beginning. He said, "Well, this is not a variance set before you." I don't know whether the variance would be applicable here or not. I'm not going to analyze that because it's not before you. I suspect there's arguments that go both ways, so I'm not really sure that kicking the can down the road is going to get you any further in this murky decision that you have to make.

MR. ROBB: Well, again, let me go back to this building permit question where it says, "Sub-application: Storage Building/Accessory Building Structure (new – of)." Could that be, "(new office)?"

MR. MAUS: Mr. Robb, it could be. I have no idea how the county, in its administrative process, how they assign subtypes to this.

MR. BOWLING: And I suspect we could get the Building Official in here and we could grill him, but I'm not sure we'd get –

MR. ROBB: Well, that's why I ask the question.

MR. BOWLING: I don't know if you'd get any more clarity than what you have right now on the paper that's before you, given the amount of time that's passed.

MR. ROBB: That's why I ask. Is this building permit a significant piece of evidence before this –

MR. BOWLING: Yes.

MR. ROBB: Okay.

MR. MAUS: I think Mr. Svoboda is handing the Chairman a piece of paper that has an expanded description of what that is, what the phrase was meant to be. Again, that's something that the county assigned after the application was submitted, and we had no way of knowing that until the building permit was issued.

MR. SHEPHERD: So, what Bart Svoboda has just handed me is the – is showing what the pulldown menu there says, and the full sentence is, "Storage Building/Accessory Structure (new or alteration)." That's what the permit is. That's the subcategory of the permit.

MR. ROBB: So this is the original.

MR. SVOBODA: Yes, so our permits are done on computer, so we don't have paper copies.

MR. ROBB: Okay, fine, but let's say that that's what it says. Still says, "New structure for home office" in italics below it. Where does it say that on this particular document? No, it doesn't. This isn't the same document.

MR. SVOBODA: It's probably a different page of the document.

MR. ROBB: It isn't the same. It's not the same as the copy of the permit that I have.

MR. SHEPHERD: I'm going to take a chance on speaking for the Building Official here just for a second, but I think you have a building permit, and there would be many pages associated with the building permit that is tracking the review of the permit through various approval processes and inspections. So, you're going to have lots of pages that will have this – the heading will be the same, but below it will be different. Is that a fair –

[Many speakers talking over each other]

MR. ROBB: Mr. Chairman, this is not a copy of the document. This is – if this the original, or the original first copy, then it's different than the one I have in my paperwork here related to titled, "Building Permit, page 1." The rest of the pages I have don't have a number on them. I don't know what they are.

MR. BOWERMAN: Mr. Chairman?

MR. SHEPHERD: Yes, Mr. Bowerman?

MR. BOWERMAN: I think you've all done a real good job up till now. I think what we need is a closure and I would suggest that if Mr. Bowling could come up with the words for a – a rejection of the Zoning Administrator's determination on this, and that we accept this as a significant – under liberal interpretation, that we accept this as a legitimate mess than can be corrected by this board.

MR. BOWLING: So, what I hear you saying is that you want to correct this under Virginia Code 15.2-2311(C)?

MR. BOWERMAN: Yes, based on what we've talked about here tonight, which is a liberal interpretation which I think – that's what this is allowing for, because clearly, you could read these minutes and you're going to see that there has been a lot of discussion about this, and there's no way to get to final answer unless you do the final answer, which is to go out and do the property line. It's just not material anymore.

MR. SVOBODA: Yeah, that burden of proof is on the applicant, not on the county. That's within the code. Correct me if I'm wrong, Mr. Bowling.

MR. BOWLING: I think you're right.

MR. BOWERMAN: Well, that's fine, but still, we could use that as the determination as to why we want to do this, correct? Under a liberal interpretation. I mean, if it's significant expense here on the part of the applicant, based upon a genuine, cloudy method of getting here.

MR. BOWLING: What I hear you saying, sir, is that you think that 15.2-2311(C) is applicable in this situation.

MR. BOWERMAN: Yes.

MR. BOWLING: A mistake was made by the county in issuing this permit, and then making a decision based upon the Zoning Administrator's determination that's before you today after 60 days had passed since the permit had been issued?

MR. BOWERMAN: Yes, because I believe that there was – there was a breakdown on the county's part in communicating to the applicant that there was a substantial difference between – in discussion of this and what had been prior approved, given a –

MR. BOWLING: There was a substantial difference between the home occupation applied for by the applicant on the building permit and how the final permit ended up, which led to all this confusion.

MR. BOWERMAN: I think that – I think the county could have been a lot more helpful.

MR. BOWLING: Now of course, the applicant could have gotten a survey right from the beginning, and maybe we wouldn't be here today at all, but that's "Monday morning quarterback."

MR. BOWERMAN: We are where we are. Anyway, that's what – if you could come up with the phraseology, that's what I would propose as a motion.

MR. BOWLING: Well, I'm kind of making it up as I go along. I'm not trying to put words in your mouth.

MR. BOWERMAN: Well, you're trying to make it sustainable.

MR. BOWLING: Well, I want your decision is to grant the applicant – the decision before you is the applicant is requesting relief from the decision of the Zoning Administrator finding that he could not use his existing structure as a home office because it was an accessory use, and the setbacks were not met. Is that correct?

MR. BOWERMAN: That is my intention, yes.

MR. BOWLING: Alright. And you want to sustain that application of the applicant, correct?

MR. BOWERMAN: I do want to sustain the application.

MR. BOWLING: So that's what you want to make as your motion?

DRAFT

MR. BOWERMAN: Yes.

MR. BOWLING: And then help me out here, too, before you go further. Even if you sustain the application, as I understand it, the applicant will still have to go back and get the home occupation approval and go through that process.

MR. BOWERMAN: I don't know about that. You could help us with that.

MR. BOWLING: That's what I don't know for certain, either. Maybe staff can help me out. I don't think you ever went through the process of that. Bart, am I making sense as to what I'm trying to say?

MR. SVOBODA: Yeah, the application was applied for and denied.

MR. BOWLING: And denied, but you never got to the determination whether you should put conditions on the home occupation, and so forth and so on.

MR. SVOBODA: It's an administrative approval, so we wouldn't –

MR. BOWLING: So you wouldn't do that.

MR. SVOBODA: Yeah, we wouldn't condition it when it is black or white. Either it meets the 25 feet or it doesn't.

MR. BOWLING: So it either meets it or it doesn't. Okay. So I just confused the issue. I apologize.

MR. BOWERMAN: This is a place to get rid of the confusion.

MR. BOWLING: So I think I've laid out the motion for you. Madam Secretary, is that clear enough for you to follow?

MS. ALLEY: I won't be transcribing this.

MR. BOWLING: Who is going to – who can read back what I've said?

MS. ALLEY: We don't have anything written to restate what you've said.

MR. BOWLING: Well then, you need a motion to grant the appeal of the applicant in this case, finding relief appropriate under Virginia Code 15.2-2311(C).

MR. BOWERMAN: And that being the motion, then the exact wording of that can be clarified after it leaves here. I mean, the exact words that were actually used. Or is that what you are suggesting the words should be?

MR. BOWLING: Well, that's what I would suggest the words to be.

MR. BOWERMAN: Okay. That's fine.

MR. BOWLING: Does the applicant see any problem with that?

MR. MAUS: No sir, Mr. Bowling.

MR. SHEPHERD: I want to – does that mean, if we approve that motion, which would be overturning the Zoning Administrator's determination, does that serve as an approval of the – can we approve a clearance, approve the use of the building for a major home occupation without having reviewed all the criteria for the home occupation? I'm a little concerned about that part of this.

MR. BOWLING: That's why I asked the question I did to the Zoning Officer.

MR. ROBB: Mr. Chairman, on that question – Certificate of Occupancy, the detached personal home office. So we would have to – the county would have to vacate that occupancy, I would think, that certificate.

MR. SHEPHERD: No.

MR. BOWLING: I'm not familiar enough with the county procedures.

MR. ROBB: Obviously, if the county has issued an occupancy – Certificate of Occupancy, they would have to – I mean –

MR. BOWLING: Assuming – well, let's ask the Zoning Administrator for some guidance here.

MR. SVOBODA: So, the Certificate of Occupancies are issued by the Building Official.

MR. BOWLING: No, in the first place –

MR. SVOBODA: That has to deal with building code, so if you change the designation on the Certificate of Occupancy – don't know if this will, or if this won't. Meaning, if it goes from an accessory residential use to a commercial use, it may change the code requirements. I am not sure what that means to the applicant or to the Building Official. So the Building Official is charged with making sure that all applicable regulations are met, but he's not charged with doing those inspections. He relies on the folks that sign off, like the Health Department. And when the Health Department says it's okay and your septic is working, that's one of the applicable regulations. So, if the designator changes, it could change the permit. I do not know what will happen there.

So again, the Certificate of Occupancy is issued by the Building Official. For the Building Official to revoke a Certificate of Occpuancy, then the Zoning Administrator or the Health Department would have to revoke their approval on the permit, and the permit has been issued and approved and CO'ed. So, the permit's not the issue. The issue is whether or not we can grant a home occupation permit. We're not dealing with the building permit. We're dealing with the home occupation permit or, as you guys have referred to it, to the zoning clearance. They are two different things. They are not the same things. One deals with structure, the other deals with use.

MR. MAUS: Mr. Shepherd, I may have about 30 seconds left in my rebuttal, but there have been some references to the email from Ms. Ragsdale back in September 2017. One of the things you want to look at there says, "If the structure for home occupation is not yet built, you would need to apply for a building permit. The home occupation could not be approved until after the structure gets its CO." So, what we did, we built the building, we applied for the clearance.

I appreciate the consideration the board has given. We think that it's only fair that the board overturn the Zoning Administrator's decision, grant us the right to use this for something other than just a space that we can occupy for our personal use. And the Certificate of Occupancy, it does say "Detached personal home office," but it's

only special conditions for personal use only. Under this CO, we can't have anybody in our office. They can modify it or amend it without having to withdraw it or cancel it. The county can do what it wishes to fix this problem, and we're asking the board to encourage them to do it. Thank you.

MR. SHEPHERD: Thank you.

I think we're all grappling with this.

MR. ROBB: Mr. Chairman, can I make – we don't have a motion.

MR. BOWERMAN: You have a motion before you, but it hasn't been seconded.

MR. SHEPHERD: I think the motion should be boiled down and clarified before –

MR. ROBB: Can I do that?

MR. SHEPHERD: Yes.

MR. ROBB: My motion would be – this is a substitute motion. I would move that this board not uphold the finding of the Zoning Administrator related to AP-201900004.

MR. BOWERMAN: You want a reference to the case determination that I based this on originally? A liberal interpretation of this? Put that in part of your motion – the reference to the decision. I would second that.

MR. BOWLING: So, you withdraw your motion?

MR. BOWERMAN: Yes, I'll accept what Ed's put up.

MR. BOWLING: If you add the language –

MR. BOWERMAN: Yes, yes. I think that was the key in your discussion. Relating to us, I think that was key information that we should use if we're going to do what I suggested, as the rationale for doing it.

MR. SHEPHERD: Is there further discussion? Further discussion from anyone? Or are we prepared to vote? Do we have a second?

MR. BOWERMAN: I'll second the motion.

MR. SHEPHERD: Okay. I would just like to ask the counsel. Jim, I – simple question. Do you think that overturning the Zoning Administrator's opinion would be within the parameters – within the scope – of 15.2-2311(C), that that could –

MR. BOWLING: I think you could read it that way. It's in the ballpark. I think you have a paucity of legal interpretation about what that language means. It seems to be a remedial statute designed for the kind of situation that you find yourself in here.

I don't think there's any duplicity on the part of the landowner. Nobody's going to go out and set themselves up for this kind of experience – "So hey, I think we know we can't do this, we're just going to build it instead. And then when the setback comes up, and says we didn't meet the setback requirements, we're going to appeal to the

Zoning Board." I don't think that's what's going on here. The landowners tried to act in good faith, and I think the county's acted in good faith, too. It was just a – a culmination of errors that occurred throughout the process.

MR. SHEPHERD: I want to say I'm leaning towards this. I had thought earlier that the right path for this was through the variance process. But I'm thinking now that, with all that has happened, that really is kicking the can down the road and would wind up having the same discussion again about how we got to this point, without getting into analyzing variances. So –

MR. BOWLING: I think that's what I concluded, too.

MR. SHEPHERD: There's a lot of criteria that have to be satisfied for the variance where – either with a variance, or this – either way, we're having to make a decision that is not as neat and bound up in a package as I would like it to be, either way. So I just want to have said that for the record.

MR. BOWLING: And one thing you've got to realize, and I don't know whether this will help or not, is that the Board of Zoning Appeals serves a different function than the Zoning Official and the Building Official and the Board of Supervisors. I think that's important to keep in mind, too, and that doesn't mean that any decision you make visible is right or wrong, or any decision they make if they don't agree with you and decide to go forward to challenge it is right or wrong.

MS. JOSEPH: Mr. Chair, I do want to say something. The rural areas are a really important part of Albemarle County, and if you look through the uses that are allowed, by right, it is – major home occupation is one of them, but it refers you back to meeting the setbacks. The idea of the rural areas is to promote agricultural use, and when we're allowing different kinds of commercial activities within the rural areas, I just think it's really, really important. All we're asking is that you conform to the setbacks.

So, I've been having a really hard time with this. You're going to be allowed to have a commercial activity, with more traffic than is normal, within a residential area – maybe not so much less than you would on a working farm, but still, it's keeping that area rural, agricultural, and really kind of focused on those sorts of activities. So, I've been having a really hard time with this.

MR. SHEPHERD: I think this matter – the hearing is closed and what's before us, I'd rather just – I think we should punch ahead here.

I'm getting ready to the call the roll, and a – sorry to do this, but I just want to be very clear on what a "yes" or "no" vote means. The motion, as I understand it, is to overturn the Zoning Administrator's determination. Is that correct? So, a "yes" is overturning the determination and approving the home occupation.

[A woman away from the mic is audible.]

MR. BOWLING: That's what Mr. Shepherd said.

MR. SHEPHERD: Is that correct?

MR. BOWLING: I mean, what you said – that's what you want to do?

MS. JOSEPH: That's what you just said.

MR. SHEPHERD: I mean, if – I thought that's the motion that is before us. The vote, the motion was stated to overturn the Zoning Administrator's determination? Or is the motion to uphold the Zoning Administrator's determination?

MR. ROBB: My motion was to not hold the Zoning Administrator's determination.

MR. SHEPHERD: Okay. So the motion is to overturn the determination.

MR. ROBB: Right.

MR. BOWLING: And a yes vote…

MR. SHEPHERD: Overturn the determination.

MR. BOWLING: Right.

MR. ROBB: In a positive way.

MR. SHEPHERD: Ready to vote? Marsha, please call the roll.

MS. ALLEY: Mr. Robb?

MR. ROBB: Yes.

MS. ALLEY: Mr. Bowerman?

MR. BOWERMAN: Yes.

MS. ALLEY: Ms. Joseph?

MS. JOSEPH: No.

MS. ALLEY: Mr. Shepherd?

MR. SHEPHERD: Yes. So that is our decision. I'm going to think about this one a long time.

Thank you for the consideration that folks have given to this. I hope this doesn't happen again, for everyone's sake here in the room.

4. Approval of Minutes
A. June 4, 2019

Mr. Robb said that regarding the minutes, it says, "At this time, the BZA did not adjourn a special meeting, but moved directly into the regular meeting." He asked if this was, in any way, a problem.

Mr. Shepherd replied no, pointing out that there was a statement they voted on that said that they only discussed matters that were proper to be held in a closed meeting.

Mr. Robb asked if the statement could be deleted from the minutes.

DRAFT

Mr. Bowling said he was not following.

Mr. Robb again read the statement and asked if there was a reason why this couldn't be deleted.

Mr. Bowling said it seemed clear that the BZA went from a specially-called meeting into a regular session. He suggested that this was perhaps a better way to describe it.

Ms. Alley asked if the correction could be restated.

Mr. Shepherd asked Mr. Robb how he would like the statement to read.

Mr. Robb answered that he would like the sentence to be eliminated from the minutes.

Ms. Joseph asked if that meeting needed to be adjourned, remarking that she had thought this had been done.

Mr. Bowling said the BZA came out of the executive session and that he also thought they adjourned that meeting.

Mr. Robb said he thought they adjourned as well, but that the minutes did not say so.

Mr. Shepherd asked if the word "not" could be eliminated so that the sentence would read, "At this time, the BZA did adjourn the special meeting and moved directly into the regular meeting."

Mr. Bowling asked about who transcribes the minutes.

Ms. Alley said they use a transcription service and that the reporting is then sent to Beth Golden, who sends her them the Word document.

Mr. Shepherd asked, with the elimination of "not," if there was a motion to approve the minutes.

MOTION: Mr. Bowerman moved to approve the minutes as presented. Mr. Robb seconded the motion, which passed unanimously (4-0).

5. Old Business

Mr. Shepherd said there had been talk before about BZA training and certification. He said that Mike Chandler was still perhaps holding classes as part of VAZO. He said there was also talk about some word from the County Attorney's Office about appointing the BZA to good parts of the Land Use Law handbook. He asked if further consideration had been made on this.

Mr. Svoboda replied that Mr. Chandler was not teaching anymore, to his knowledge. He said that there had been discussion about going away to training, but that this idea was not popular with the BZA. He said some in-house training could be held with the counsel present involving a work session to review the Land Use Law Handbook. He said staff was more than willing to do this in conjunction with himself, the County Attorney, and the board's counsel.

Mr. Shepherd expressed that individually, the board members all brought with them their own experience and talents. He said that the experience of undergoing training together would be a positive thing for the board and would help them with their analysis, as well as with strengthening their processes. He said he was in favor of

the training and liked the idea of reducing the scope of the training to allow it to happen in town. He noted his appreciation for Mr. Bowling, explaining that his presence provides the board with some training on an ongoing basis.

Mr. Bowling said that the County Attorney had done a good job over the years on monumental work on zoning law in Virginia, and that this information was all on the County Attorney's website and that it is updated regularly. He expressed the information was extremely helpful and would be to the BZA as well.

Mr. Shepherd said that Greg Kamptner did a good job on this as well, adding that the information was referred to and used throughout the Commonwealth. He said that he and Mr. Svoboda could discuss this further, as well as anyone else who wanted to be included, so that they could come up with more of a definite plan for the next meeting.

6. New Business
There was no new business.

7. Adjournment
At 3:37 p.m., Mr. Robb moved to adjourn the meeting. Mr. Bowerman seconded the motion, which passed unanimously (4-0).

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,

_____

David Bowerman, Secretary Board of Zoning Appeals

DRAFT

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 Fax (434) 972-4126

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD
LANE AUDITORIUM, 2:00 P.M
AGENDA
TUESDAY, OCTOBER 1, 2019

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   A. Project Number: AP201900004 Bufton & Maus TMP 50 - 49
      Property Owner/Appellant: Evelyn Bufton and John R. Maus
      Staff: Bart Svoboda/Kevin McCollum

4. Approval of Minutes
   A. June 4, 2019

5. Old Business

6. New Business

7. Adjournment

BOARD OF ZONING APPEALS MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) meeting. The following information is provided to help ensure the meeting proceeds as efficiently and effectively as possible. As a courtesy to others, please turn off all cell phones during the meeting.

General Information:

This meeting is recorded and later transcribed into minutes approved at a later meeting date.

Each item set for public hearing will begin with a presentation of the staff report. Next, the applicant or appellant for that item will be invited to speak. During the course of the process, the Chairman will open the public hearing to comments from the public. At the end of these proceedings the Chairman will announce that the public hearing is closed. Once the public hearing is closed, no further public comments will be allowed unless the Board asks for additional information from the applicant or appellant.

The BZA reserves the right to digress from these guidelines in any particular case.

To Members of the Public:

If you wish to address the Board, please raise your hand or stand when the Chairman asks for public comments for that item. When it is your turn for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording secretary. If you are with a group of people, you may want to have a spokesperson present your position to the Board.

In order to give all speakers equal treatment and courtesy, the Board requests that speakers adhere to the following guidelines:

- *Come forward to the speaker's podium and state your name;*
- *Address comments directly to the Board as a whole - open public debate is prohibited;*
- *State your position and give facts and other data to back it up – keep in mind that there is a **3 minute time limit for public comment**;*
- ***Give written statements and other supporting material to the Recording Secretary** (written comments are also welcome if you do not wish to speak).*

Additional Guidelines for Applicants and Appellants addressing the Board:

- *Please contact staff in Community Development ahead of the meeting to make any necessary arrangements for your presentation. **The Recording Secretary will also need copies of any handouts given to the BZA members for the official record of the meeting.***
- *Be clear in stating your position and do not repeat information that has been previously submitted to the Board.*
- *Stay on topic by addressing the questions in the application or by responding directly to staff's determination(s). Focus on presenting facts and data that support your position.*
- *Keep in mind there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.** The Board will ask any necessary follow-up questions to clarify points made during the presentation.*
- *Understand that the Board of Zoning Appeals cannot change County ordinances.*

The BZA reserves the right to place additional time limitations on speakers, as necessary.

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 **Fax (434) 972-4126**

Memorandum

To: Members of the Board of Zoning Appeals

From: Kevin McCollum, Planner and Designee to the Zoning Administrator

Division: Zoning

Subject: Preliminary Package for AP-2019-004 "Bufton & Maus"
Board of Zoning Appeals - October 1, 2019 Meeting

Date: September 10, 2019

To Whom It May Concern:

This memorandum serves as cover sheet and provides information on all of the items included in the AP-2019-4 Preliminary Package. This appeal is scheduled for the Board of Zoning Appeals on October 1, 2019.

Preliminary Package Items:

1. RE: HO2019-00233 Major Home Occupation Clearance - Bufton and Maus, PLC

This letter, written on July 30, 2019, informed the applicant that the above referenced Zoning Clearance could not be approved at the time because the structure did not comply with the primary structure setbacks for the Rural Areas zoning district.

2. Clearance Application

A copy of the Major Home Occupation Clearance Application - HO201900233.

3. Applicant Submittal

This preliminary package includes all of the information the Applicant provided with their appeal application.

4. Map

A map of the subject property, 7380 Gordonsville Road.

5. Section 5.2A of the Zoning Ordinance

This section of the Zoning Ordinance provides the regulations for Home Occupation Clearances in the Rural Areas zoning district.

6. Section 10.4 of the Zoning Ordinance

This section of the Zoning Ordinance provides the area and bulk regulations for the Rural Areas zoning district.

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 **Fax (434) 972-4126**

July 30, 2019

John R. Maus
7380 Gordonsville Rd
Gordonsville, VA 22942

RE: HO2019-00233 Major Home Occupation Clearance - Bufton and Maus, PLC
Parcel ID 05000-00-00-04900 (2.40 Acres) (the "Property"), 7380 Gordonsville Rd, Gordonsville, VA 22942

Mr. Maus:

In response to your request for a Major Home Occupation Clearance for the above referenced Property in the Rural Areas, please be advised of the following:

Based on the information provided with the application and the site inspection conducted on June 13, 2019 the accessory structure on the Property, proposed with building permit B2017-02431NNR, does not meet the applicable setback and yard requirements for primary structures required by Section 5.2A(c). Thus, the noted accessory structure cannot be used for the proposed Major Home Occupation until it is determined to comply with the primary structure setbacks for the Rural Areas zoning district. Therefore, in accordance with *Albemarle County Code* § 18-5.2A(c) and *Albemarle County Code* § 18-31.5(b) the above referenced Major Home Occupation Clearance cannot be approved at this time.

Additionally, if the proposed Major Home Occupation operates on the Property without an approved Zoning Clearance it will be considered in violation and subject to *Albemarle County Code* § 18-36.

If you are aggrieved by this determination, you have a right to appeal it within thirty (30) days of this notice, in accordance with *Virginia Code* § 15.2-2311. If you do not file a timely appeal, this determination shall be final and unappealable.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with *Albemarle County Code* § 18-34.3, along with a fee of $258. Additionally, a separate fee is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at www.albemarle.org/cdapps. This form applies to the appeal of a decision of the zoning administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance. They may be reviewed online at www.albemarle.org/countycodebza.

(Please note that our online documents are in Adobe Acrobat PDF format and must be viewed with the Adobe Acrobat Reader or an equivalent. A link to download the free plug-in is available at the bottom of www.albemarle.org/cdapps.)

Please contact me if you have questions or require additional information.

Sincerely,



Kevin McCollum
Planner
Authorized Designee to the Zoning Administrator

Attachments:
Links shown can be copied and pasted into web browser

Albemarle County Code § 18-5 (See Section 5.2A for Major Home Occupation requirements)
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning05_Supplement_Regulations.pdf

Albemarle County Code § 18-31 (See Section 31.5 for Zoning Clearance requirements)
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning31_Admin_Enforcement.pdf

Albemarle County Code § 18-10 - Area and Bulk Regulations Sec. 10.4 (“applicable setback and yard requirements for primary structures” ref. 5.2A(c))
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning10_Rural_Areas.pdf

Albemarle County Code § 18-36
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning36_Violations.pdf

FOR OFFICE USE ONLY HO # A019-00033
Fee Amount $ 27.00 Date Paid 6/4/19 By who? J. Maus Receipt # 1152 Ck# 1152 By: J. Frazier

Application for Major Home Occupation Clearance

(Only for parcels in the Rural Areas Zoning District)

Major Home Occupation Clearance = $27.00 + applicable fees

This application may require additional review by the Fire Marshal. Fees in addition to those shown on this application may be required by the Fire Prevention Code Fee Schedule. A copy of the schedule is available from the Fire Marshal.

Home Occupation, Major: An occupation, not expressly prohibited by section 5.2A, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit and up to two (2) additional persons not residing within the dwelling unit, with or without the use of accessory structures; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit or to any accessory structure to engage in the occupation.

Applicant MUST HAVE the following information to apply:

1) Tax Map and Parcel Number (or Address) and a description of the Home Occupation.
2) A Floor Plan Sketch on the next page with the following:
   a) The total square footage of the dwelling;
   b) The square footage of area within the home being used for the occupation (note this cannot be more than 25% of the gross square footage of the dwelling).
3) If applicable, a survey, plat, or aerial map showing accessory structures and parking associated with the home occupation. The GIS Web enables easy viewing and printing of aerial maps.

Name of Business: Button + Maus, PLC

Type of Business: attorneys **Tax map and parcel:** 05000-00-00-04900

Contact Person (Who should we call/write concerning this project?): John R. MAUS

Address 7380 Gordonsville Rd. City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

Owner of Record Evelyn Button + John Maus

Address Same as above City _____ State _____ Zip _____

Daytime Phone (_____) _____ Fax # (_____) _____ E-mail _____

DESCRIPTION OF USE (If necessary, attach an additional sheet. Include information about the number of vehicles and number of employees associated with the use, hours of operation, use of accessory structures, etc.):

law office - 2-3 vehicles
- no employees

Each major home occupation authorized in the Rural Areas zoning district is subject to the following:

PLEASE CHECK EACH BOX SO THAT IT IS CLEAR THAT YOU HAVE READ AND UNDERSTAND THE REQUIREMENTS FOR THIS CLEARANCE

☑ **LOCATION & AREA**
This home occupation shall be conducted within the dwelling unit or accessory structures, or both, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative area used for the home occupation, including the gross floor area within the dwelling unit or any accessory structure and the area used for outdoor storage as provided in section 5.2A(g), shall not exceed one thousand five hundred (1500) square feet. Plants that are planted in the ground that are to be used for a major home occupation do not count toward the one thousand five hundred (1500) square feet limitation. **[Section 5.2A (b) (1)]**

☑ **EXTERIOR APPEARANCE**
There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of the home occupation, except that one home occupation sign may be erected as authorized by section 4.15. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a residential area and shall be specifically compatible in design and scale with other residential development in the area in which it is located. Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation. **[Section 5.2A (c) (1)]**

☑ **VISITORS & SALES**
Customers, clients and students are permitted to visit the property where the home occupation is conducted. Only goods that are hand-crafted on-site and goods that are directly related to the home occupation, including but not limited to tools for pottery making and frames for artwork are permitted to be for sale to customers who comes to the site.
[Section 5.2A (d) (1)]

☑ **TRAFFIC** How many trips per week? Avg. amount of customers?
The traffic generated by the home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site. **[Section 5.2A (e)]**

☑ **PARKING** Location of parking - how many spaces?
All vehicles used in the home occupation and all vehicles of employees, customers, clients or students related to the home occupation shall be parked on-site. **[Section 5.2A (f)]**

☑ **OUTDOOR STORAGE**
The storage of goods, products, equipment other than vehicles used in the home occupation, or any materials associated with the home occupation, other than natural landscaping materials such as mulch and plants, outside of an enclosed structure is prohibited. **[Section 5.2A (g)]**

☑ **HOURS OF OPERATION** What're the typical hours?
The home occupation may operate up to six (6) days per week and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients or students visiting the site.
[Section 5.2A (h)]

☑ **NUMBER OF VEHICLES**
The number of vehicles that may be used in the home occupation that are parked or stored on-site shall not exceed two (2) motor vehicles and two (2) trailers. **[Section 5.2A (i)]**

☑ **NUMBER OF HOME OCCUPATIONS**
More than one home occupation is permitted on a parcel, provided that the area occupied and the traffic generated by the home occupations shall be considered cumulatively and all requirements of this section shall apply. **[Section 5.2A (j)]**

☑ **PERFORMANCE STANDARDS**

The home occupation shall comply with the performance standards in section 4.14. **[Section 5.2A (k)]**

Does the use involve procedures, machinery or chemicals that may cause the following?

	YES	NO
NOISE		
VIBRATION		
GLARE		
HEAT		
AIR POLLUTION		
WATER POLLUTION		
RADIOACTIVITY		
ELECTRICAL DISTURBANCE		
NON-DOMESTIC WASTE DISCHARGED TO A SEPTIC FIELD OR SEWER		

If YES, then applicable standards must be addressed with a Certified Engineer's Report (available from staff).

☑ **PROHIBITED USES**

(1) any use requiring a special use permit under section 10.2.2
(2) animal rescue centers
(3) automobile graveyards
(4) restaurants

(5) storage yards
(6) gun sales, unless the guns are made on-site by one or more family members residing within the dwelling unit
(7) on-site pet grooming
(8) body shops
(9) equipment, trailers, vehicles or machinery rentals
[Section 5.2A (l)]

(10) shooting ranges

(11) commercial stables
(12) rummage or garage sales other than those determined by the zoning administrator to be occasional
(13) veterinary clinics or hospitals
(14) pyrotechnic (fireworks or bomb) device manufacturing or sale
(15) Any other use not expressly listed that is determined by the zoning administrator to be contrary to the purpose and intent of section 5.2A.

☑ **NOTIFICATIONS & INSPECTIONS** I will be sending this out shortly

Written notice that an application for a zoning clearance for a major home occupation has been submitted will be sent to the owner of each abutting parcel under different ownership than the parcel on which the proposed home occupation would be located. The notice will identify the proposed home occupation, its size, its location, and whether there is a request for a waiver or modification. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed at least five (5) days prior to the action on the zoning clearance as provided in section 32.4.2.5. In addition, a public notice sign will posted on the property for the duration of the review. **[Section 5.2A (n)]**

☑ **SIGNAGE** Any signage?

One sign that does not exceed four (4) square feet in sign area and only states the name of the person occupying the dwelling and identifies the product or service offered by the home occupation is permitted. No additional permit is required for this sign, however, it must not exceed 6 ft. in height and must be setback at least 5 ft. from the public road right-of-way. **[Section 4.15.2 (25) and 4.15.8]**

☑ **ADDITIONAL IMPROVEMENTS AND REVIEWS FROM OTHER AGENCIES**

A zoning clearance shall not be issued if, after review of any site, additional improvements are necessary to protect public health or safety. **[Section 31.5 (c)]**

Other state and local resources, including but not limited to the Health Department, Virginia Department of Transportation, Building Official, and County Engineer are commonly asked to comment on Home Occupation applications.

WAIVERS OR MODIFICATIONS MAY BE SOUGHT ONLY FOR THE FOLLOWING:

AREA

The area requirements in section 5.2A(b) may be waived or modified, provided that the waiver or modification shall not authorize the home occupation to occupy more than forty-nine (49) percent of the gross floor area of the dwelling. In granting a waiver or modification of the area requirement, the commission shall make the following findings in addition to those findings in section 5.1: (1) the nature of the home occupation requires storage or additional space within the dwelling unit to conduct the home occupation; (2) the primary use of the dwelling unit as a residence is maintained; and (3) the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
[Section 5.2A (m) (1)]

TRAFFIC

The traffic limitation in section 5.2A (e) may be waived or modified. In granting a waiver or modification of the traffic limitation, the commission shall find, in addition to those findings in section 5.1, that the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
[Section 5.2A (m) (2)]

REVIEW PROCESS AND ADDITIONAL FEES

WITHOUT WAIVER REQUEST ($27 + notice fees)	**WITH A SPECIAL EXCEPTION ($27 + $457 + notice fees)**
1. Submit Home Occupation application ($27). 2. Staff will review for completion and mail abutting owner notification (Fee varies based on number of letters). 3. Staff will visit property to post public notice sign, review parking areas, proposed location of sign, and storage areas (if applicable). 4. Staff will approve application if requirements have been met and pick-up public notice sign.	1. Submit Home Occupation application and Waiver application ($25 + $457). 2. Staff will review for completion and mail abutting owner notification (Fee varies based on number of letters). 3. Staff will visit property to post public notice sign, review parking areas, proposed location of sign, and storage areas (if applicable). 4. Staff will coordinate date of next available Planning Commission meeting to process special exception 5. Staff will approve application if requirements have been met and pick-up public notice sign.

Owner/Applicant Must Read and Sign

I hereby apply for approval to conduct the Home Occupation identified above, and certify that this address is my legal residence. I also certify that I have read the restrictions on Home Occupations, that I understand them, and that I will abide by them. This certificate, in conjunction with a business license, represents zoning approval to conduct the Major Home Occupation identified above.

Signature of Applicant _____ **Date** 6/4/15

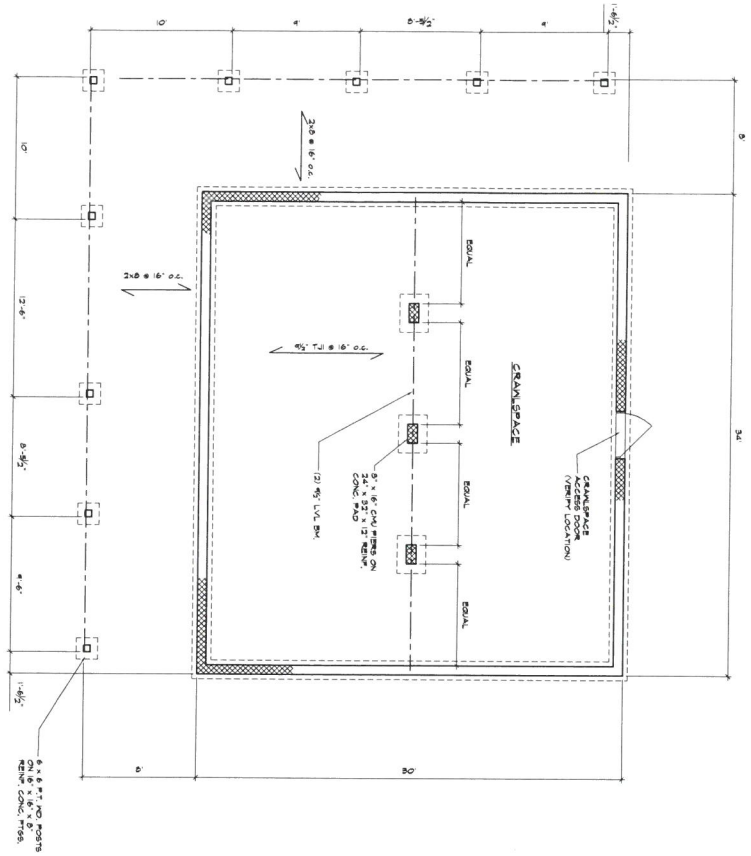
Other Official _____ **Date** _____

Building Official _____ **Date** _____

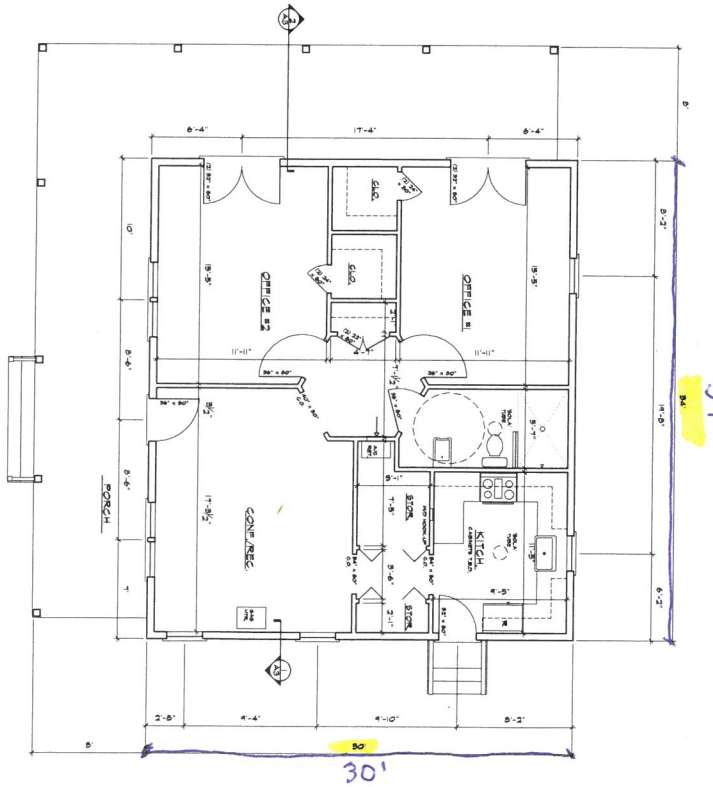
Zoning Official _____ **Date** _____

ENGINEER'S REPORT ATTACHED: YES _____ NO _____

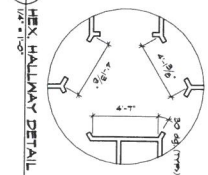
CONDITIONS: _____



1/A1 FOUNDATION PLAN
1/4" = 1'-0"



2/A1 FLOOR PLAN
1/4" = 1'-0"



3/A1 HEX. HALLWAY DETAIL
1/4" = 1'-0"

Gross square footage 34' x 30'
or 1020 SF

A1	JULY 31, 2018	Plans	BUFTON & MAUS LAW OFFICE Albemarle County, Virginia

Albemarle County

Planning Application

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 Owner(s): BUFTON, EVELYN & JOHN R MAUS

Application #: AP201900004

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: Rivanna

Land Use Primary: Residential -- Single-family (incl. modular homes

Current AFD: Not in A/F District

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

Application Type: Appeal of Zoning Administrator's Determination

Entered By: Buck Smith 8/12/2019

Project: EVELYN BUFTON AND JOHN R MAUS

Received Date: 08/12/19

Received Date Final:

Submittal Date: 08/12/19

Submittal Date Final:

Total Fees: 258

Total Paid: 258

Closing File Date:

Revision Number:

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	BUFTON, EVELYN & JOHN R MAUS	P O BOX E	GORDONSVILLEV	22942		
Primary Contact	JACK MAUS	P.O. BOX E	GORDONSVILLE	22942	5408941006	
Applicant	EVELYN BUFTON AND JOHN R MAUS					

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 201900004 SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $ 258 - Date Paid 8/12/19 By who? Du Four + Maus PLC Receipt # _____ Ck# _____ By: _____

Application for Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $258**

FEES to be paid after staff review for public notice:

Appeals of the Zoning Administrator require a public hearing by the Board of Zoning Appeals. Virginia State Code requires that notice for public hearings be made by publishing a legal advertisement in the newspaper and by mailing letters to adjacent property owners.

The total fee for public notice will be provided to the applicant after the final cost is determined and must be paid before the application is heard by a public body. Staff estimates the total cost of legal advertisement and adjacent owner notification to be between $350 and $450. This estimate reflects the average cost of public notice fees, but the cost of certain applications may be higher.

➢ Preparing and mailing or delivering up to fifty (50) notices	$215
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.08 for each additional notice + actual cost of first-class postage
➢ Legal advertisement (published twice in the newspaper for each public hearing)	Actual cost (averages between $150 and $250)

Contact Person (Who should we call/write concerning this project?): Jack Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

Owner of Record Evelyn Bufton and John R. "Jack" Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (804) 432-0920 Fax # (540) 406-5911 E-mail ebuftonlaw@gmail.com

Applicant (Who is the Contact person representing?): Evelyn Bufton and John R. Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

County of Albemarle Department of Community Development
401 McIntire Road Charlottesville, VA 22902 Voice: (434) 296-5832 Fax: (434) 972-4126

Project Name: Bufton & Maus Law Office

Tax map and parcel: 050000-00-00-04900 **Zoning:** rural

Physical Street Address (if assigned):
7380 Gordonsville Road, Gordonsville, Virginia 22942

Location of property (landmarks, intersections, or other):
Rt. 231 approximately 2 miles north of the intersection with Lindsay Road - across from Fielder's Choice Farm

The following information shall be submitted with the application and is to be provided by the applicant:

1) Completed application including subject of appeal.
2) Justification for applicant's position, including error in Zoning Administrators determination. You may use the space below to provide this information or submit an attached sheet.
3) If applicable, a copy of the latest deed for the property involved, and the approved and recorded plat.
4) If applicable, the appropriate drawings showing all existing and proposed improvements on the property and any special conditions for the situation that may justify the appeal.
5) Reference to the relevant Zoning Ordinance section or other applicable regulations or case precedence to justify the appeal.
6) Appropriate fee made payable to the County of Albemarle.

Explanation of error in determination and justification of applicant's position:

As further explained on the attachment, the jusitification for applicants' position is that (1) they fully disclosed to the Department of Community Development their intended use for the building, (2) the Department issued a Building Permit approving the placement of the building, (3) the applicants relied on the Building Permit in locating the building, and(4) the applicants' reliance on the Building Permit and their expenditure of substantial funds to construct the building is to their detriment if they are unable to use the building for its intended purpose.

Owner/Applicant Must Read and Sign

I hereby certify that the information provided on this application and accompanying information is accurate, true and correct to the best of my knowledge and belief.

Signature of Owner or Contract Purchaser, Agent

Date: 8/12/19

John R. Maus

Print Name

540-894-1086

Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

Board of Zoning Appeals Chairman's signature: _____ Date: _____

ATTACHMENT TO APPLICATION FOR APPEAL OF ZONING ADMINISTRATOR'S DETERMINATION

Background

When the applicants applied for a building permit, they submitted a copy of the architectural plans for the structure, which called for a building of approximately 1000 square feet with 2 offices, a conference room, a bathroom and a small kitchenette. The applicants' clear intention was to use the building as a law office and to meet there with clients and other professionals incidental to their law practice. The Department of Community Development (hereinafter, "the Department") issued a building permit that required the building to be set back only 6 feet from the side property line. A copy of the building permit is attached as Exhibit 1.

The foundation for the building was staked out so that it is parallel to the residence rather than the side property line. So, at its nearest point, the building is set back 14 feet away from the side property line. At its furthest point, the building exceeds the 25 foot side setback requirement.

When the foundation was staked, the applicants asked the Department to send a representative to visit the site to make sure that the stakes were properly placed. When that representative said that the location was correct, the applicants constructed the building in that precise location. The building was constructed in full compliance with the Statewide Building Code as enacted by Albemarle County and has passed the final inspection. The applicants have been told by the Department of Community Development that they are entitled to a Certificate of Occupancy.[1] Indeed, within hours after the final construction inspection was done, the County's Tax Assessor visited the property to ascertain its effect on an increased property tax assessment. Now, the Zoning Administrator has determined that he cannot approve a Major Home Occupation Clearance because the entire building is not set back 25 feet from the side property line.

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[1] The Department has indicated to the applicants that, although the building has been completed in full compliance with the building code, the Department has, at the time of filing of this Application, withheld the Certificate of Occupancy because it did not want to influence the zoning process. Those are two entirely different issues and the Department's refusal to issue a Certificate of Occupancy under these circumstances is arbitrary and capricious.

Case Precedent to Support the Appeal

The applicants have been unable to find any legal precedent that precisely deals with this situation. However, there are other legal precedents that are instructive about the appropriate resolution of this appeal.

The law in Virginia is clear that, if one person relies on the representations of another to their detriment, the person making the representation is prevented (or estopped) from later taking a different position. Allowing one party to change positions under certain circumstances would be unfair. That's why the doctrine is called "equitable estoppel."

In *Stewart v. Lady*, 251 Va. 106, 465 S.E.2d 782 (1996), the Supreme Court of Virginia said:

> To establish equitable estoppel, it is not necessary to show actual fraud but only that the person to be estopped has misled another to his prejudice (internal citation omitted) or that the innocent part acted in reliance upon the conduct or misstatement by the person to be estopped. *Khoury v. Memorial Hospital*, 203 Va. 236, 123 S.E.2d 533 (1962) ....Elements necessary to establish equitable estoppel, absent a showing of fraud and deception, are a representation, reliance, a change of position, and detriment. 251 Va. at 112-113, 465 S.E.2d at 785.

All of those elements necessary to prove equitable estoppel are present in the applicants' case:

- There was a representation (that the side setback was only 6 feet),
- The applicants relied on the representation,
- The applicants changed their position (they spend over $120,000.00 to build the office where it was permitted), and
- The applicants have suffered a detriment (that the County will not allow them to use the building for its intended purpose).

The principle of equitable estoppel applies to zoning issues as well. In *Chapel Creek, Ltd. V. Mathews County*, 12 Va. Cir 350 (1988), a developer had acquired a parcel of land on which he intended to build a 6-unit apartment building. He received approval for that and, when he learned that the County was going to enact an ordinance that prevented expansion

of that project, took additional steps to increase the size of his project before the ordinance became effective. When the Zoning Administrator denied the building permit for the expanded project, the developer sued and lost. However, the Court said this:

> The doctrine of equitable estoppel provides that the right to use or develop land cannot be infringed upon by legislative action when the owner or developer of such land has in good faith relied upon some act or failure to act by a governmental body and made a substantial change in position. (Internal citations omitted) ...[A] property owner may acquire a valid nonconforming use or acquire a vested right to complete construction of a nonconforming building where, in good faith and in reliance upon a validly issued building permit, the property owner has begun substantial construction or has incurred substantial expenses relating directly to the construction. (internal citations omitted) The most obvious missing link in petitioner's case is the threshold government act, the issuance of a building permit. 12 Va. Cir. At 353.

Unlike the developer in *Chapel Creek*, the applicants in this case had a validly issued building permit and constructed the building in accordance therewith. The applicants have finished construction of the building as it was permitted and, as indicated above, have spent in excess of $120,000.00 to do so. As a result, Albemarle County is estopped from denying the applicants a zoning clearance.

Furthermore, the Supreme Court of Virginia, in *Lee v. City of Norfolk*, 281 Va. 423, 706 S.E.2d 330 (2011) applied language from *Jones v. Board of Governors*, 704 F.2d 713 (4th Cir. 1983) in which that Court said:

> [S]ignificant departures from stated procedures of government and even from isolated assurances by governmental officers which have induced reasonable and detrimental reliance may, if sufficiently unfair and prejudicial, constitute procedural due process violations. 281 Va. at 436.

The decision of the Zoning Administrator is so unfair and prejudicial that it violates the applicants' due process rights under both Article I, §11 of the Constitution of Virginia, and under the 5th Amendment to the Constitution of the United States as made applicable to the States through the 14th Amendment.

Finally, it appears that the Zoning Administrator takes the position that the setback requirements in Code §18-10.4 are mandatory. However, the heading at the top of the setback table merely says that "Area and bulk regulations within the RA, rural areas, zoning

district are as follows:" That's not enough to make the setback requirement mandatory. Even if the word "shall" could be inferred from the ordinance, the Supreme Court of Virginia has recently ruled that "shall" is not always mandatory, but that it can also be directory. *Rickman v. Commonwealth*, 294 Va. 531, 808 S.E.2d 395 (2017). In fact, the Court said that:

> Under Virginia law, the use of the term "shall" in a statute is generally construed as directory, rather than mandatory, and, consequently, no specific, exclusive remedy applies unless the states manifests a contrary intent. (internal citations omitted). 294 Va. at 539.

In fact, one of the decisions cited in *Rickman*, was *Tran v. Board of Zoning Appeals*, 260 Va. 654, 536 S.E.2d 913 (2000). In *Tran*, the Board of Zoning Appeals issued a ruling outside of the 90-day period prescribed by Virginia Code §15.2-2312. The Supreme Court of Virginia ruled that the word "shall" in the statute was directory, not mandatory so that a BZA decision outside the 90-day limit was valid.

As indicated above, the County Assessor has determined that the structure adds value to the property. The Department of Community Development recently visited the property and assigned the office building a separate 911 address. The applicants were told that, so long as the building was going to be visited by third parties, it needed a separate 911 address in case of an emergency. The applicants don't understand why the County needs to plan for the presence of third parties if the applicants are not allowed to have them in the building.

In summary, for all of the reasons set forth above, the applicants submit that the decision of the Zoning Administrator to deny them a Major Home Occupation approval was incorrect and should be reversed by the Board of Zoning Appeals.

County of Albemarle

BUILDING PERMIT - Page 1

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900

Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40

Primary Zoning: Rural Areas

Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit #: B2017-02431-NNR ✓ EW

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or

Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

BUILDING WORK INFORMATION

Work Class	Frame Type	Water Supply Type	Sewage Disposal Type	Foundation Type
New	Wood	Cartesian Well	Private	Other

Work Valuation: $ 48,000.00

Jurisdictional Area: No Service

Other Foot / Found. Desc.:

Work Description: NEW STRUCTURE FOR HOME OFFICE

Directions: 7380 GORDONSVILLE RD

Legal Description: ACREAGE

Use Group:

Construction Type:

Square Footages:

# of Stories	1	Porches	504	Unfinished Basement	
1st Floor	792	Decks		Other Unfinished	
2nd Floor		Garage		Total Unfinished Sq. Footage	
3rd Floor		Swimming Pool			
Finished Basement					
Other Habitable					
Total Habitable Sq. Footage				Total Building Sq. Footage	

Set Backs:

Front	75	Back	6	Zoning Pre-Construction?	Land Use?
Left Side	6	Right Side	6	Fire Alarms Required?	Bldg Pre-Construction?
				Fire Sprinkler NAPA Code/Year	

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile\Prefab. Homes		Mobile Offices\Prefab. Units	
Carports		Bedrooms		Baths	1.0	Paint Spray Booths	
Garages				Kitchens		Swimming Pools\Hot Tubs\Spas (Res. Only)	
Other				Elevators\Escalators\Lifts			

APPLICATION CONTACT INFORMATION

Contact Type	Name	Address	City / State	Zip Cod	Work Phone	Cell
Owner/Applicant	bufton, evelyn & john r maus	P O BOX E	gordonsville va	22942	( ) -	
General Contractor	same/owner/agent				( ) -	

County of Albemarle

BUILDING PERMIT - Page 2

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

SUB-CONTRACTOR INFORMATION

Contractor Number	StateLicenseNumber	License Class

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for **BUFTON, EVELYN & JOHN R MAUS**, the Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address

P O BOX E **GORDONSVILLE VA** **22942**

within 10 days of today's date as required by Virginia Code § 15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.

Signature of Owner, Contractor or Authorized Agent — Date

Judy H. Mastei — 12/7/17

Signature of Building official or Authorized Representative — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building

Please initial here if you AGREE to receive and/or use electronic records and electronic signatures for Building Permit transactions.

Initials of Owner, Contractor or Authorized Agent

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

County of Albemarle

Community Development Department

Building Permit

Issued

BUILDING PERMIT #: **B2017-02431-NNR**

CONTRACTOR: **SAME/OWNER/AGENT**

MECHANICS LIEN AGENT: **NONE DESIGNATED**

SET BACKS:

FRONT	BACK	LEFT SIDE	RIGHT SIDE
75	6	6	6

CONTACT #: (434) 296-5832

MUST BE PRINTED ON YELLOW CARDSTOCK AND POSTED VISIBLE FROM THE PUBLIC WAY
FOR ALL BUILDING PERMITS ISSUED AFTER JULY 1, 2017

County of Albemarle
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902

AUG -7 2019



DATE: 08/05/2019
TO: BUFTON, EVELYN & JOHN R MAUS
P O BOX E
GORDONSVILLE VA 22942
CC: Post Office, GORDONSVILLE
FROM: Geographic Data Services (GDS)
www.albemarle.org/gds
434-296-5832

SUBJECT: Physical Address Notification - NEW CONSTRUCTION
TMP: 05000-00-00-04900
PERMIT#: B2017-02431NNR
PHYSICAL ADDRESS: **7382 GORDONSVILLE RD**

As of the date of this letter, the physical address located at the above Tax Map Parcel (TMP) and/or Building Permit# is currently in our addressing system.

To ensure proper location by emergency service providers, timely mail delivery, and the accuracy of other County records, please do the following:

- If applicable, contact your telephone company to ensure this physical address is associated with your landline telephone number;
- Post the address for this structure in accordance with Albemarle County's Road Naming and Property Numbering Ordinance and Manual;*
- To receive mail using this address, contact your post. If this is an address change and you didn't physically move, do not submit a Change of Address form with the USPS. Any questions about mail delivery, zip code information, and determining where a mailbox should be installed, will be handled by the post office;
- If applicable, ensure that your records are up to date with Voter Registration (434-972-4173), School Transportation (434-973-5716), and the County's Finance Department (434-296-5851);
- Alert other County and non-County entities (e.g. credit card, utilities, etc.) as necessary.

Note: any change in your physical address does not require the deed to your property to be re-recorded at the courthouse.

*The County's Road Naming and Property Numbering Ordinance requires that this physical address number be posted so it is easily visible from the named street or road. **The number must be posted at the driveway entrance.** If the mailbox is not located directly on the above named street or road, the address number *and* road name must appear on the mailbox. The numerals displayed should be at least three inches in height on a contrasting background and any previously displayed numbers, which could be confused with or mistaken for the address assigned, shall be removed from the mailbox and property.

If you should have any questions regarding this physical address, please do not hesitate to contact our office.

7380 Gordonsville Rd



Legend

(Note: Some items on map may not appear in legend)

Parcel Info

- ☐ Parcels



GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

June 6, 2019

5.2A HOME OCCUPATIONS IN THE RURAL AREAS ZONING DISTRICT

Each home occupation authorized in the rural areas zoning district shall be subject to the following:

a. *Purpose and intent*. The purpose for authorizing home occupations in the rural areas zoning district is to encourage limited home-based economic development, balanced with the need to protect and preserve the quality and character of the county's agricultural areas and residential neighborhoods in the rural areas zoning district. The regulations in this section are intended to ensure that authorized home occupations will be compatible with other permitted uses, the agricultural areas, and the residential neighborhoods by regulating the scale, hours, external activities, external appearance and other impacts that may arise from a home occupation.

b. *Location and area occupied by a home occupation*. A home occupation shall be located and sized as follows:

1. *Major home occupations*. A major home occupation shall be conducted within the dwelling unit or accessory structures, or both, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative area used for the home occupation, including the gross floor area within the dwelling unit or any accessory structure and the area used for outdoor storage as provided in section 5.2A(g), shall not exceed one thousand five hundred (1500) square feet. Plants that are planted in the ground that are to be used for a major home occupation do not count toward the one thousand five hundred (1500) square feet limitation.

2. *Minor home occupations*. A minor home occupation shall be conducted entirely within the dwelling unit, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the gross floor area used for the home occupation shall not exceed one thousand five hundred (1500) square feet.

c. *Exterior appearance*. The exterior appearance of a parcel with a home occupation shall be subject to the following:

1. *Major home occupations*. There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a major home occupation, except that one home occupation sign may be erected as authorized by section 4.15. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a residential area and shall be specifically compatible in design and scale with other residential development in the area in which it is located. Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation.

2. *Minor home occupations*. There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a minor home occupation.

d. *Visitors and sales*. Visitors and sales related to a home occupation shall be subject to the following:

1. *Major home occupations*. Customers, clients and students may visit a major home occupation. The sale of goods by the major home occupation to a customer who comes to the site is prohibited except for goods that are hand-crafted on-site and accessory goods that are directly related to a major home occupation, including but not limited to tools for pottery making and frames for artwork.

2. *Minor home occupations*. No customers, clients or students may visit a minor home occupation for a purpose related to the home occupation. The sale of goods or the provision of services by the minor home occupation to a customer, client or student at the site is prohibited.

e. *Traffic generated by a major home occupation*. The traffic generated by a major home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site.

f. *Parking*. All vehicles used in a home occupation and all vehicles of employees, customers, clients or students related to a major home occupation shall be parked on-site.

g. *Outdoor storage*. The storage of goods, products, equipment other than vehicles used in a home occupation, or any materials associated with a home occupation, other than natural landscaping materials such as mulch and plants, outside of an enclosed structure is prohibited.

h. *Days and hours of operation for major home occupations*. Major home occupations may operate up to six (6) days per week and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients or students visiting the site.

i. *Number of vehicles used in a home occupation*. The number of vehicles that may be used in a home occupation that are parked or stored on-site shall not exceed two (2) motor vehicles and two (2) trailers.

j. *Number of home occupations*. More than one home occupation is permitted on a parcel, provided that the area occupied and the traffic generated by the home occupations shall be considered cumulatively and all requirements of this section shall apply.

k. *Performance standards*. All home occupations shall comply with the performance standards in section 4.14.

l. *Prohibited home occupations*. The following uses are prohibited as home occupations: (1) any use requiring a special use permit under section 10.2.2; (2) animal rescue centers; (3) junkyards; (4) restaurants; (5) storage yards; (6) gun sales, unless the guns are made on-site by one or more family members residing within the dwelling unit; (7) on-site pet grooming; (8) body shops; (9) equipment, trailers, vehicles or machinery rentals; (10) shooting ranges; (11) commercial stables; (12) rummage or garage sales other than those determined by the zoning administrator to be occasional; (13) veterinary clinics or hospitals; (14) pyrotechnic (fireworks or bomb) device manufacturing or sales; and (15) any other use not expressly listed that is determined by the zoning administrator to be contrary to the purpose and intent of section 5.2A.

m. *Waivers and modifications*. The waiver or modification of any requirement of section 5.2A is prohibited except as provided herein:

1. *Area*. The area requirements in section 5.2A(b) may be waived or modified, provided that the waiver or modification shall not authorize the home occupation to occupy more than forty-nine (49) percent of the gross floor area of the dwelling. In granting a waiver or modification of the area requirement, the commission shall make the following findings in addition to those findings in section 5.1: (1) the nature of the home occupation requires storage or additional space within the dwelling unit to conduct the home occupation; (2) the primary use of the dwelling unit as a residence is maintained; and (3) the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.

2. *Traffic*. The traffic limitation in section 5.2A(e) may be waived or modified. In granting a waiver or modification of the traffic limitation, the commission shall find, in addition to those findings in section 5.1, that the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.

n. *Zoning clearance required; notice of request*. No home occupation shall commence without a zoning clearance issued under section 31.5. For each zoning clearance requested for a major home occupation, the zoning administrator shall provide written notice that an application for a zoning clearance has been submitted to the owner of each abutting parcel under different ownership than the parcel on which the proposed home occupation would be located. The notice shall identify the proposed home occupation, its size, its location, and whether any waiver or modification is requested. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed at least five (5) days prior to the action on the zoning clearance as provided in section 32.4.2.5.

(Ord. 11-18(1), 1-12-11; Ord. 19-18(3), 6-5-19)

c. Provisions of section 10.3.3, rural preservation development, shall be applied to the entire parcel. Combination of conventional and rural preservation development within the parcel shall not be permitted, provided that the total number of lots achievable under section 10.3.1 and section 10.3.2 shall be permitted by authorization of more than one (1) rural preservation tract. Nothing contained herein shall be deemed to preclude the director of current development and zoning from approving a rural preservation development for multiple tracts of adjoining land, or on land divided or otherwise altered prior to the effective date of this provision; provided that, in either case, the provisions of section 10.3.3 shall be applicable;

d. The area devoted to development lots together with the area of roadway necessary to provide access to such lots shall not exceed the number of development lots multiplied by a factor of six (6) expressed in acres;

e. No rural preservation development shall contain less than one (1) rural preservation tract. The director of current development and zoning may authorize more than one (1) rural preservation tract in a particular case pursuant to the various purposes of rural preservation development as set forth in section 10.3.3.2 or in accord with section 10.3.3.3.c, as the case may be;

f. No rural preservation tract shall consist of less than forty (40) acres. Except as specifically permitted by the director of current development and zoning at time of establishment, not more than one (1) dwelling unit shall be located on any rural preservation tract or development lot. No rural preservation tract shall be diminished in area. These restrictions shall be guaranteed by perpetual easement accruable to the County of Albemarle and the public recreational facility authority of Albemarle County in a form acceptable to the board. In accordance with Chapter 14 of the Code of Albemarle, the director of planning and community development shall serve as agent for the board of supervisors to accept such easement. Thereafter, such easement may be modified or abandoned only by mutual agreement of the grantees to the original agreement;

g. Each application for a rural preservation development is subject to the review and approval of the director of current development and zoning.

(§ 20-10.3.3.3, 11-8-89; § 18-10.3.3.3, Ord. 98-A(1), 8-5-98; Ord. 04-18(1), 5-5-04 effective 7-1-04)

Sec. 10.4 Area and bulk regulations.

Area and bulk regulations within the RA, rural areas, zoning district are as follows:

REQUIREMENTS	DIVISIONS BY RIGHT	DIVISIONS BY SPECIAL USE PERMIT
Gross density	0.5 du/ac	0.5 du/ac
Minimum lot size	2.0 acres	2.0 acres
Minimum frontage existing public roads	250 feet	250 feet
Minimum frontage internal public or private roads	150 feet	150 feet
Yards, minimum:		
Front (existing public roads)	75 feet	75 feet
Front (internal public or private road)(Amended 11-13-91)	25 feet	25 feet
Side	25 feet	25 feet
Rear	35 feet	35 feet
Maximum structure height	35 feet	35 feet

(§ 20-10.4, 12-10-80; 8-14-85; § 18-10.4, Ord. 98-A(1), 8-5-98; Ord. 08-18(7), 11-12-08)

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 Fax (434) 972-4126

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
COUNTY OFFICE BUILDING
401 MCINTIRE ROAD
LANE AUDITORIUM, 2:00 P.M
AGENDA
TUESDAY, OCTOBER 1, 2019

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   A. Project Number: AP201900004 Bufton & Maus TMP 50 - 49
      Property Owner/Appellant: Evelyn Bufton and John R. Maus
      Staff: Bart Svoboda/Kevin McCollum

4. Approval of Minutes
   A. June 4, 2019

5. Old Business

6. New Business

7. Adjournment

BOARD OF ZONING APPEALS MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) meeting. The following information is provided to help ensure the meeting proceeds as efficiently and effectively as possible. As a courtesy to others, please turn off all cell phones during the meeting.

General Information:

This meeting is recorded and later transcribed into minutes approved at a later meeting date.

Each item set for public hearing will begin with a presentation of the staff report. Next, the applicant or appellant for that item will be invited to speak. During the course of the process, the Chairman will open the public hearing to comments from the public. At the end of these proceedings the Chairman will announce that the public hearing is closed. Once the public hearing is closed, no further public comments will be allowed unless the Board asks for additional information from the applicant or appellant.

The BZA reserves the right to digress from these guidelines in any particular case.

To Members of the Public:

If you wish to address the Board, please raise your hand or stand when the Chairman asks for public comments for that item. When it is your turn for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording secretary. If you are with a group of people, you may want to have a spokesperson present your position to the Board.

In order to give all speakers equal treatment and courtesy, the Board requests that speakers adhere to the following guidelines:

- *Come forward to the speaker's podium and state your name;*
- *Address comments directly to the Board as a whole - open public debate is prohibited;*
- *State your position and give facts and other data to back it up – keep in mind that there is a **3 minute time limit for public comment**;*
- ***Give written statements and other supporting material to the Recording Secretary** (written comments are also welcome if you do not wish to speak).*

Additional Guidelines for Applicants and Appellants addressing the Board:

- *Please contact staff in Community Development ahead of the meeting to make any necessary arrangements for your presentation. **The Recording Secretary will also need copies of any handouts given to the BZA members for the official record of the meeting.***
- *Be clear in stating your position and do not repeat information that has been previously submitted to the Board.*
- *Stay on topic by addressing the questions in the application or by responding directly to staff's determination(s). Focus on presenting facts and data that support your position.*
- *Keep in mind there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.** The Board will ask any necessary follow-up questions to clarify points made during the presentation.*
- *Understand that the Board of Zoning Appeals cannot change County ordinances.*

The BZA reserves the right to place additional time limitations on speakers, as necessary.

STAFF: Kevin McCollum and Bart Svoboda
PUBLIC HEARING: October 1, 2019

STAFF REPORT: AP2019-00004

APPLICANT/APPELLANT: Evelyn Bufton and John "Jack" R. Maus

Description of Property: According to current real estate assessment records, Tax Map 50, Parcel 49 contains 2.40 acres+/- and is located in eastern Albemarle County along State Route 631 (Attachment A). There is one dwelling and one accessory structure located on the property at 7380 and 7382 Gordonsville Rd, respectively. The property fronts on State Route 631, an Entrance Corridor, and is zoned Rural Areas, RA.

Background: On October 17, 2017, the appellant applied for a building permit, B2017-02431-NNR (Attachment B) for an accessory structure. On December 7, 2017, the County issued that building permit for an accessory structure now located at 7382 Gordonsville Rd, building permit B2017-02431-NNR (Attachment B). The building permit application described the structure as a storage building/accessory structure with a work description of "new structure for home office." Based on the information provided, staff applied the following accessory structure setbacks for the RA; Front - 75', Rear - 6', and Side - 6'.

On June 4, 2019, the Applicant applied for a Major Home Occupation Clearance to use the accessory structure as a law office (Attachment C). After inspecting the property to verify that the proposed Major Home Occupation met all the applicable regulations, staff sent an advisory email on June 17 noting that the side setback did not appear to be met and informing the applicant that the proposed Major Home Occupation Clearance cannot be approved until they can confirm that the structure meets the applicable setbacks (Attachment D).

Determination and Applicant's Appeal: On July 30, 2019, staff wrote an official determination informing the applicant that the Major Home Occupation Clearance application could not be approved until staff determines that the accessory structure complies with the primary structure setbacks for the Rural Areas zoning district (Attachment E). On August 12, 2019, the Applicant submitted an appeal of "the decision of the Zoning Administrator to deny them a Major Home Occupation approval" (Attachment F).

Grounds for Zoning Administrator's Determination: The Zoning Administrator based the determination on the information provided with the application as well as the site inspection conducted on June 13, 2019. During that inspection, staff noted that the accessory structure did not meet the applicable setback and yard requirements for primary structures required by Section 5.2A(c). Therefore, in accordance with Albemarle County Code § 18-5.2A(c) and Albemarle County Code § 18-31.5(b), the proposed Major Home Occupation cannot be approved until it is determined to comply with the primary structure setbacks for the Rural Areas zoning district.

The Appellant's Justification for Appeal: The justification for the Applicants' position is that (1) they fully disclosed to the Department of Community Development their intended use for the building, (2) the Department issued a building permit approving the placement of the building,

(3) the Applicants relied on the building permit in locating the building, and (4) the Applicants' reliance on the building permit and their expenditure of substantial funds to construct the building is to their detriment if they are unable to use the building for its intended purpose.

Staff Response: Staff responses to the four major points of the Appellant's justification.

1. The Appellants' first argument is that the intended use of the accessory structure, a commercial law office, was fully disclosed to the Department of Community Development.

   Staff contends that the information provided on the building permit does not indicate in any way the use of the accessory structure for a commercial law office Major Home Occupation. The building permit was issued for a "storage building/accessory structure" with a work description of "new structure for home office." Based on this information staff correctly applied the accessory structure setbacks for the Rural Areas zoning district which are Front - 75', Rear - 6', and Side - 6'. Because "home offices" can exist as part of a single-family dwelling in the Rural Areas and are significantly different than a Major Home Occupation, there is not enough evidence to support the claim that use of the accessory structure as a commercial law office was fully disclosed to the Department of Community Development. Additionally, a Major Home Occupation Clearance was not submitted until over a year and a half after the building permit was issued. If the applicant submitted the Major Home Occupation Clearance alongside the building permit, the County would have known the intended use and would have applied the appropriate setbacks on the building permit.

2. The Appellants' second argument is that the County issued a building permit approving the placement of the building.

   Staff agrees with this statement. The County issued a building permit for the accessory structure at the correct setbacks. The accessory structure that exists on the property right now meets the applicable accessory structure setbacks. The accessory structure does not, however, meet the applicable setbacks to be used as a Major Home Occupation. The appellant was notified, by email (Attachment G), on September 29, 2017 of the required setbacks for a Major Home Occupation.

3. The Appellants' third argument is that they relied on the building permit in locating the building.

   Staff contends that the intended law office use was not known to staff and that given the information provided (Attachment H), the appropriate setbacks for an accessory structure were applied.

4. The Appellants' last argument is that the applicants' reliance on the building permit and their expenditure of substantial funds to construct the building is to their detriment if they are unable to use the building for its intended purpose.

Staff contends that the intended purpose of the building, based on the information provided on the building permit application, was an accessory structure. Therefore, the structure is able to be used and is no detriment to the Appellants.

Summary: On July 30, 2019, the Zoning Administrator issued a determination that the proposed Major Home Occupation cannot be approved until it is determined to comply with the primary structure setbacks for the Rural Areas zoning district. The Applicants of that Major Home Occupation are appealing "the decision of the Zoning Administrator to deny them a Major Home Occupation approval." Despite the Appellants' grounds for the appeal, presented above, staff contends that the determination made was correct and that the Board of Zoning Appeals should affirm this determination.

Proposed Motions: Staff recommends that the Board of Zoning Appeals upholds the Zoning Administrator's determination regarding Major Home Occupation Clearance, HO2019-233.

Attachments:

Attachment A: Current GIS Map of the Property

Attachment B: Building Permit B2017-02431-NNR

Attachment C: Major Home Occupation Clearance Application

Attachment D: Staff Email to the Applicant dated June 17, 2019

Attachment E: Official Determination "RE: HO2019-00233 Major Home Occupation Clearance"

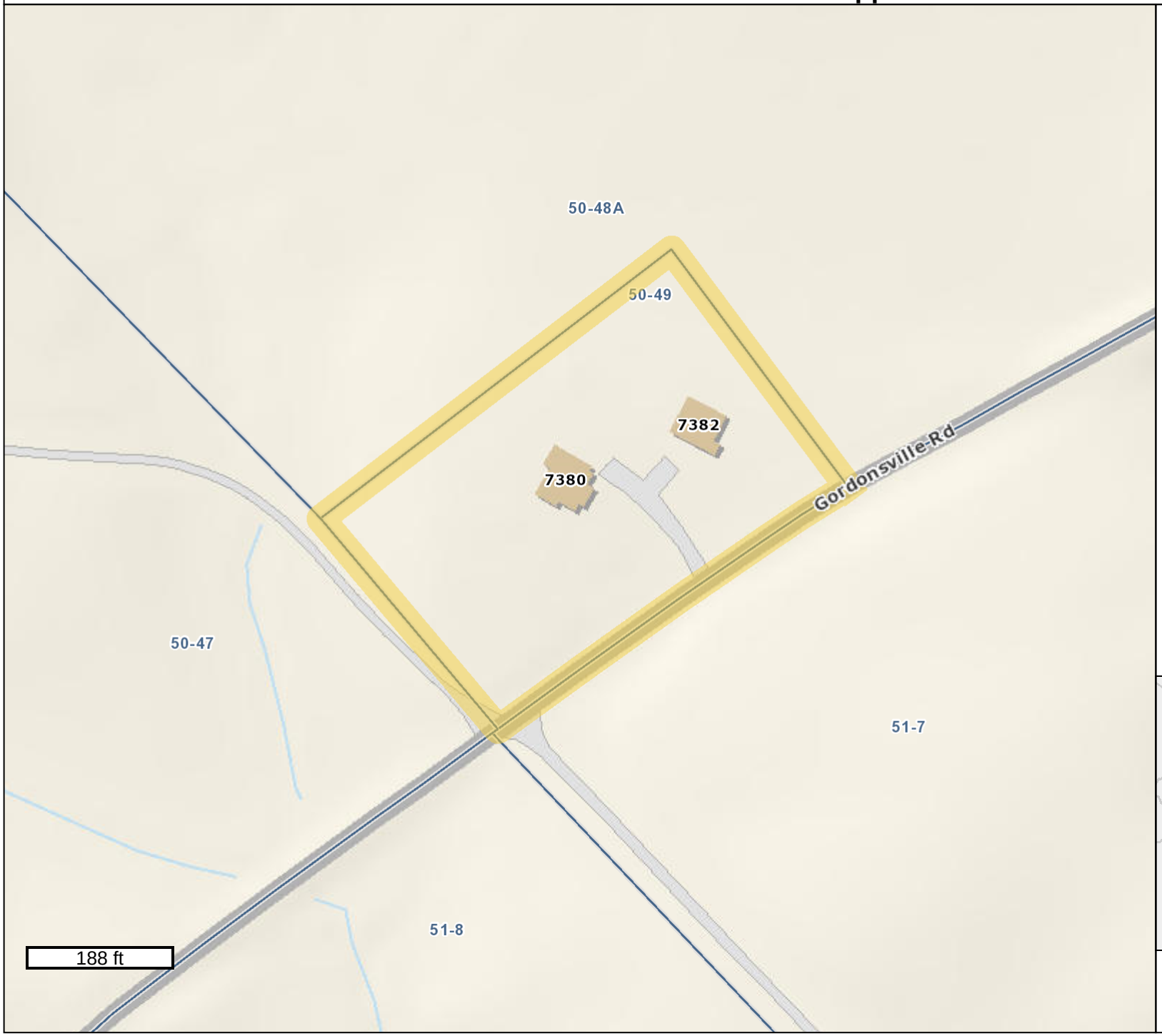
Attachment F: AP201900004 Application

Attachment G: Staff Email to the Applicant dated September 29, 2017

Attachment H: Building Permit Layout

AP2019-004 Bufton/Maus Appeal

Attachment A: Current GIS Map of the Property



Legend

(Note: Some items on map may not appear in legend)

Parcel Info

- Parcels



GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

August 16, 2019

Map elements may scale larger than GIS data measured in the map or as provided on the data download page due to the projection used. Map Projection: WGS84 Web Mercator (Auxiliary Sphere) (EPSG 3857)

County of Albemarle

BUILDING PERMIT - Page 1

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit #: B2017-02431-NNR ✓ EW

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or

Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

BUILDING WORK INFORMATION

Work Class	Frame Type	Water Supply Type	Sewage Disposal Type	Foundation Type
New	Wood	Cartesian Well	Private	Other

Work Valuation: $ 48,000.00

Jurisdictional Area: No Service

Other Foot / Found. Desc.:

Work Description: NEW STRUCTURE FOR HOME OFFICE

Directions: 7380 GORDONSVILLE RD

Attachment B: Building Permit B2017-02431-NNR

Legal Description: ACREAGE

Use Group:

Construction Type:

Square Footages:

# of Stories	1	Porches	504	Unfinished Basement	
1st Floor	792	Decks		Other Unfinished	
2nd Floor		Garage		Total Unfinished Sq. Footage	
3rd Floor		Swimming Pool			
Finished Basement					
Other Habitable					
Total Habitable Sq. Footage				Total Building Sq. Footage	

Set Backs:

Front: 75 | Back: 6 | Left Side: 6 | Right Side: 6

Zoning Pre-Construction? | Land Use? | Fire Alarms Required? | Bldg Pre-Construction? | Fire Sprinkler NAPA Code/Year

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile\Prefab. Homes		Mobile Offices\Prefab. Units	
Carports		Bedrooms		Baths	1.0	Paint Spray Booths	
Garages				Kitchens		Swimming Pools\Hot Tubs\Spas (Res. Only)	
Other				Elevators\Escalators\Lifts			

APPLICATION CONTACT INFORMATION

Contact Type	Name	Address	City / State	Zip Cod	Work Phone	Cell
Owner/Applicant	bufton, evelyn & john r maus	P O BOX E	gordonsville va	22942	( ) -	
General Contractor	same/owner/agent				( ) -	

County of Albemarle

BUILDING PERMIT - Page 2

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

SUB-CONTRACTOR INFORMATION

Contractor Number	StateLicenseNumber	License Class

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for **BUFTON, EVELYN & JOHN R MAUS**, the Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address

P O BOX E **GORDONSVILLE VA** **22942**

within 10 days of today's date as required by Virginia Code § 15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.

Signature of Owner, Contractor or Authorized Agent — Date

Judy H. Mastei — 12/7/17

Signature of Building official or Authorized Representative — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building

Please initial here if you AGREE to receive and/or use electronic records and electronic signatures for Building Permit transactions.

Initials of Owner, Contractor or Authorized Agent

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

Sewage Disposal System Minor Modification Design

THIS PLAN IS BEING SUBMITTED UNDER PROVISION 32.1-163.6 OF THE CODE OF VIRGINIA
AND DOES NOT POSE A GREATER RISK OF MALFUNCTION AS DEFINED IN THE SHDR 350 THAN CURRENT REGULATORY DESIGNS.

TM 50-49
7380 Gordonsville Rd
Gordonsville, VA 22942
2.4 Acres

APPROVED

Bufton, Evelyn & John R Maus
P O Box E
Gordonsville, VA 22942

300 gallon per day system (2 BDR)
STE

New Sewage Ejector Station
Existing 1000 Gallon Septic Tank with effluent filter
Existing Drainfield

	Page
Specifications	2
Site Plan	3
Septic Tank Details	4
Sewage Pump Details	5

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
PROFESSIONAL ENGINEER
11-15-17

Old Dominion Engineering
2036 Forest Drive
Waynesboro, Va 22980
Phone: (540) 942-5600
email: olddomeng@ntelos.net

1317085

November 15, 2017

General

1. Modifications or substitutions to the specified equipment or layout must be approved by the engineer.
2. The contractor should inspect the site prior to submitting an estimate to the owner. Any potential conflicts should be reported to the engineer. By submitting an estimate the contractor indicates that he has investigated the site and has found no discrepancies with the plans and specifications.
3. **A preconstruction conference is mandatory before starting installation of the system.** Contact engineer to discuss important aspects of installation. The engineer will not certify the system at the final inspection unless a preconstruction conference is done prior to installation.
4. A final inspection is required – The installation must pass inspection **by the engineer**. Notify the engineer of the planned inspection date in advance. Prior to final inspection the contractor should shoot all invert elevations and take as-built triangulation measurements. The contractor shall provide as-built measurements to all components of system to the engineer at the final inspection. The **OWNER** is responsible for paying the engineer's inspection fees.
5. If adverse subsurface conditions are encountered (rock, groundwater, utilities, etc.) contact the engineer.
6. If site conditions vary contact the engineer.
7. The contractor is responsible for maintaining all set back distances as required by local ordinances and health department and payment for all inspections by health department.
8. Installation shall be in accordance with Virginia Department of Health Sewage Handling and Disposal regulations and in accordance with erosion and sediment control guidelines.
9. A separate Project Manual contains calculations, equipment cut sheets, etc. A separate package contains AOSE soil information.
10. Notify "MISS Utility" prior to excavation.

Gravity Sewer/Effluent Main/Force Main

1. Gravity sewer from the office to the sewage ejector tank is 4" SCH 40 PVC sewer. Cleanouts every 50'.
2. Effluent mains shall be 4" schedule 40 PVC and have a slope of 6" per 100' minimum.
3. Force main and pressure piping shall be 2" Schedule 40 PVC .

Septic Tank

1. Septic Tank - existing. Check tank to make sure it is not leaking and check tees for alignment. The tank and all seams shall be waterproof.
2. The access port on the outlet end of the tank shall have a 24" waterproof riser. The riser shall be attached to the tank and sealed.. Riser shall reach the surface and shall be covered at the surface with lockable, watertight lids.
3. Zabel A300 12x20-VC-Ball effluent filter on tank.

Garage Sewage Ejector Tank

1. 24" diameter Polylok Basin with 24" Heavy Duty Lid. 50" min height. Basin to be waterproof.
2. Pipe penetrations to be waterproof with Polylok grommets.
3. Inlet to tank shall be 4" SCH 40 PVC. Outlet is 2" SCH 40 PVC.
4. The risers shall extend 2" above final grade and shall be covered at the surface with a plastic, lockable, watertight lid. The risers shall be 24" in diameter.
5. If rock is encountered in the tank hole then tank shall be bedded with 8" #68 stone. Tank shall be backfilled in layers with sufficient compaction (> 95% compaction) to avoid settling. Backfill material shall be free of debris and large stones.
6. Tank shall be backfilled in layers with sufficient tamping to avoid settling. Backfill material shall be free of debris and large stones.

Sewage Ejector Pump

1. Little Giant 10SN-CIA-RF (1/2 HP). Pump shall deliver 35 gpm @ 19 ft. Pump operation is to be controlled by an integrated piggyback float. Hardwired electrical connection in waterproof junction box.
2. Install 3/16 vent hole location before check valve per Little Giant recommendation

Alarm Panel

1) Indoor/Outdoor Little Giant Alarm 303HWXT Alarm (513273). Alarm to be installed on office. Alarm to be audiovisual and controlled by float. All electrical connections shall be hardwired in a waterproof junction box.

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

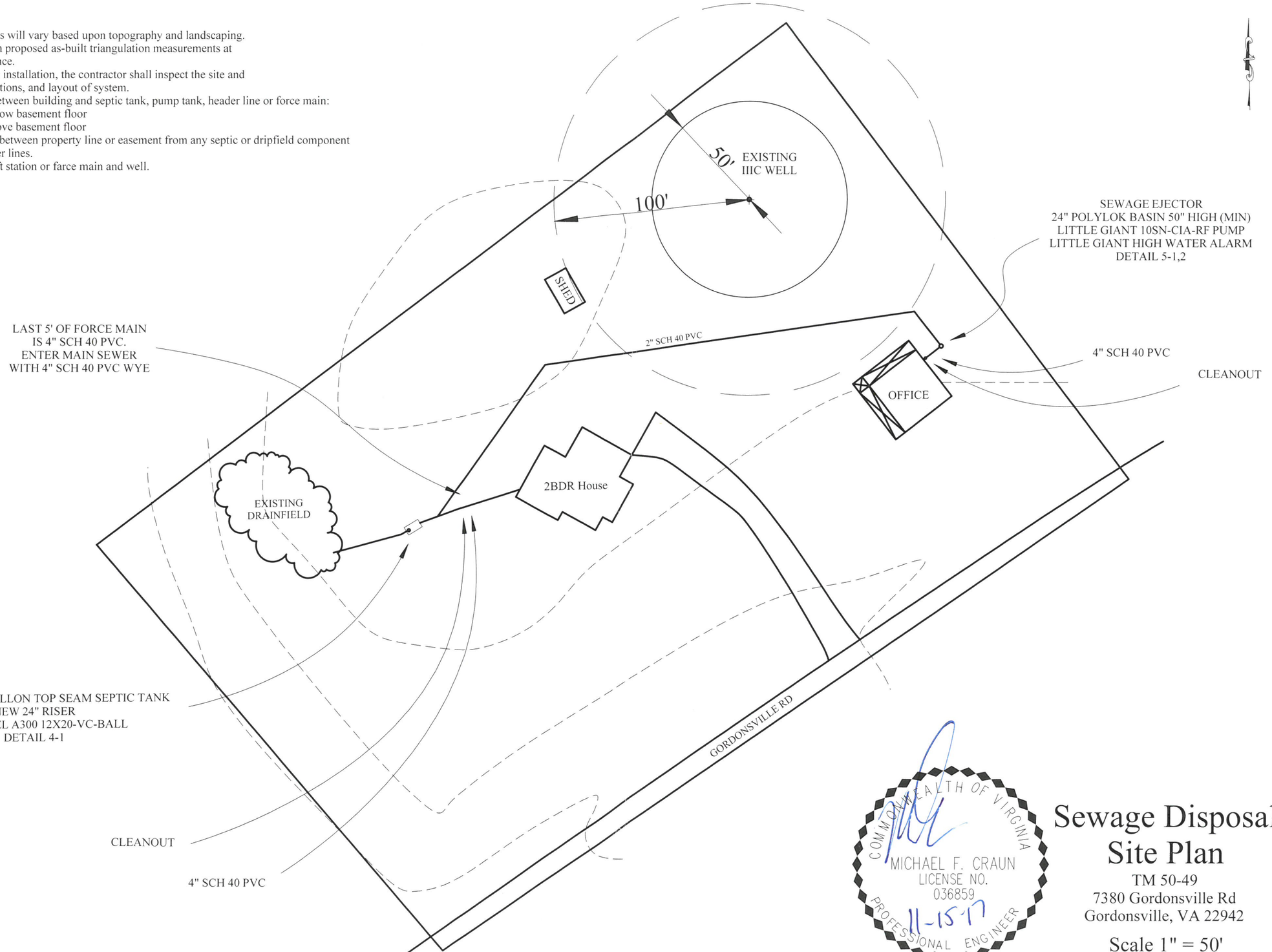
Project Notes/Specifications

Old Dominion Engineering

2

1317085

Notes:
1. Exact location of tanks will vary based upon topography and landscaping.
2. Provide Engineer with proposed as-built triangulation measurements at preconstruction conference.
3. Before pricing system installation, the contractor shall inspect the site and verify dimensions, elevations, and layout of system.
4. Separation distance between building and septic tank, pump tank, header line or force main:
   10' - when located below basement floor
   20' - when located above basement floor
5. 5' separation distance between property line or easement from any septic or dripfield component
6. 15' separation to power lines.
7. 50' separation from lift station or farce main and well.



COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Sewage Disposal Site Plan

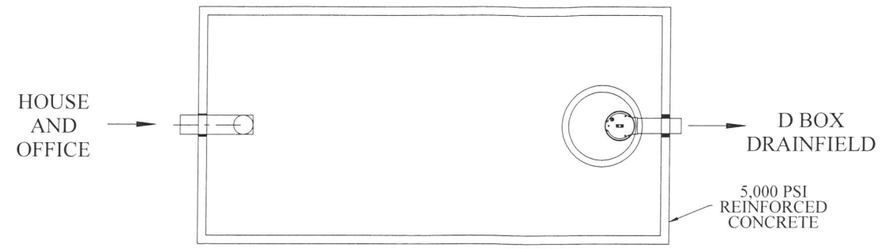
TM 50-49
7380 Gordonsville Rd
Gordonsville, VA 22942

Scale 1" = 50'

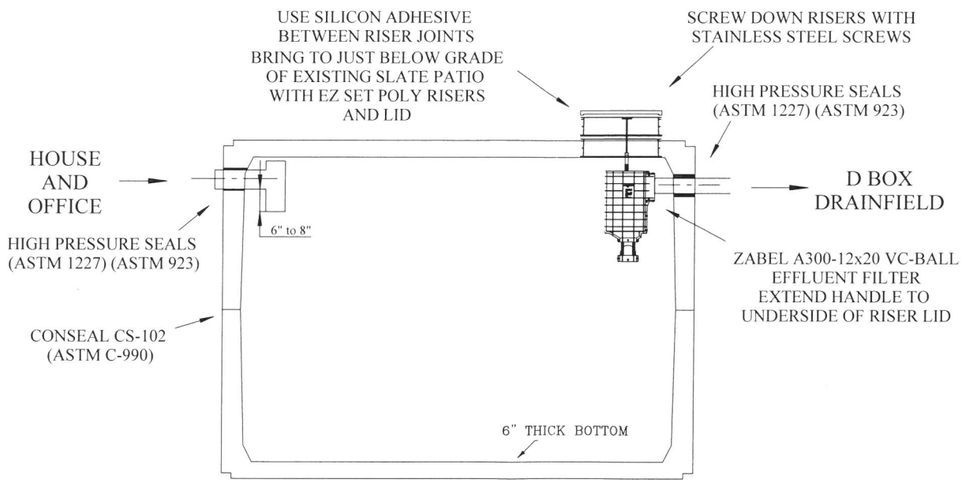
Old Dominion Engineering
2036 Forest Drive Waynesboro, VA 22980 (540) 942-5600 olddomeng@ntelos.net

3

Revision
1317085



PLAN VIEW



SECTION VIEW

NOTES:
1. SEPTIC TANK IS EXISTING 1000 GALLON CONCRETE TANK
2. CHECK INLET - PER VDH SEWAGE DISPOSAL and HANDLING REGS
3. OUTLET WITH NEW EFFLUENT FILTER AND RISER
4. TANKS PENETRATIONS MUST BE WATERPROOFED AND NOT LEAK. SEAL PIPE PENETRATIONS
5. 24" PLASTIC RISER ON OUTLET SIDE OF TANK.

1 **1000 GALLON MID SEAM SEPTIC TANK**

SECTION VIEW

Not To Scale

APPROVED

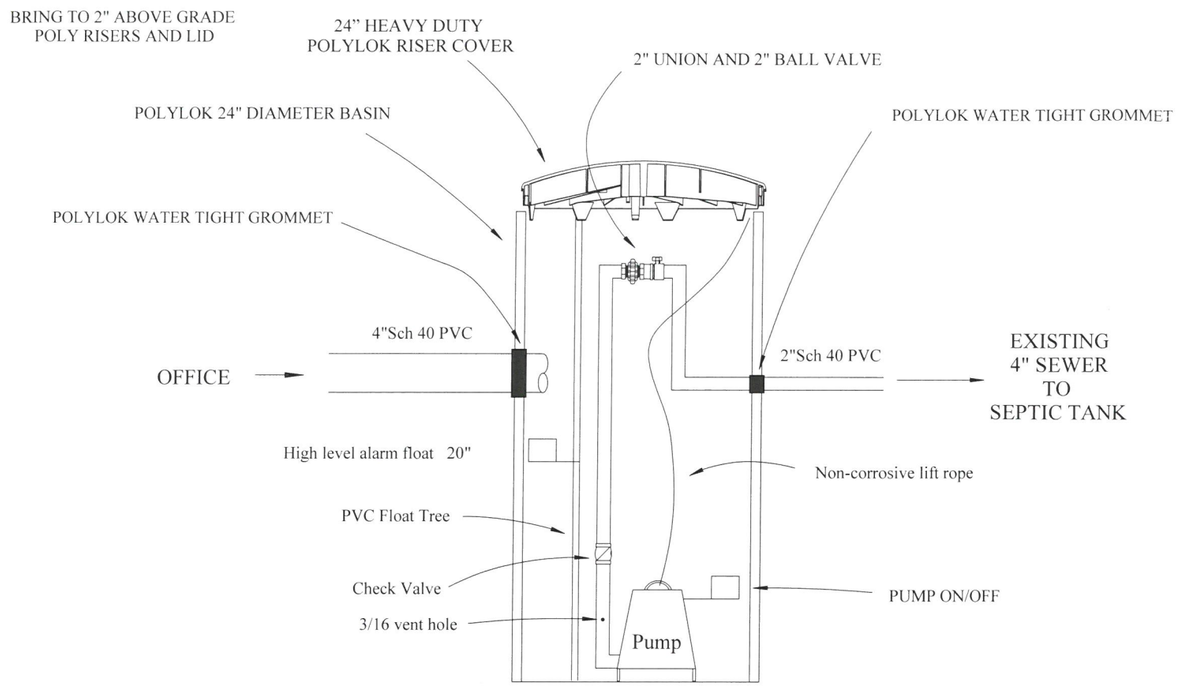
COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Old Dominion Engineering

4

Septic Tanks Details

1317085



LITTLE GIANT 10SN-CIA-RF
SEWAGE PUMP
AUTOMATIC

NOTES:
1. SEWAGE EJECTOR PUMP TANK IS NEW 24" DIAMETER X 50" DEEP POLYLOK BASIN
2. INLET - 4" SCH 40 PVC, OUTLET - 2" SCH 40 PVC
3. TANKS PENETRATIONS MUST BE WATERPROOFED AND NOT LEAK; USE POLYLOK GROMMET.
4. 24" RISER ON TANK.
5. STRAP ALL PIPING TO TANK WITH PLASTIC STRAPS AND STAINLESS STEEL ANCHORS
6. FLOAT HEIGHTS WILL NEED TO BE ADJUSTED IF TANK DIMENSIONS VARY FROM 1.96 GAL PER INCH
7. EASY ACCESS TO VALVES AND UNIONS

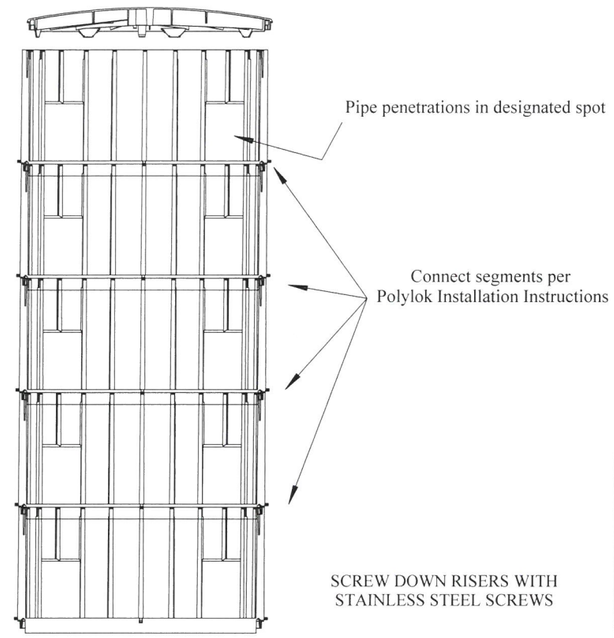
24" SEWAGE EJECTOR PUMP TANK

1 SECTION VIEW

Not To Scale

Polylok 24" Basin
One - 4" penetration (4" Polylok Grommet)
One - 2" penetration (2" Polylok Grommet)
One - 1" penetration (1" Polylok Grommet)

Water test prior to backfill



24" POLYLOK BASIN

2 SECTION VIEW

Not To Scale

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Sewage Ejector Details

Old Dominion Engineering

5

1317085

County of Albemarle

Community Development Department

Building Permit

Issued

BUILDING PERMIT #: **B2017-02431-NNR**

CONTRACTOR: **SAME/OWNER/AGENT**

MECHANICS LIEN AGENT: **NONE DESIGNATED**

SET BACKS:

FRONT	BACK	LEFT SIDE	RIGHT SIDE
75	6	6	6

CONTACT #: (434) 296-5832

MUST BE PRINTED ON YELLOW CARDSTOCK AND POSTED VISIBLE FROM THE PUBLIC WAY
FOR ALL BUILDING PERMITS ISSUED AFTER JULY 1, 2017

FOR OFFICE USE ONLY HO # A019-00033
Fee Amount $ 27.00 Date Paid 6/4/19 By who? J. Maus Receipt # 1152 Ck# 1152 By: J. Frazier

Application for Major Home Occupation Clearance
(Only for parcels in the Rural Areas Zoning District)

Major Home Occupation Clearance = $27.00 + applicable fees
This application may require additional review by the Fire Marshal. Fees in addition to those shown on this application may be required by the Fire Prevention Code Fee Schedule. A copy of the schedule is available from the Fire Marshal.

Home Occupation, Major: An occupation, not expressly prohibited by section 5.2A, conducted for profit within a dwelling unit solely by one or more members of the family residing within the dwelling unit and up to two (2) additional persons not residing within the dwelling unit, with or without the use of accessory structures; provided that nothing herein prohibits the occupation from engaging other persons who work off-site and do not come to the dwelling unit or to any accessory structure to engage in the occupation.

Applicant MUST HAVE the following information to apply:

1) Tax Map and Parcel Number (or Address) and a description of the Home Occupation.
2) A Floor Plan Sketch on the next page with the following:
   a) The total square footage of the dwelling;
   b) The square footage of area within the home being used for the occupation (note this cannot be more than 25% of the gross square footage of the dwelling).
3) If applicable, a survey, plat, or aerial map showing accessory structures and parking associated with the home occupation. The GIS Web enables easy viewing and printing of aerial maps.

Name of Business: Button + Maus, PLC
Type of Business: attorneys **Tax map and parcel:** 05000-00-00-04900

Contact Person (Who should we call/write concerning this project?): John R. MAUS
Address 7380 Gordonsville Rd. City Gordonsville State VA Zip 22942
Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com
Owner of Record Evelyn Button + John Maus
Address Same as above City State Zip
Daytime Phone ( ) Fax # ( ) E-mail

DESCRIPTION OF USE (If necessary, attach an additional sheet. Include information about the number of vehicles and number of employees associated with the use, hours of operation, use of accessory structures, etc.):

law office - 2-3 vehicles
- no employees

Each major home occupation authorized in the Rural Areas zoning district is subject to the following:

PLEASE CHECK EACH BOX SO THAT IT IS CLEAR THAT YOU HAVE READ AND UNDERSTAND THE REQUIREMENTS FOR THIS CLEARANCE

☑ **LOCATION & AREA**
This home occupation shall be conducted within the dwelling unit or accessory structures, or both, provided that not more than twenty-five (25) percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative area used for the home occupation, including the gross floor area within the dwelling unit or any accessory structure and the area used for outdoor storage as provided in section 5.2A(g), shall not exceed one thousand five hundred (1500) square feet. Plants that are planted in the ground that are to be used for a major home occupation do not count toward the one thousand five hundred (1500) square feet limitation. **[Section 5.2A (b) (1)]**

☑ **EXTERIOR APPEARANCE**
There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of the home occupation, except that one home occupation sign may be erected as authorized by section 4.15. Accessory structures shall be similar in façade to a single-family dwelling, private garage, shed, barn or other structure normally expected in a residential area and shall be specifically compatible in design and scale with other residential development in the area in which it is located. Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation. **[Section 5.2A (c) (1)]**

☑ **VISITORS & SALES**
Customers, clients and students are permitted to visit the property where the home occupation is conducted. Only goods that are hand-crafted on-site and goods that are directly related to the home occupation, including but not limited to tools for pottery making and frames for artwork are permitted to be for sale to customers who comes to the site.
[Section 5.2A (d) (1)]

☑ **TRAFFIC** How many trips per week? Avg. amount of customers?
The traffic generated by the home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site. **[Section 5.2A (e)]**

☑ **PARKING** Location of parking - how many spaces?
All vehicles used in the home occupation and all vehicles of employees, customers, clients or students related to the home occupation shall be parked on-site. **[Section 5.2A (f)]**

☑ **OUTDOOR STORAGE**
The storage of goods, products, equipment other than vehicles used in the home occupation, or any materials associated with the home occupation, other than natural landscaping materials such as mulch and plants, outside of an enclosed structure is prohibited. **[Section 5.2A (g)]**

☑ **HOURS OF OPERATION** What're the typical hours?
The home occupation may operate up to six (6) days per week and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients or students visiting the site.
[Section 5.2A (h)]

☑ **NUMBER OF VEHICLES**
The number of vehicles that may be used in the home occupation that are parked or stored on-site shall not exceed two (2) motor vehicles and two (2) trailers. **[Section 5.2A (i)]**

☑ **NUMBER OF HOME OCCUPATIONS**
More than one home occupation is permitted on a parcel, provided that the area occupied and the traffic generated by the home occupations shall be considered cumulatively and all requirements of this section shall apply. **[Section 5.2A (j)]**

☑ **PERFORMANCE STANDARDS**

The home occupation shall comply with the performance standards in section 4.14. **[Section 5.2A (k)]**

Does the use involve procedures, machinery or chemicals that may cause the following?

	YES	NO
NOISE		
VIBRATION		
GLARE		
HEAT		
AIR POLLUTION		
WATER POLLUTION		
RADIOACTIVITY		
ELECTRICAL DISTURBANCE		
NON-DOMESTIC WASTE DISCHARGED TO A SEPTIC FIELD OR SEWER		

If YES, then applicable standards must be addressed with a Certified Engineer's Report (available from staff).

☑ **PROHIBITED USES**

(1) any use requiring a special use permit under section 10.2.2
(2) animal rescue centers
(3) automobile graveyards
(4) restaurants

(5) storage yards
(6) gun sales, unless the guns are made on-site by one or more family members residing within the dwelling unit
(7) on-site pet grooming
(8) body shops
(9) equipment, trailers, vehicles or machinery rentals
[Section 5.2A (l)]

(10) shooting ranges

(11) commercial stables
(12) rummage or garage sales other than those determined by the zoning administrator to be occasional
(13) veterinary clinics or hospitals
(14) pyrotechnic (fireworks or bomb) device manufacturing or sale
(15) Any other use not expressly listed that is determined by the zoning administrator to be contrary to the purpose and intent of section 5.2A.

☑ **NOTIFICATIONS & INSPECTIONS** I will be sending this out shortly

Written notice that an application for a zoning clearance for a major home occupation has been submitted will be sent to the owner of each abutting parcel under different ownership than the parcel on which the proposed home occupation would be located. The notice will identify the proposed home occupation, its size, its location, and whether there is a request for a waiver or modification. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed at least five (5) days prior to the action on the zoning clearance as provided in section 32.4.2.5. In addition, a public notice sign will posted on the property for the duration of the review. **[Section 5.2A (n)]**

☑ **SIGNAGE** Any signage?

One sign that does not exceed four (4) square feet in sign area and only states the name of the person occupying the dwelling and identifies the product or service offered by the home occupation is permitted. No additional permit is required for this sign, however, it must not exceed 6 ft. in height and must be setback at least 5 ft. from the public road right-of-way. **[Section 4.15.2 (25) and 4.15.8]**

☑ **ADDITIONAL IMPROVEMENTS AND REVIEWS FROM OTHER AGENCIES**

A zoning clearance shall not be issued if, after review of any site, additional improvements are necessary to protect public health or safety. **[Section 31.5 (c)]**

Other state and local resources, including but not limited to the Health Department, Virginia Department of Transportation, Building Official, and County Engineer are commonly asked to comment on Home Occupation applications.

WAIVERS OR MODIFICATIONS MAY BE SOUGHT ONLY FOR THE FOLLOWING:

AREA

The area requirements in section 5.2A(b) may be waived or modified, provided that the waiver or modification shall not authorize the home occupation to occupy more than forty-nine (49) percent of the gross floor area of the dwelling. In granting a waiver or modification of the area requirement, the commission shall make the following findings in addition to those findings in section 5.1: (1) the nature of the home occupation requires storage or additional space within the dwelling unit to conduct the home occupation; (2) the primary use of the dwelling unit as a residence is maintained; and (3) the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
[Section 5.2A (m) (1)]

TRAFFIC

The traffic limitation in section 5.2A (e) may be waived or modified. In granting a waiver or modification of the traffic limitation, the commission shall find, in addition to those findings in section 5.1, that the waiver or modification would not change the character of the neighboring agricultural area or the residential neighborhood.
[Section 5.2A (m) (2)]

REVIEW PROCESS AND ADDITIONAL FEES

WITHOUT WAIVER REQUEST ($27 + notice fees)	**WITH A SPECIAL EXCEPTION ($27 + $457 + notice fees)**
1. Submit Home Occupation application ($27). 2. Staff will review for completion and mail abutting owner notification (Fee varies based on number of letters). 3. Staff will visit property to post public notice sign, review parking areas, proposed location of sign, and storage areas (if applicable). 4. Staff will approve application if requirements have been met and pick-up public notice sign.	1. Submit Home Occupation application and Waiver application ($25 + $457). 2. Staff will review for completion and mail abutting owner notification (Fee varies based on number of letters). 3. Staff will visit property to post public notice sign, review parking areas, proposed location of sign, and storage areas (if applicable). 4. Staff will coordinate date of next available Planning Commission meeting to process special exception 5. Staff will approve application if requirements have been met and pick-up public notice sign.

Owner/Applicant Must Read and Sign

I hereby apply for approval to conduct the Home Occupation identified above, and certify that this address is my legal residence. I also certify that I have read the restrictions on Home Occupations, that I understand them, and that I will abide by them. This certificate, in conjunction with a business license, represents zoning approval to conduct the Major Home Occupation identified above.

Signature of Applicant _____ **Date** 6/4/15

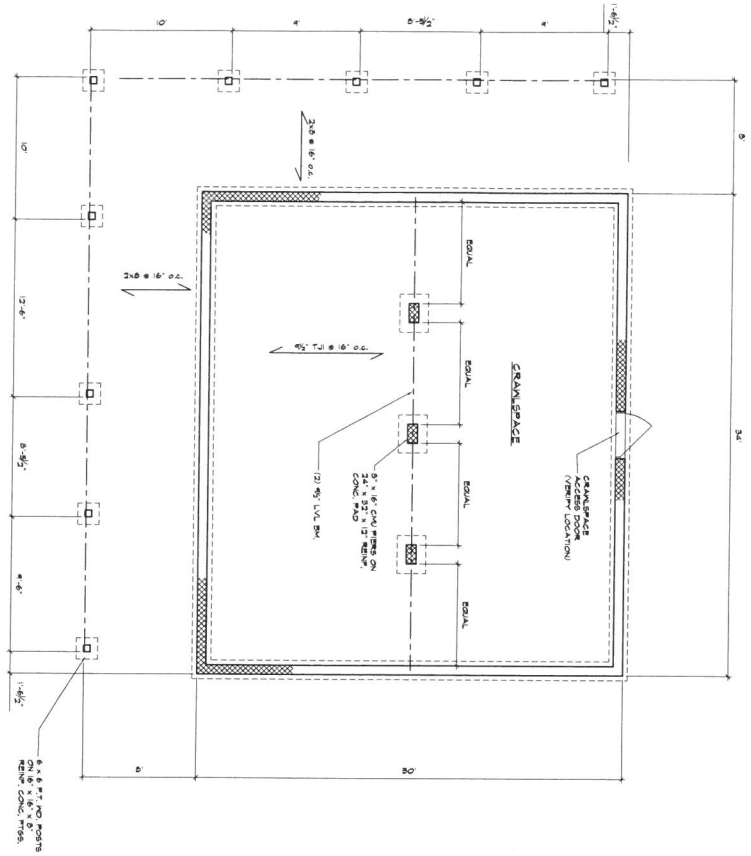
Other Official _____ **Date** _____

Building Official _____ **Date** _____

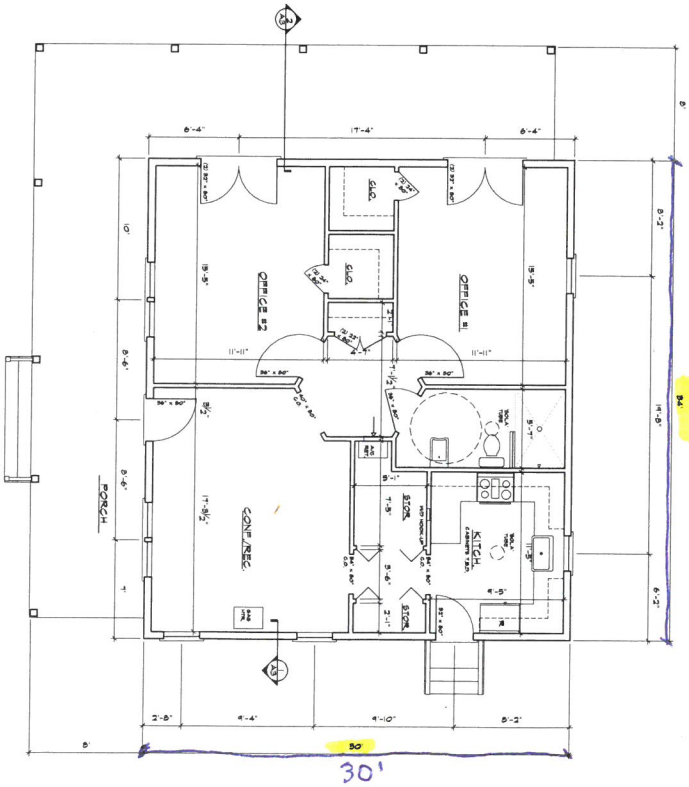
Zoning Official _____ **Date** _____

ENGINEER'S REPORT ATTACHED: YES _____ NO _____

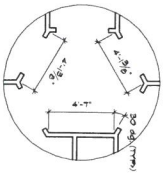
CONDITIONS: _____



1/A1 FOUNDATION PLAN
1/4" = 1'-0"



2/A1 FLOOR PLAN
1/4" = 1'-0"



3/A1 HEX. HALLWAY DETAIL
1/4" = 1'-0"

Gross square footage 34' x 30'
or 1020 SF

A1	JULY 31, 2018	Plans

BUFTON & MAUS LAW OFFICE

Albemarle County, Virginia

Kevin McCollum

From: Kevin McCollum
Sent: Monday, June 17, 2019 8:25 AM
To: Jack Maus
Cc: Rebecca Ragsdale; Keith Bradshaw
Subject: Major Home Occupation Clearance

Jack,

Thanks for allowing us to come out and visit the property again on Thursday. Since then, Keith and I have met with the Zoning Administrator, along with the County Attorney's office, and have concluded that the Major Home Occupation Clearance cannot be approved until we can confirm that the structure meets the applicable setbacks, which are:

Front – 75'
Side – 25'
Rear – 35'

We can confirm that these setbacks are met by either seeing a physical survey that shows the location and distance of the structure to the property line or visibly seeing the property line in the field by clearly marked stakes. If the structure does not meet the required 25' side setback a boundary line adjustment is a possible solution to the bring the structure into compliance with the required Major Home Occupation side setback.

The Building Permit (B2017-02431-NNR) was correctly approved given the information we were given at the time. The building was permitted as an accessory structure and no Major Home Occupation clearance was submitted alongside the building permit. Therefore, the setbacks were front – 75, side – 6, and rear – 6.

Kevin McCollum
Planner, Zoning
Albemarle County
Community Development
kmccollum@albemarle.org
434-296-5832 x 3141

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 **Fax (434) 972-4126**

July 30, 2019

John R. Maus
7380 Gordonsville Rd
Gordonsville, VA 22942

RE: HO2019-00233 Major Home Occupation Clearance - Bufton and Maus, PLC
Parcel ID 05000-00-00-04900 (2.40 Acres) (the "Property"), 7380 Gordonsville Rd, Gordonsville, VA 22942

Mr. Maus:

In response to your request for a Major Home Occupation Clearance for the above referenced Property in the Rural Areas, please be advised of the following:

Based on the information provided with the application and the site inspection conducted on June 13, 2019 the accessory structure on the Property, proposed with building permit B2017-02431NNR, does not meet the applicable setback and yard requirements for primary structures required by Section 5.2A(c). Thus, the noted accessory structure cannot be used for the proposed Major Home Occupation until it is determined to comply with the primary structure setbacks for the Rural Areas zoning district. Therefore, in accordance with *Albemarle County Code* § 18-5.2A(c) and *Albemarle County Code* § 18-31.5(b) the above referenced Major Home Occupation Clearance cannot be approved at this time.

Additionally, if the proposed Major Home Occupation operates on the Property without an approved Zoning Clearance it will be considered in violation and subject to *Albemarle County Code* § 18-36.

If you are aggrieved by this determination, you have a right to appeal it within thirty (30) days of this notice, in accordance with *Virginia Code* § 15.2-2311. If you do not file a timely appeal, this determination shall be final and unappealable.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with *Albemarle County Code* § 18-34.3, along with a fee of $258. Additionally, a separate fee is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at www.albemarle.org/cdapps. This form applies to the appeal of a decision of the zoning administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance. They may be reviewed online at www.albemarle.org/countycodebza.

(Please note that our online documents are in Adobe Acrobat PDF format and must be viewed with the Adobe Acrobat Reader or an equivalent. A link to download the free plug-in is available at the bottom of www.albemarle.org/cdapps.)

Please contact me if you have questions or require additional information.

Sincerely,



Kevin McCollum
Planner
Authorized Designee to the Zoning Administrator

Attachments:
Links shown can be copied and pasted into web browser

Albemarle County Code § 18-5 (See Section 5.2A for Major Home Occupation requirements)
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning05_Supplement_Regulations.pdf

Albemarle County Code § 18-31 (See Section 31.5 for Zoning Clearance requirements)
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning31_Admin_Enforcement.pdf

Albemarle County Code § 18-10 - Area and Bulk Regulations Sec. 10.4 (“applicable setback and yard requirements for primary structures” ref. 5.2A(c))
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning10_Rural_Areas.pdf

Albemarle County Code § 18-36
http://www.albemarle.org/upload/images/Forms_Center/Departments/County_Attorney/Forms/Albemarle_County_Code_Ch18_Zoning36_Violations.pdf

Albemarle County

Planning Application

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 Owner(s): BUFTON, EVELYN & JOHN R MAUS

Application #: AP201900004

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: Rivanna

Land Use Primary: Residential -- Single-family (incl. modular homes

Current AFD: Not in A/F District

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

Application Type: Appeal of Zoning Administrator's Determination

Entered By: Buck Smith 8/12/2019

Project: EVELYN BUFTON AND JOHN R MAUS

Received Date: 08/12/19

Received Date Final:

Submittal Date: 08/12/19

Submittal Date Final:

Total Fees: 258

Total Paid: 258

Closing File Date:

Revision Number:

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	BUFTON, EVELYN & JOHN R MAUS	P O BOX E	GORDONSVILLEV	22942		
Primary Contact	JACK MAUS	P.O. BOX E	GORDONSVILLE	22942	5408941006	
Applicant	EVELYN BUFTON AND JOHN R MAUS					

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 201900004 SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $ 258 - Date Paid 8/12/19 By who? Du Four + Maus PLC Receipt # _____ Ck# _____ By: _____

Application for Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $258**

FEES to be paid after staff review for public notice:

Appeals of the Zoning Administrator require a public hearing by the Board of Zoning Appeals. Virginia State Code requires that notice for public hearings be made by publishing a legal advertisement in the newspaper and by mailing letters to adjacent property owners.

The total fee for public notice will be provided to the applicant after the final cost is determined and must be paid before the application is heard by a public body. Staff estimates the total cost of legal advertisement and adjacent owner notification to be between $350 and $450. This estimate reflects the average cost of public notice fees, but the cost of certain applications may be higher.

➢ Preparing and mailing or delivering up to fifty (50) notices	$215
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.08 for each additional notice + actual cost of first-class postage
➢ Legal advertisement (published twice in the newspaper for each public hearing)	Actual cost (averages between $150 and $250)

Contact Person (Who should we call/write concerning this project?): Jack Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

Owner of Record Evelyn Bufton and John R. "Jack" Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (804) 432-0920 Fax # (540) 406-5911 E-mail ebuftonlaw@gmail.com

Applicant (Who is the Contact person representing?): Evelyn Bufton and John R. Maus

Address Post Office Box E City Gordonsville State VA Zip 22942

Daytime Phone (540) 894-1006 Fax # (540) 406-5911 E-mail jackmauslaw@gmail.com

County of Albemarle Department of Community Development
401 McIntire Road Charlottesville, VA 22902 Voice: (434) 296-5832 Fax: (434) 972-4126

Project Name: Bufton & Maus Law Office

Tax map and parcel: 050000-00-00-04900 **Zoning:** rural

Physical Street Address (if assigned):
7380 Gordonsville Road, Gordonsville, Virginia 22942

Location of property (landmarks, intersections, or other):
Rt. 231 approximately 2 miles north of the intersection with Lindsay Road - across from Fielder's Choice Farm

The following information shall be submitted with the application and is to be provided by the applicant:

1) Completed application including subject of appeal.
2) Justification for applicant's position, including error in Zoning Administrators determination. You may use the space below to provide this information or submit an attached sheet.
3) If applicable, a copy of the latest deed for the property involved, and the approved and recorded plat.
4) If applicable, the appropriate drawings showing all existing and proposed improvements on the property and any special conditions for the situation that may justify the appeal.
5) Reference to the relevant Zoning Ordinance section or other applicable regulations or case precedence to justify the appeal.
6) Appropriate fee made payable to the County of Albemarle.

Explanation of error in determination and justification of applicant's position:

As further explained on the attachment, the jusitification for applicants' position is that (1) they fully disclosed to the Department of Community Development their intended use for the building, (2) the Department issued a Building Permit approving the placement of the building, (3) the applicants relied on the Building Permit in locating the building, and(4) the applicants' reliance on the Building Permit and their expenditure of substantial funds to construct the building is to their detriment if they are unable to use the building for its intended purpose.

Owner/Applicant Must Read and Sign

I hereby certify that the information provided on this application and accompanying information is accurate, true and correct to the best of my knowledge and belief.

Signature of Owner or Contract Purchaser, Agent

Date: 8/12/19

John R. Maus

Print Name

540-894-1086

Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

Board of Zoning Appeals Chairman's signature: _____ Date: _____

ATTACHMENT TO APPLICATION FOR APPEAL OF ZONING ADMINISTRATOR'S DETERMINATION

Background

When the applicants applied for a building permit, they submitted a copy of the architectural plans for the structure, which called for a building of approximately 1000 square feet with 2 offices, a conference room, a bathroom and a small kitchenette. The applicants' clear intention was to use the building as a law office and to meet there with clients and other professionals incidental to their law practice. The Department of Community Development (hereinafter, "the Department") issued a building permit that required the building to be set back only 6 feet from the side property line. A copy of the building permit is attached as Exhibit 1.

The foundation for the building was staked out so that it is parallel to the residence rather than the side property line. So, at its nearest point, the building is set back 14 feet away from the side property line. At its furthest point, the building exceeds the 25 foot side setback requirement.

When the foundation was staked, the applicants asked the Department to send a representative to visit the site to make sure that the stakes were properly placed. When that representative said that the location was correct, the applicants constructed the building in that precise location. The building was constructed in full compliance with the Statewide Building Code as enacted by Albemarle County and has passed the final inspection. The applicants have been told by the Department of Community Development that they are entitled to a Certificate of Occupancy.[1] Indeed, within hours after the final construction inspection was done, the County's Tax Assessor visited the property to ascertain its effect on an increased property tax assessment. Now, the Zoning Administrator has determined that he cannot approve a Major Home Occupation Clearance because the entire building is not set back 25 feet from the side property line.

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[1] The Department has indicated to the applicants that, although the building has been completed in full compliance with the building code, the Department has, at the time of filing of this Application, withheld the Certificate of Occupancy because it did not want to influence the zoning process. Those are two entirely different issues and the Department's refusal to issue a Certificate of Occupancy under these circumstances is arbitrary and capricious.

Case Precedent to Support the Appeal

The applicants have been unable to find any legal precedent that precisely deals with this situation. However, there are other legal precedents that are instructive about the appropriate resolution of this appeal.

The law in Virginia is clear that, if one person relies on the representations of another to their detriment, the person making the representation is prevented (or estopped) from later taking a different position. Allowing one party to change positions under certain circumstances would be unfair. That's why the doctrine is called "equitable estoppel."

In *Stewart v. Lady*, 251 Va. 106, 465 S.E.2d 782 (1996), the Supreme Court of Virginia said:

> To establish equitable estoppel, it is not necessary to show actual fraud but only that the person to be estopped has misled another to his prejudice (internal citation omitted) or that the innocent part acted in reliance upon the conduct or misstatement by the person to be estopped. *Khoury v. Memorial Hospital*, 203 Va. 236, 123 S.E.2d 533 (1962) ....Elements necessary to establish equitable estoppel, absent a showing of fraud and deception, are a representation, reliance, a change of position, and detriment. 251 Va. at 112-113, 465 S.E.2d at 785.

All of those elements necessary to prove equitable estoppel are present in the applicants' case:

- There was a representation (that the side setback was only 6 feet),
- The applicants relied on the representation,
- The applicants changed their position (they spend over $120,000.00 to build the office where it was permitted), and
- The applicants have suffered a detriment (that the County will not allow them to use the building for its intended purpose).

The principle of equitable estoppel applies to zoning issues as well. In *Chapel Creek, Ltd. V. Mathews County*, 12 Va. Cir 350 (1988), a developer had acquired a parcel of land on which he intended to build a 6-unit apartment building. He received approval for that and, when he learned that the County was going to enact an ordinance that prevented expansion

of that project, took additional steps to increase the size of his project before the ordinance became effective. When the Zoning Administrator denied the building permit for the expanded project, the developer sued and lost. However, the Court said this:

> The doctrine of equitable estoppel provides that the right to use or develop land cannot be infringed upon by legislative action when the owner or developer of such land has in good faith relied upon some act or failure to act by a governmental body and made a substantial change in position. (Internal citations omitted) ...[A] property owner may acquire a valid nonconforming use or acquire a vested right to complete construction of a nonconforming building where, in good faith and in reliance upon a validly issued building permit, the property owner has begun substantial construction or has incurred substantial expenses relating directly to the construction. (internal citations omitted) The most obvious missing link in petitioner's case is the threshold government act, the issuance of a building permit. 12 Va. Cir. At 353.

Unlike the developer in *Chapel Creek*, the applicants in this case had a validly issued building permit and constructed the building in accordance therewith. The applicants have finished construction of the building as it was permitted and, as indicated above, have spent in excess of $120,000.00 to do so. As a result, Albemarle County is estopped from denying the applicants a zoning clearance.

Furthermore, the Supreme Court of Virginia, in *Lee v. City of Norfolk*, 281 Va. 423, 706 S.E.2d 330 (2011) applied language from *Jones v. Board of Governors*, 704 F.2d 713 (4th Cir. 1983) in which that Court said:

> [S]ignificant departures from stated procedures of government and even from isolated assurances by governmental officers which have induced reasonable and detrimental reliance may, if sufficiently unfair and prejudicial, constitute procedural due process violations. 281 Va. at 436.

The decision of the Zoning Administrator is so unfair and prejudicial that it violates the applicants' due process rights under both Article I, §11 of the Constitution of Virginia, and under the 5th Amendment to the Constitution of the United States as made applicable to the States through the 14th Amendment.

Finally, it appears that the Zoning Administrator takes the position that the setback requirements in Code §18-10.4 are mandatory. However, the heading at the top of the setback table merely says that "Area and bulk regulations within the RA, rural areas, zoning

district are as follows:" That's not enough to make the setback requirement mandatory. Even if the word "shall" could be inferred from the ordinance, the Supreme Court of Virginia has recently ruled that "shall" is not always mandatory, but that it can also be directory. *Rickman v. Commonwealth*, 294 Va. 531, 808 S.E.2d 395 (2017). In fact, the Court said that:

> Under Virginia law, the use of the term "shall" in a statute is generally construed as directory, rather than mandatory, and, consequently, no specific, exclusive remedy applies unless the states manifests a contrary intent. (internal citations omitted). 294 Va. at 539.

In fact, one of the decisions cited in *Rickman*, was *Tran v. Board of Zoning Appeals*, 260 Va. 654, 536 S.E.2d 913 (2000). In *Tran*, the Board of Zoning Appeals issued a ruling outside of the 90-day period prescribed by Virginia Code §15.2-2312. The Supreme Court of Virginia ruled that the word "shall" in the statute was directory, not mandatory so that a BZA decision outside the 90-day limit was valid.

As indicated above, the County Assessor has determined that the structure adds value to the property. The Department of Community Development recently visited the property and assigned the office building a separate 911 address. The applicants were told that, so long as the building was going to be visited by third parties, it needed a separate 911 address in case of an emergency. The applicants don't understand why the County needs to plan for the presence of third parties if the applicants are not allowed to have them in the building.

In summary, for all of the reasons set forth above, the applicants submit that the decision of the Zoning Administrator to deny them a Major Home Occupation approval was incorrect and should be reversed by the Board of Zoning Appeals.

County of Albemarle

BUILDING PERMIT - Page 1

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900

Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40

Primary Zoning: Rural Areas

Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit #: B2017-02431-NNR ✓ EW

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or

Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

BUILDING WORK INFORMATION

Work Class	Frame Type	Water Supply Type	Sewage Disposal Type	Foundation Type
New	Wood	Cartesian Well	Private	Other

Work Valuation: $ 48,000.00

Jurisdictional Area: No Service

Other Foot / Found. Desc.:

Work Description: NEW STRUCTURE FOR HOME OFFICE

Directions: 7380 GORDONSVILLE RD

Legal Description: ACREAGE

Use Group:

Construction Type:

Square Footages:

# of Stories	1	Porches	504	Unfinished Basement	
1st Floor	792	Decks		Other Unfinished	
2nd Floor		Garage		Total Unfinished Sq. Footage	
3rd Floor		Swimming Pool			
Finished Basement					
Other Habitable					
Total Habitable Sq. Footage				Total Building Sq. Footage	

Set Backs:

Front	75	Back	6	Zoning Pre-Construction?	Land Use?
Left Side	6	Right Side	6	Fire Alarms Required?	Bldg Pre-Construction?
				Fire Sprinkler NAPA Code/Year	

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile\Prefab. Homes		Mobile Offices\Prefab. Units	
Carports		Bedrooms		Baths	1.0	Paint Spray Booths	
Garages				Kitchens		Swimming Pools\Hot Tubs\Spas (Res. Only)	
Other				Elevators\Escalators\Lifts			

APPLICATION CONTACT INFORMATION

Contact Type	Name	Address	City / State	Zip Cod	Work Phone	Cell
Owner/Applicant	bufton, evelyn & john r maus	P O BOX E	gordonsville va	22942	( ) -	
General Contractor	same/owner/agent				( ) -	

County of Albemarle

BUILDING PERMIT - Page 2

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

SUB-CONTRACTOR INFORMATION

Contractor Number	StateLicenseNumber	License Class

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for **BUFTON, EVELYN & JOHN R MAUS**, the Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address

P O BOX E **GORDONSVILLE VA** **22942**

within 10 days of today's date as required by Virginia Code § 15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.

Signature of Owner, Contractor or Authorized Agent — Date

Judy H. Mastei — 12/7/17

Signature of Building official or Authorized Representative — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building

Please initial here if you AGREE to receive and/or use electronic records and electronic signatures for Building Permit transactions.

Initials of Owner, Contractor or Authorized Agent

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

County of Albemarle

Community Development Department

Building Permit

Issued

BUILDING PERMIT #: **B2017-02431-NNR**

CONTRACTOR: **SAME/OWNER/AGENT**

MECHANICS LIEN AGENT: **NONE DESIGNATED**

SET BACKS:

FRONT	BACK	LEFT SIDE	RIGHT SIDE
75	6	6	6

CONTACT #: (434) 296-5832

MUST BE PRINTED ON YELLOW CARDSTOCK AND POSTED VISIBLE FROM THE PUBLIC WAY
FOR ALL BUILDING PERMITS ISSUED AFTER JULY 1, 2017

County of Albemarle
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902

AUG -7 2019



DATE: 08/05/2019
TO: BUFTON, EVELYN & JOHN R MAUS
P O BOX E
GORDONSVILLE VA 22942
CC: Post Office, GORDONSVILLE
FROM: Geographic Data Services (GDS)
www.albemarle.org/gds
434-296-5832

SUBJECT: Physical Address Notification - NEW CONSTRUCTION
TMP: 05000-00-00-04900
PERMIT#: B2017-02431NNR
PHYSICAL ADDRESS: **7382 GORDONSVILLE RD**

As of the date of this letter, the physical address located at the above Tax Map Parcel (TMP) and/or Building Permit# is currently in our addressing system.

To ensure proper location by emergency service providers, timely mail delivery, and the accuracy of other County records, please do the following:

- If applicable, contact your telephone company to ensure this physical address is associated with your landline telephone number;
- Post the address for this structure in accordance with Albemarle County's Road Naming and Property Numbering Ordinance and Manual;*
- To receive mail using this address, contact your post. If this is an address change and you didn't physically move, do not submit a Change of Address form with the USPS. Any questions about mail delivery, zip code information, and determining where a mailbox should be installed, will be handled by the post office;
- If applicable, ensure that your records are up to date with Voter Registration (434-972-4173), School Transportation (434-973-5716), and the County's Finance Department (434-296-5851);
- Alert other County and non-County entities (e.g. credit card, utilities, etc.) as necessary.

Note: any change in your physical address does not require the deed to your property to be re-recorded at the courthouse.

*The County's Road Naming and Property Numbering Ordinance requires that this physical address number be posted so it is easily visible from the named street or road. **The number must be posted at the driveway entrance.** If the mailbox is not located directly on the above named street or road, the address number *and* road name must appear on the mailbox. The numerals displayed should be at least three inches in height on a contrasting background and any previously displayed numbers, which could be confused with or mistaken for the address assigned, shall be removed from the mailbox and property.

If you should have any questions regarding this physical address, please do not hesitate to contact our office.

Kevin McCollum

From: Rebecca Ragsdale
Sent: Wednesday, June 12, 2019 3:39 PM
To: Kevin McCollum
Subject: FW: Building Law Office on Home Property

From: Rebecca Ragsdale
Sent: Friday, September 29, 2017 7:21 PM
To: Jack Maus <maus48@gmail.com>
Subject: RE: Building Law Office on Home Property

Mr. Maus,

We allow small offices as a home occupation as long as the requirements of the major home occupation checklist are met:

http://www.albemarle.org/upload/images/forms_center/departments/Community_Development/forms/applications/Major_Home_Occupation_Clearance.pdf

If you would like to build an accessory structure to accommodate the home occupation, it may be no more than 1500 square feet in size and must be 75' from the front property line/edge of VDOT right of way, 25' from the side property lines, and 35' from the rear property line.

If the structure for the home occupation is not yet built, you would need to apply for a building permit. The home occupation could not be approved until after the structure gets its CO.

We can set up a time next week to chat about this in more detail if you would like. I'm free to meet or give you a call any time after 2:30pm on Monday and have other scattered openings throughout next week.

Rebecca

From: Jack Maus [mailto:maus48@gmail.com]
Sent: Wednesday, September 27, 2017 7:37 PM
To: Rebecca Ragsdale <rragsdale@albemarle.org>
Subject: Building Law Office on Home Property

Dear Ms. Ragsdale:

My wife, Lyn Bufton, and I live in the northeastern corner of Albemarle County at 7380 Gordonsville Road. We are both lawyers and recently formed a law partnership. We would like to build a law office in a corner of our 2.4 acre lot.

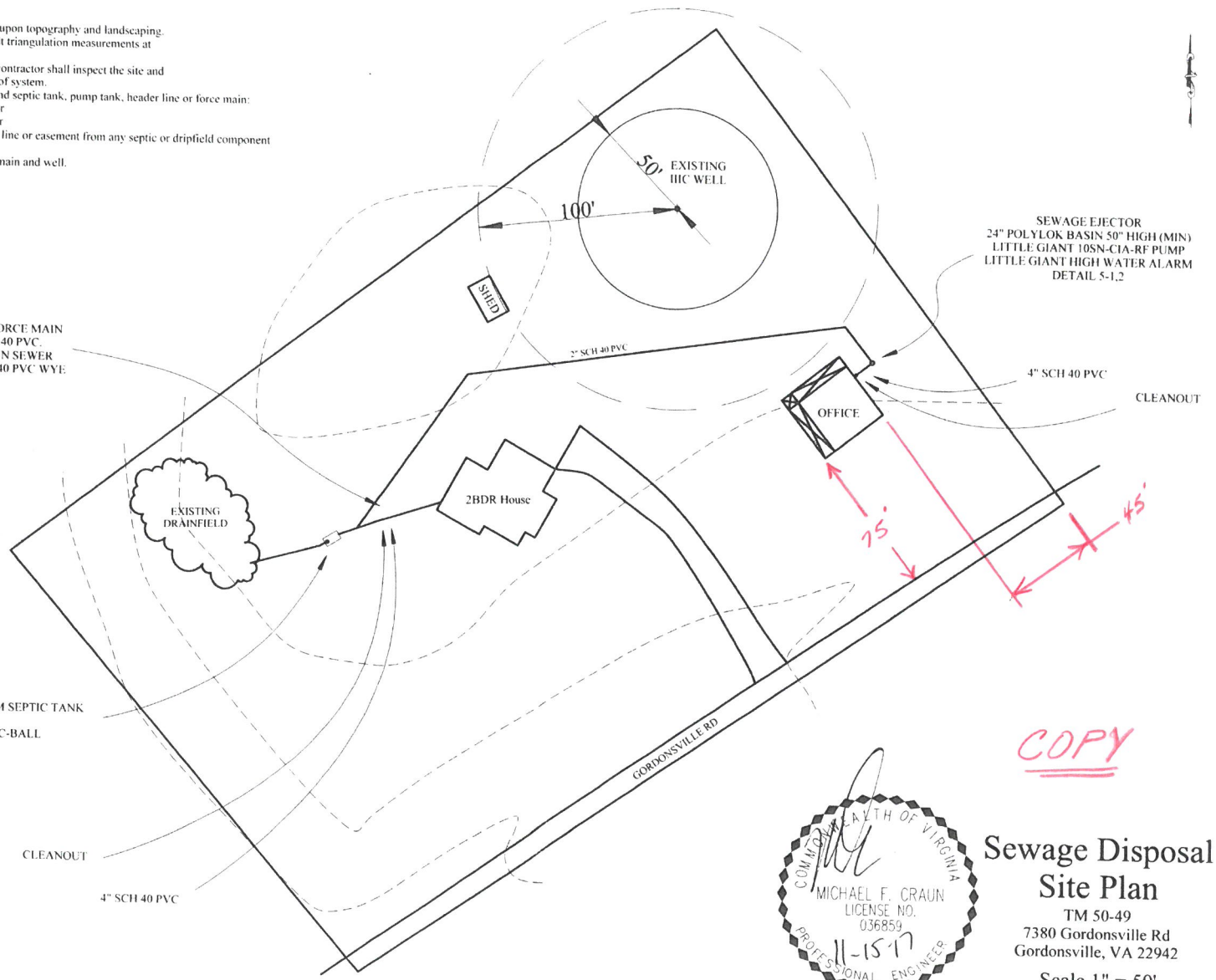
I stopped by the Community Development Office yesterday without an appointment and was given your name as a contact person to see whether that's possible and, if so, what we need to do to get started.

Please let me know when it would be a good time to explore this further. My cell phone number is 540-894-1006.

Thank you,

Jack Maus

Notes:
1. Exact location of tanks will vary based upon topography and landscaping.
2. Provide Engineer with proposed as-built triangulation measurements at preconstruction conference.
3. Before pricing system installation, the contractor shall inspect the site and verify dimensions, elevations, and layout of system.
4. Separation distance between building and septic tank, pump tank, header line or force main:
   10' - when located below basement floor
   20' - when located above basement floor
5. 5' separation distance between property line or easement from any septic or dripfield component
6. 15' separation to power lines.
7. 50' separation from lift station or farce main and well.



COPY

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Sewage Disposal Site Plan

TM 50-49
7380 Gordonsville Rd
Gordonsville, VA 22942
Scale 1" = 50'

Old Dominion Engineering
2036 Forest Drive Waynesboro, VA 22980 (540) 942-5600 olddomeng@ntelos.net

3

Revision
1317085

BUILDING PERMIT LAYOUT

COUNTY OF ALBEMARLE

MEMORANDUM

TO: Albemarle County Board of Zoning Appeals

FROM: Andrew H. Herrick, Deputy County Attorney

DATE: September 19, 2019

RE: Bufton & Maus Appeal; No. AP 2019-4

On behalf of the County, the County Attorney's Office submits the following summary of legal issues raised in the Bufton & Maus Appeal (No. AP 2019-4). Appellants Evelyn Bufton and John R. Maus are appealing the denial of a home occupation clearance HO2019-00233.

1. Summary of Facts

On or about October 18, 2017, Appellants Evelyn Bufton and John R. Maus applied for a building permit for an accessory structure in the Rural Areas (RA) zoning district. On or about December 7, 2017, Building Permit B2017-02431-NNR was issued, authorizing the construction of the accessory structure. The building permit noted side and rear setbacks of six feet, consistent with *County Code* § 18-4.11.2(b).

Following completion of construction, on or about June 4, 2019, the Appellants applied for a major home occupation clearance, pursuant to *County Code* § 18-5.2A. Specifically, the Appellants applied to operate a law office from the newly-constructed accessory structure, which is located within 25 feet of the side property line.

In an official determination dated July 30, 2019, the Zoning Administrator's designee denied the Appellants' application for a major home occupation clearance. On or about August 12, 2019, the Appellants filed the present appeal.

2. Applicable Standards

A. Standard of Review: Presumption of Correctness / Appellant's Burden of Proof

Virginia Code § 15.2-2309(1) enables the Board of Zoning Appeals (BZA) to "hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of [the zoning ordinance]. The decision on such appeal

shall be based on the board's judgment of whether the administrative officer was correct." *See Board of Zoning Appeals of James City County v. University Square Associates*, 246 Va. 290 (1993).

Virginia Code § 15.2-2309(1) further provides: "The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence." [emphasis added]

B. Applicable Zoning Ordinances

This appeal primarily involves two provisions of the County's zoning ordinance:

1. *County Code* § 18-5.2A outlines the standards by which major home occupations may be conducted in the Rural Areas (RA) zoning district. Most notably for the present case, *County Code* § 18-5.2A(c)(1) provides: "Any accessory structure that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation." (emphasis added)
2. *County Code* § 18-10.4 in turn provides that the applicable side setbacks for primary structures in the Rural Areas zoning district are 25 feet.

3. Application/Analysis

At its core, this appeal misunderstands the critical distinction between structures (on the one hand) and uses (on the other). Building permits and use clearances (such as for home occupations) are analyzed and issued by separate offices under separate standards. The County's Building Official issues building permits, following the standards of the Uniform Statewide Building Code (USBC).

By contrast, the County's Zoning Administrator issues zoning clearances for certain uses, following the standards of *County Code* § 18-31.5 and (in the case of home occupations in the Rural Areas) *County Code* § 18-5.2A. Note that these requirements address the use of a structure or property. A structure meeting the structural requirements of the USBC may not necessarily meet the separate requirements needed to qualify for a certain use, such as an approved home occupation.

In this case, the newly-constructed accessory structure did and does meet all applicable USBC requirements. Therefore, the new accessory structure was properly issued a building permit, despite being within the side setback applicable to primary structures, and may still be used for any use permitted in accessory structures in the Rural Areas zoning district.

Unfortunately for the Appellants, a major home occupation simply isn't one of those permitted uses, at least where the accessory structure is within a setback applicable to primary structures. Though the Appellants have other potential use(s) of the accessory structure or may seek a boundary line adjustment (among other potential remedies), *County Code* § 18-5.2A(c)(1) simply does not permit home occupation use within the setbacks applicable to primary structures, as here.

4. Rebuttal

The appeal objects to the determination on two grounds. Neither is legally persuasive.

A. Equitable estoppel does not apply.

Despite the Appellants' argument, equitable estoppel does not apply to the County's zoning determination in this case. As the Virginia Supreme Court has ruled: "To establish equitable estoppel, it is not necessary to show actual fraud, but only that the person to be estopped has misled another to his prejudice, *Security Co.* v. *Juliano, Inc.,* 203 Va. 827, 834, 127 S.E.2d 348, 352 (1962), or that the innocent party acted in reliance upon the conduct or misstatement by the person to be estopped. *Khoury* v. *Memorial Hospital,* 203 Va. 236, 243, 123 S.E.2d 533, 538 (1962)." T. v. T., 216 Va. 867, 872-73, 224 S.E.2d 148, 152 (1976). (emphasis added)

In this case, the County-issued Building Permit was neither misleading nor a misstatement. The Building Permit properly allowed the construction of the proposed structure in the proposed location. However, as noted above, the use of that structure was and is a separate matter. As a result, the Building Permit did not (and could not) give zoning approval for a home occupation use. The Appellants apparently inferred a home occupation use approval from the Building Permit where none was actually granted. The County's approval of the Building Permit and disapproval of the subsequent home occupation use application are consistent and do not represent a change in position on the County's part. Therefore, equitable estoppel does not apply. Even if equitable estoppel did apply, it would only preclude the County from revoking its initial Building Permit, which the County has not sought to do.

B. The setback requirement is plain, unambiguous, and mandatory.

Despite the Appellant's argument, the setback requirement in the County's zoning ordinance is plain, unambiguous, and mandatory. Before outlining specific dimensions, *Albemarle County Code* § 18-10.4 begins: "Area and bulk regulations within the RA, rural areas, zoning district are as follows:" (emphasis added). The Appellants attempt to confuse the issue by introducing the distinction between the mandatory ("must") and directory ("will") uses of the ambiguous term "shall." Fortunately, the ordinance in question actually uses the clear and unambiguous term "are."

The alternative, a "directory" setback, would eliminate defined setbacks altogether. As the Virginia Supreme Court noted (in the case cited by the Appellants): [A] "shall" command in a directory statute carries no specific, exclusive remedy. Instead, it empowers the court to exercise discretion in fashioning a tailored remedy, if one is called for at all." Rickman v. Commonwealth, 294 Va. 531, 537, 808 S.E.2d 395, 398 (2017) In arguing for a "directory" setback, the Appellants are arguing (perhaps without realizing it) that courts should "exercise discretion in fashioning a tailored [setback], if one is called for at all." That clearly is not the meaning or intent of the County's setback requirements, as written. Setbacks are in fact mandatory requirements, not directory guidance.

5. Conclusion

For the reasons stated above, the denial of a home occupation clearance HO2019-00233 was correct. Because the Appellants have failed to rebut the presumption of correctness, their appeal should be denied, and the denial of the zoning clearance affirmed.

Cc: Bart Svoboda, Zoning Administrator

Information Requested by
John Shepherd

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 - Fax (434) 972-4126

CERTIFICATE OF OCCUPANCY

This is to certify that the **detached personal home office**, as further described below, has been inspected and found to be in compliance with the **2012** edition of the Virginia Uniform Statewide Building Code.

Construction Information

Building Permit #	B201702431NNR
Type of Construction	5-B
Sprinkler System	None Designated
Special Conditions or Modifications	For personal use only.
Use Group	R-5

Property Information

Parcel ID	05000000004900
Owner	BUFTON, EVELYN & JOHN R MAUS
Subdivision	Acreage
Property Address	7382 GORDONSVILLE RD GORDONSVILLE 22942-
Magisterial District	Rivanna
Zoning Designation	Rural Areas

Date: August 15, 2019

Building Official: _____

Zoning Administrator: _____

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	Acreage
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD
Work Description:	NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 2/15/2019

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

Insulation	989-4324	☐	☐	☒

Printed: 2/14/2019 4:28 PM

Scheduled By: Eileen Wittwer

Inspectors Name

Inspectors Comments:

Romex wires bundled on top of trusses need to have sprayed insulation removed due to heat concerns.

Crawl space needs insulated.

All exterior walls/attic received sprayed insulation

Verify proper R-value per inch on walls not fully insulated.

1/25/2019

VDH VIRGINIA DEPARTMENT OF HEALTH

Protecting You and Your Environment

Albemarle County Health Department
1138 Rose Hill Drive
Charlottesville, VA 22903
(434) 972-6219 Voice
(434) 972-4310 Fax

8-15

Sewage Disposal System Operation Permit

Property Owner

Evelyn Bufton
7380 Gordonsville Road
Gordonsville, VA 22942
Phone: (804) 432-0920

Health Dept. ID: **101-17-0590**
Bldg Permit #: **B2017-02431-NNR**
Tax Map/GPIN: **50-49**
Locality: **Albemarle County**

Property Location

Property Address: 7380 Gordonsville Road
Gordonsville, VA 22942

==========

Evelyn Bufton is hereby granted permission to operate a **Residential Conventional Onsite Sewage System** at the above referenced location, under the following parameters:

Daily Flow: 300 gallons
Number of Bedrooms: 2

This permit is issued in accordance with the provisions of Title 32.1, Chapter 6 of the Code of Virginia as Amended, and Section 12VAC 5-610-340 of the Sewage Handling and Disposal Regulations of the Virginia Department of Health. The issuance of an operation permit does not denote or imply any guarantee by the department that the sewage disposal system will function for any specified period of time. It shall be the responsibility of the owner or any subsequent owner to maintain, repair, or replace any sewage disposal system that ceases to operate in accordance with the regulations.

July 9, 2019
Effective Date

Travis Davis
Environmental Health Specialist, Sr.

Signature

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription: Acreage

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE

Directions: 7380 GORDONSVILLE RD

Work Description: NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 5/22/2019

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

Final Building	540-894-1006 A.M.	☐	☑	☐
Final Electric		☐	☑	☐
Final Mechanical		☐	☑	☐
Final Plumbing		☐	☑	☐

Printed: 5/21/2019 4:26 PM

Scheduled By: Eileen Wittwer

Todd S

Inspectors Name

Inspectors Comments:

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription: Acreage

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE

Directions: 7380 GORDONSVILLE RD

Work Description: NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 4/25/2019

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

Final Building	☐	☐	☑
Final Electric	☐	☐	☑
Final Mechanical	☐	☐	☑
Final Plumbing	☐	☐	☑
Final Zoning	☐	☑	☐

am please..

Printed: 4/24/2019 4:14 PM

Scheduled By: Keith Huckstep

Inspectors Name

Inspectors Comments:

Mfg Breaker for outdoor Unit is 20 amp. 30 amp installed
Breaker Lock needed for both heaters.
Fill hole in sink duct @ faucet.
Complete gas heater installation

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription: Acreage

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE

Directions: 7380 GORDONSVILLE RD

Work Description: NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 2/19/2019

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

Insulation

Printed: 2/15/2019 4:06 PM

Scheduled By: Keith Huckstep

Inspectors Comments:

10:40

DO NOT DRYWALL

☑

Inspectors Name

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	Acreage
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD
Work Description:	NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 2/5/2019

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

Insulation Not ready ☐ ☐ ☑

Printed: 2/4/2019 4:13 PM

Scheduled By: Cindy Dotson

11:10

Inspectors Name

Inspectors Comments:

Fr ☐ ☑

Mech for front porch

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	Acreage
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD
Work Description:	NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 1/29/2019

Type:	Administration COMMENT	Re-Inspection	APPROVE	REJECTED
Rough-in Mechanical	A.M.	☐	☑	☐

Printed: 1/28/2019 4:14 PM

Scheduled By: Eileen Wittwer

1.00

Inspectors Name

Inspectors Comments:

Mech fee waiver on pond on pond cert base bldg

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	Acreage
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD W sd. 231 B4 Devonshire
Work Description:	NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 1/22/2019

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

~~Final Plumbing~~		☐	☐	☐
Framing Walls	on porch Can't bear beam on ledger, Mech fasteners on posts a.m. 804-432-0920	☐	☐	☑
Inside Gas Line	MAY INSULATE	☐	☑	☐

Printed: 1/18/2019 4:13 PM

Scheduled By: Eileen Wittwer

7:30

Inspectors Name

Inspectors Comments:

RIM run bath duct ☐ ☑

UGT only not ready

~~mast be included~~

~~Mech fasteners for~~ Footings

~~Footings base~~

~~cant hang beam of test~~

~~Footings~~

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	Acreage
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD
Work Description:	NEW STRUCTURE FOR HOME OFFICE

w 3rd 231 s downshire

DateScheduled: 1/18/2019

Type:	Administration COMMENT	Re-Inspection	APPROVE	REJECTED
Outside Gas Line	Not ready	☐	☐	☐
Underground Tank	540-832-0090 A.M.	☐	☐	☐

Printed: 1/17/2019 4:13 PM

Scheduled By: Eileen Wittwer

10:45

CJ Dotson

Inspectors Name

Inspectors Comments:

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number: B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	Acreage
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD
Work Description:	NEW STRUCTURE FOR HOME OFFICE

N 615

EW 2:14

DateScheduled: 1/11/2019

Type:	Administration COMMENT	Re-Inspection	APPROVE	REJECTED
Framing Walls	firestop chase 804-432-0920 A.M. Mechanical/ can't hang beam off ledger truss bracing fastener top + bottom porch posts	☐	☐	☑
Rough-in Electric		☐	☑	☐
Rough-in Mechanical	run both duct	☐	☐	☑
Rough-in Plumbing	11:10	☐	☑	☐

CVEC

Printed: 1/10/2019 4:16 PM

Scheduled By: Eileen Wittwer

C J Dotson

Inspectors Name

Inspectors Comments:

ES

☑

Residential Inspection

County of Albemarle - Inspections Division - (434) 296-5832

TMP: 05000-00-00-04900

Permit Number B2017-02431-NNR

Power Company: Central Virginia

Owner: BUFTON, EVELYN & JOHN R MAUS

Phone: Cell Phone:

New Owner:

Phone: Cell Phone:

LegalDescription:	ACREAGE
Street Address:	7380 GORDONSVILLE RD GORDONSVILLE
Directions:	7380 GORDONSVILLE RD
Work Description:	NEW STRUCTURE FOR HOME OFFICE

DateScheduled: 8/30/2018

Type: Administration COMMENT Re-Inspection APPROVE REJECTED

Footing	A.M. 804-432-0920	☐	☑	☐
Preliminary Zoning	F-75, B-6, SS-6	☐	☑	☐

Printed: 8/29/2018 4:11 PM

Scheduled By: Eileen Wittwer

Inspectors Name

Inspectors Comments:

County of Albemarle

BUILDING PERMIT - Page 1

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR

Entered By: Jennifer Smith on 10/18/2017

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

BUILDING WORK INFORMATION

Work Class	Frame Type	Water Supply Type	Sewage Disposal Type	Foundation Type
New	Wood	Cartesian Well	Private	Other

Work Valuation: $ 48,000.00 | Jurisdictional Area: No Service | Other Foot / Found. Desc.:

Work Description: NEW STRUCTURE FOR HOME OFFICE

Directions: 7380 GORDONSVILLE RD

Legal Description: ACREAGE

Use Group: | Construction Type:

Square Footages:

# of Stories	1	Porches	504	Unfinished Basement	
1st Floor	792	Decks		Other Unfinished	
2nd Floor		Garage		Total Unfinished Sq. Footage	504
3rd Floor		Swimming Pool			
Finished Basement					
Other Habitable					
Total Habitable Sq. Footage	792				

Total Building Sq. Footage: 1296

Set Backs:

Front: | Back: | Left Side: | Right Side:

Zoning Pre-Construction? | Land Use? | Fire Alarms Required? | Bldg Pre-Construction? | Fire Sprinkler NFPA Code/Year:

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile\Prefab. Homes		Mobile Offices\Prefab. Units	
Carports		Bedrooms		Baths	1.0	Paint Spray Booths	
Garages				Kitchens		Swimming Pools\Hot Tubs\Spas (Res. Only)	
Other				Elevators\Escalators\Lifts			

APPLICATION CONTACT INFORMATION

Contact Type	Name	Address	City / State	Zip Cod	Work Phone	Cell
Owner/Applicant	bufton, evelyn & john r maus	P O BOX E	gordonsville va	22942	( ) -	
General Contractor	same/owner/agent				( ) -	

County of Albemarle

BUILDING PERMIT - Page 2

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP: 05000-00-00-04900 | Current Owner(s): BUFTON, EVELYN & JOHN R MAUS

Acres: 2.40 | Primary Zoning: Rural Areas | Major Subdiv.: Acreage

APPLICATION INFORMATION

Building Permit = B2017-02431-NNR | *Entered By: Jennifer Smith on 10/18/2017*

Sub Application Type: Storage building/accessory structure (new or | Associated Building Permit:

Street Address: 7380 GORDONSVILLE RD GORDONSVILLE, 22942

SUB-CONTRACTOR INFORMATION

Contractor Number	StateLicenseNumber	License Class

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating and Air Conditioning.

This permit becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for **BUFTON, EVELYN & JOHN R MAUS**, the Owner, and am authorized to submit this application on behalf of the Owner under the agency granted to me.

☐ I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address **P O BOX E GORDONSVILLE VA 22942** within 10 days of today's date as required by Virginia Code § 15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.

Signature of Owner, Contractor or Authorized Agent _____ Date _____

Signature of Building official or Authorized Representative _____ Date _____

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building

Please initial here if you AGREE to receive and/or use electronic records and electronic signatures for Building Permit transactions.

Initials of Owner, Contractor or Authorized Agent _____

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

County of Albemarle

Building Application

Department of Community Development
401 McIntire Road Charlottesville, VA 22902-4596
Inspection Line: (434) 972-4179 Voice: (434) 296-5832 Fax: (434) 972-4126

PARCEL/OWNER INFORMATION

TMP 50-49

Current Owner(s) Evelyn Bufton & John R. Mays

STREET ADDRESS

House #	Street Name	Apt / Suite
1380	Gordonsville Rd	

BUILDING WORK INFORMATION

Work Class:	Frame Type:	Water Supply Type:	Sewage Disposal Type:	Footing / Foundation Type:
☐ Addition	☐ Concrete	☐ Artesian Well	☐ None	☐ Basement
☐ Alteration	☐ Masonry	☐ None	☒ Private	☐ Crawl Space
☐ Demolition	☐ Other	☐ Private	☐ Public	☐ None
☒ New	☐ Steel	☒ Central Well	☐	☒ Other
☐ Other	☐ Vinyl	☐ Public	☐	☐ Slab
☐ Remodel	☒ Wood	☐	☐	☐

Receipt 111426 CK 1039

Jurisdictional Area

Other Foot / Found Desc.:

Work Valuation $48,000.

Power Company CVEC

Work Description: new structure for home office

Directions

Use Group

Construction Type

419.79
80.64
500.43
10.01
510.44
32.00
542.44 *

47

Square Footages:

# of Stories	1	Porches	~~396.00~~ 504
1st Floor	~~900~~ 792	Decks	
2nd Floor	—	Garage	—
3rd Floor	—	Swimming Pool	—
Finished Basement	—	Unfinished Basement	
Other Habitable	—	Other Unfinished	
Total Habitable Sq. Footage	~~900~~ 792	**Total Unfinished Sq. Footage**	
		Total Building Sq. Footage	

Setbacks:

Front Back

Left Side Right Side

Zoning Pre-Construction? ☐ Land Use? ☐

Fire Alarms Required? ☐ Bldg Pre-Construction? ☐

Fire Sprinkler NAPA Code Year? ☐

PROPOSED USE INFORMATION

Dwelling Units		Accessory Structures		Mobile / Prefab. Homes		Mobile Offices/Prefab. Units	
Carports		Bedrooms		Baths	1	Paint Spray Booths	
Garages				Kitchens	1	Swimming Pools/Hot Tubs/Spas (Res. Only)	
Other				Elevators/Escalators/Lifts			

APPLICATION CONTACT INFORMATION

Primary Contact

Name	Evelyn Bufton	Phone #	804432-0920 cell
Street Name	7380 Gordonsville Rd	Fax #	
City / State	Gordonsville VA	Zip Code	22942
E-mail	lynbufton@gmail.com	Cellular #	

Owner / Applicant

Name		Phone #	
Street Name		Fax #	
City / State		Zip Code	
E-mail		Cellular #	

Mechanics Lien

Name		Phone #	
Street Name		Fax #	
City / State		Zip Code	
E-mail		Cellular #	

General Contractor

Name	same	Phone #	
Street Name		Fax #	
City / State		Zip Code	
E-mail		Cellular #	

SUB-CONTRACTOR INFORMATION

Business Name:	License Types:	State License #	Locality License #

Separate permits may be required for Electrical, Plumbing, Heating, Ventilating, and Air Conditioning.

This permits becomes null and void if work or construction authorized is not commenced within 6 months, or if construction or work is suspended or abandoned for a period of 6 months at any time after work is commenced.

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

By signing this building permit, the owner and/or their agent hereby grant employees of the Albemarle County Community Development & Real Estate Departments the right to enter and inspect the subject property Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., holidays excepted.

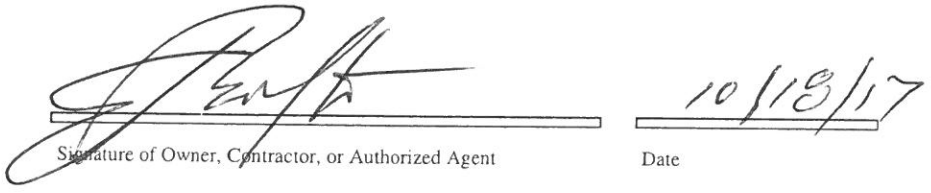
If you are not the owner of record, please check which applies:

☐ I certify that I am the agent for _____, The Owner, and am authorized to submit this application on behalf of the Owner under the agency

I am neither the Owner nor the Owner's agent. I certify that written notice of this application, by providing a copy of this application, will be mailed to the Owner at the following address:

☐ _____

Within 10 days of today's date as required by Virginia Code §15.2-2204(H). I understand that, if I do not provide the notice to the Owner as provided herein, the building permit application and every other subsequent approval, permit or certificate related thereto could be determined to be void.



Signature of Owner, Contractor, or Authorized Agent — Date: 10/18/17

Signature of Owner, Contractor, or Authorized Agent — Date

ELECTRONIC RECORDS STATEMENT: Albemarle County is creating and using electronic records and electronic signatures as allowed by the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et. Seq.). As an applicant to the Building Permit process, you may consent to receive, or have online access to, electronic records and receive and create records having electronic signatures related to Building Permits, Correspondence, Inspection Tickets and Certificates of Occupancy (the Building Permit transactions).

Initials of Owner, Contractor or Authorized Agent — Date

Your agreement to conduct Building Permit transactions by electronic means does not prevent you from refusing to conduct other transactions by electronic means.

B2017-2431 NMR

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

Albemarle County Health Department
1138 Rose Hill Drive
Charlottesville, VA 22903
(434) 972-6219 Voice
(434) 972-4310 Fax

PE Construction Permit

Well and Sewage Contractors: Please notify Health Department and OSE or PE 48 hours prior to installation to arrange for inspection

November 30, 2017

☑ APPROVED

Evelyn Bufton
7380 Gordonsville Road
Gordonsville, VA 22942

RE: **Site Address:** 7380 Gordonsville Road, Gordonsville, VA 22942
Tax Map/GPIN: 50-49 (Albemarle County)
HDID: 101-17-0590 **Reserve:** 100% reserve area provided
Usage Desscription: Detached office with bathroom

Dear Evelyn Bufton :

This letter and the attached drawings, specifications, and calculations (8 pages) dated November 15, 2017, constitute your permit to install a sewage disposal system and on the property referenced above. Your application for a permit was submitted pursuant to §32.1-163.5 of the Code of Virginia, which requires the Health Department to accept private soil evaluations and designs from an Onsite Soil Evaluator (OSE) or a Professional Engineer working in consultation with an OSE for residential development. VDH is not required to perform a field check to verify the private evaluations of OSEs or PEs and such a field check may not have been conducted for the issuance of this permit.

The soil absorption area ("site"), sewage system design, a were certified by **Michael Craun, PE** as substantially complying with the Board of Health's regulations (and local ordinances if the locality has authorized the local health department to accept private evaluations for compliance with local ordinances). This permit is issued in reliance upon that certification. VDH hereby recognizes that the soil and site conditions acknowledged by this permit are suitable for the installation of an onsite sewage system. The attached plat shows the approved area for the sewage disposal system; there are additional records on file with the Albemarle County Health Department pertaining to this permit, including the Site and Soil Evaluation Report. This construction permit is null and void if any substantial physical change in the soil or site conditions occurs where a sewage disposal system is to be located.

If modifications or revisions are necessary between now and when you construct your dwelling, please contact the OSE/PE who performed the evaluation and design on which this permit is based. Should revisions be necessary during construction, your contractor should consult with the OSE/PE that submitted the site evaluation or site evaluation and design. The OSE/PE is authorized to make minor adjustments in the location or design of the system at the time of construction provided adequate documentation is provided to the Albemarle County Health Department.

The OSE/PE that submitted the certified design for this permit is required to conduct a final inspection of this sewage system when it is installed and to submit an inspection report and completion statement. As the owner, you are responsible for giving reasonable notice to the OSE/PE of the need for a final inspection. If the designer is unable to perform the required inspection, you may provide an inspection report and

completion statement executed by another OSE/PE. The Albemarle County Health Department is not required to inspect the installation but may perform an inspection at its sole discretion . No part of this installation shall be covered until it has been inspected by the OSE/PE as noted herein. The sewage system may not be placed into operation until you have obtained an Operation Permit from the Albemarle County Health Department.

This Construction Permit is null and void if conditions are changed from those shown on your application or if conditions are changed from those shown on the Site and Soil Evaluation Report and the attached construction drawings, specifications, and calculations. VDH may revoke or modify any permit if, at a later date, it finds that the site and soil conditions and/or design do not substantially comply with the Sewage Handling and Disposal Regulations, 12 VAC 5-610-20 et seq., or if the system would threaten public health or the environment.

This permit approval has been issued in accordance with applicable regulations based on the information and materials provided at the time of application. There may be other local, state, or federal laws or regulations that apply to the proposed construction of this onsite sewage system. The owner is responsible at all times for complying with all applicable local, state, and federal laws and regulations. If you have any questions, please contact me.

This permit expires: **June 01, 2019**. This permit is not transferable to another owner or location.

Sincerely,

Josh Kirtley
Environmental Health Technical Specialist
Albemarle County Health Department

CC: Craun, Michael PE

WHAT YOU WILL NEED TO GET YOUR SEPTIC SYSTEM OPERATION PERMIT

- Your system must have a **satisfactory inspection** at the time of installation. This will be done by either a representative of the local Health Department, a private OSE, or a PE, depending on the designer of your permitted system. If your system is designed/inspected by an OSE or PE, they must submit a copy of the inspection results, complete with an as-built diagram, to the Health Department.
- Please ensure that your contractor turns in a **Completion Statement** to the local Health Department after installation.
- If your permit is for an alternative system, you must sign, have notarized, and record the attached **Notice of Recordation** in your locality's land records. Please bring proof of this recordation to the local Health Department

Allow 5 business days after the last piece of documentation is received for the Operation Permit to be issued. To avoid delays, clearly label each piece of documentation with the property Tax Map/GPIN number and HDID number shown above and on your construction permit. *Please note that due to the individual circumstances of your permit there may be additional required items not covered by this checklist.*

If you have any questions about any of the items on this list, please do not hesitate to contact the Albemarle County Health Department at (434) 972-6219.

Albemarle County
PO Box 7546
Charlottesville, VA 22906
(434) 972-6219 - Office
(434) 972-4310- Fax

VIRGINIA DEPARTMENT OF HEALTH
Thomas Jefferson Health District
Revised March 29, 2009

ENVIRONMENTAL HEALTH SERVICES

Louisa County
PO Box 336
Louisa, VA 23093
(540) 967-3707 - Office
(540) 967-3733 - Fax

Fluvanna County
PO Box 136
Palmyra, VA 22963
(434) 591-1965 - Office
(434) 591-1961- Fax

Greene County
PO Box 38
Stanardsville, VA 22973
(434) 985-2262 - Office
(434) 985-4822 - Fax

☑ APPROVED

Nelson County
PO Box 98
Lovingston, VA 22949
(434) 263-4297 - Office
434) 263-4304 - Fax

REQUEST FOR NEW CONSTRUCTION WITH EXISTING SEWAGE DISPOSAL

Applicant's Name			Agent's Name		
Evelyn Bufton			Gene		
Applicant's Address			**Agent's Address**		
7380 Gordonsville Rd					
City	**State**	**Zip**	**City**	**State**	**Zip**
Gordonsville	VA	22942			
Home Phone:			**Home Phone:**		
Work Phone:			**Work Phone:**		
Cell Phone: 804-432-0920			**Cell Phone:**		

PROPERTY INFORMATION

Parcel: 50-49				Building/Zoning Permit Number: B2017-2431 NNR.
Subdivision	**Section**	**Block**	**Lot**	**Proposed New Construction**
N/A				home office - tie into existing septic
Directions to Property:				

PLEASE ANSWER THE FOLLOWING QUESTIONS — **Circle One**

1.) Was your septic system installed and approved within the last 10 Years?	(YES)	NO
2.) Does proposed addition or replacement come within 20' of the drain field or reserve area?	YES	(NO)
3.) Does proposed addition or replacement come within 50' of your well?	YES	(NO)
4.) Are there wet spots in your yard, slow running drains, backups, or discolored spots in lawn?	YES	(NO)

By signing this statement you are requesting that the Environmental Health Specialist evaluate your system and are granting him/her permission to enter your property. If a site visit is needed, you may be required to uncover your septic tank and distribution box lids.

Applicant/Agent Signature — Date: 10/18/17

SEE PAGE 2 FOR HEALTH DEPARTMENT FINDINGS

HEALTH DEPARTMENT USE ONLY

Site Visit WAS NOT made and existing water supply WAS NOT evaluated, unless otherwise noted under comments.

☑ **ADEQUATE DESIGN**

A review of our records indicate the existing sewage disposal system (SDS) and reserve area (where indicated) appears to be adequately designed for the proposed use. This does not imply that the existing SDS will continue to function properly for any minimum period. No conflicts were noted when the attached site plan (including footprint) was compared to those records. Exact locations may vary from records and it is suggested that the exact location of the SDS be confirmed before beginning construction.

☐ **INADEQUATE DESIGN**

Existing SDS inadequate. Applicant must apply at the Health Department for a sewage disposal construction permit. Permit must be issued and a copy submitted to building inspections before Building/Zoning permit is issued.

AS-BUILT DRAWING:

COMMENTS:

Existing DF looks to function as designed. Please see VDH ID 101-17-0490 for alteration design criteria.

Health Department Official

30 Nov 17
Date

COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4596
Phone (434) 296-5832 Fax (434) 972-4126

Permit # B2017-2431 NNR

CONTRACTOR/SUBCONTRACTOR LICENSURE EXEMPTION AFFIDAVIT

Section 108.4 of the Virginia Uniform Statewide Building Code requires that any person applying for a building permit be duly licensed as a contractor/subcontractor under the terms of Chapter 11 of Title 54.1 of the Code of Virginia, or be exempt from such licensure.

"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property.

I have applied for the building permit identified above. I affirm that I am familiar with the Virginia Uniform Statewide Building Code requirement for contractor/subcontractor licensure under the terms of Chapter 11 of Title 54.1 of the Code of Virginia, and that I am exempt from such licensure.

The basis for my exemption is the following (applicant must initial at least one):

1. ____ The work is performed by a government agency with its own forces
2. ____ The work is bid upon or undertaken for the United States armed services under the Armed Services Procurement act
3. ____ The work is bid upon or undertaken for the United States government on federal property
4. ____ The work is bid upon or undertaken for the Virginia Department of Transportation on state highway and/or bridges
5. ____ The applicant is excluded by another law, such law being: _____
6. ____ The applicant is a material supplier rendering advice but not providing construction or installation services
7. ____ The applicant is performing or supervising work on no more than one primary residence owned by him/her for his/her own use during any 24-month period
8. ____ The applicant is performing or supervising work on his/her own property as a gift to an immediate family member, provided that such family member (mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law or father-in-law) lives in the house

9. ____ The applicant is performing or supervising work on industrial or manufacturing facilities, or on a commercial or retail building for his/her own use

10. ____ The applicant is performing or supervising work on residential dwelling unit(s), subject to the Virginia Residential Landlord and Tenant Act, owned by him/her

11. ____ The applicant is an owner-developer, provided that any third-party purchaser is made a third-party beneficiary to the contract between the applicant and a licensed contractor whereby the contractor's obligation to perform the contract extends to both the applicant and the third-party purchaser

12. ____ The work is undertaken by students as part of a career and technical education project, established by any school board, on the construction of portable classrooms or single-family homes

I understand that any reference to me in this document also includes the company or entity that I own, work for or represent.

I understand that even if I am exempt from licensure pursuant to the provisions of Exemptions 7, 8, 9, 10, 11 or 12 above, I must comply with all other provisions of the Virginia Uniform Statewide Building Code.

I understand that even if I am exempt from licensure pursuant to the provisions of Exemptions 7, 10, 11 or 12 above, I shall obtain a certificate of occupancy, or other evidence of building code compliance, prior to conveying the property described in the building permit application to a third-party purchaser, unless such purchaser has acknowledged in writing that no certificate of occupancy, or other evidence of building code compliance has been issued and that such purchaser consents to acquire the property without a certificate of occupancy or other evidence of building code compliance.

I understand that working without a valid contractor's license, or without being duly exempt from such licensure, subjects me to criminal prosecution.

Evelyn Bufton (applicant's name - printed)

_____ (applicant's signature)

Signed and sworn to before me by:

Evelyn Bufton (applicant's name – printed),

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville:

JENNIFER CHRISTINE SMITH NOTARY PUBLIC REG. #7696540 MY COMMISSION EXPIRES COMMONWEALTH OF VIRGINIA

The foregoing instrument was acknowledged before me this 18 day of October, 2017

My Commission Expires: 12/31/2020

Jennifer C Smith
Notary Public

Revised: 05/2011

MINOR - MODIFICATION

OSE/PE Report For:

☒ Construction Permit ☐ Repair Permit ☐ Voluntary Upgrade Permit ☐ Certification Letter ☐ Subdivision Approval

11/27/17 N/C

Property Location:

911 Address: 7380 Gordonsville Rd. City: Gordonsville

Lot _____ Section _____ Subdivision _____

GPIN or Tax Map # TM 50-49 Health Dept ID # 101-17-0590

Latitude _____ Longitude _____

Applicant or Client Mailing Address:

Name: Bufton, Evelyn & John R Maus

Street: P O Box E ☑ APPROVED

City: Gordonsville State VA Zip Code 22942

Prepared by:

OSE Name _____ License # _____

Address _____

City _____ State _____ Zip Code _____

PE Name Michael F Craun License # 036859

Address 2036 Forest Drive

City Waynesboro State VA Zip Code 22980

Date of Report 11/16/17 Date of Revision #1 _____

OSE/PE Job # 1317057 Date of Revisio

Contents/Index of this report (e.g., Site Evaluation Summary, Soil Profile Descriptions, Site S

see table of contents on next page

Plans - 11"x17" - Separate - 5 pages

COMMONWEALTH OF VIRGINIA MICHAEL F. CRAUN Lic. No. 036859 11-15-17 PROFESSIONAL ENGINEER

Certification Statement

I hereby certify that the evaluations and/or designs contained herein were conducted in accordar *the* Sewage Handling and Disposal Regulations (12 VAC5-610), the Private Well Regulations (12 V/ Alternative Onsite Sewage Systems (12VAC5-613) and all other applicable laws, regulations and p Department of Health. I further certify that I currently possess any professional license required b Commonwealth that have been duly issued by the applicable agency charged with licensure to pe

☐ The work attached to this cover page has been conducted under an exemption to the practice of engineering, specifically the exemption in Code of Virginia Section 54.1-402.A.11

I recommend that a (select one): construction permit ☒ certification letter ☐ subdivision approval ☐ be (select one) Issued ☒ repair permit ☐ voluntary upgrade ☐ Denied ☐

OSE/PE Signature _____ Date 11-15-17

This form contains personal information subject to disclosure under the Freedom of Information Act. Revised 12/1/2014

Table of Contents

Cover page/Certification Statement	1
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Application Page	3
Supplemental Calculations	4-8

3/8

Commonwealth of Virginia

Application for: ☑ **Sewage System** ☐ **Water Supply**

VDH Use only
Health Department ID#
Due Date

Owner Bufton, Evelyn & John R Maus — Phone

Mailing Address P O Box E Gordonsville, VA 22942 — Phone

Fax

Agent — Phone

Mailing Address — Phone

Fax

Site Address 7380 Gordonsville Rd Gordonsville, VA 22942 ✓ APPROVED

Email lynbufton@gmail.com

Directions to Property:

Subdivision — Section — Block — Lot

Tax Map TM 50-49 — Other Property Identification — Dimension/Acreage of Property 2.4 acres

Sewage System

Type of Approval: Applicants for new construction are advised to apply for a certification letter to determine if land is suitable for a sewage system and to apply for a construction permit (valid for 18 months) **only when ready to build.**

☐ Certification Letter ☒ Construction Permit ☐ Voluntary Upgrade ☐ Repair Permit

Proposed Use:

Single Family Home (**Number of Bedrooms** 2) Multi-Family Dwelling (**Total Number of Bedrooms** ____)

Other (describe) Addition of an office with an office bathroom - minor modification

Basement? ☒ Yes ☐ No Walk-out Basement? ☐ Yes ☒ No Fixtures in Basement ☐ Yes ☒ No

Conditional permit desired? ☐ Yes ☒ No If yes, which conditions do you want?

☐ Reduced water flow ☐ Limited Occupancy ☐ Intermittent or seasonal use ☐ Temporary use not to exceed 1 year

Do you wish to apply for a betterment loan eligibility letter? ☐ Yes ☒ No *There is a $50 fee for determination of eligibility.

Water Supply

Will the water supply be ☐ Public or ☒ Private? Is the water supply ☒ Existing or ☐ Proposed?

If proposed, is this a replacement well? ☐ Yes ☒ No If yes, will the old well be abandoned? ☐ Yes ☒ No

Will any buildings within 50' of the proposed well be termite treated? ☒ Yes ☐ No

All Applicants

Is this a private sector OSE/PE application? ☒ Yes ☐ No If yes, is the OSE/PE package attached? ☒ Yes ☐ No

Is this property indeed to serve as your (owners) principal place of residence? ☐ Yes ☒ No

In order for VDH to process your application for a sewage system you must attached a plat of the property and a site sketch. For water supplies, a plat of the property is recommended and a site sketch is required. The site sketch should show your property lines, actual and/or proposed buildings and the desired location of your well and/or sewage system. When the site evaluation is conducted the property lines, building location and the proposed well and sewage sites must be clearly marked and the property sufficiently visible to see the topography.

I give permission to the Virginia Department of Health to enter onto the property described during normal business hours for the purpose of processing this application and to perform quality assurance checks of evaluations and designs certified by a private sector Onsite Soil Evaluator or Professional Engineer as necessary until the sewage disposal system and/or private water supply has been constructed and approved.

Signature of Owner/ Agent

11/20/17
Date

This form contains personal information subject to disclosure under the Freedom of Information Act. Revised 12/1/2014

Supplemental Calculations

Project Narrative
An office is being added to the property. The office will typically have one or two occupants. There will be one convenience bathroom in the office. The sewer cannot flow by gravity to the septic tank. A sewage lift pump chamber located outside the garage will be used to lift the wastewater to the septic tank. To aid the septic tank in holding back solids, an effluent filter will be added.

No expansion of the current septic permit is being requested.

Total Nitrogen Removal Calculation (per GMP 156)

N/A

Treatment Level

Septic Tank Effluent

Sewage Lift Pump and Tank – One 24" diameter pump basin, 50" tall will be used as a sewer ejector lift pump basin. The pump operation will be automatic through an integrated float. A separate alarm will be used to signal a high level event.

Pump tank requirements such as storage above alarm, minimum storage volume, and manual over ride are waived for this design.

Deviation from regulation justification:

- The sewage ejector only serves one convenience bathroom in the office. If the sewage ejector malfunctions, the owner has other bathroom facilities in the main house to use.

24" diameter
1.96 gallons per inch

Invert in @ 24"
Alarm Float = 20"
Pump On - 14"
Pump Off - 6"

Pump Volume = 15.7 gallons
Alarm Storage = 8 gallons

Pump Size Calculation

Job Description:	TM 50-49
Pump:	Sewage Pump
Prepared by:	MFC
Date:	11/15/2017

Worksheet - Pump Sizing

A)	Desired Pump Capacity	35.00 gpm	
B)	Pipe size	2 inch	
C)	Pressure loss in 100 ft. of pipe	0.89 psi	
D)	Friction head in 100 ft. of pipe	2.06 ft.	
E)	Static head		
	i) Height from pump to tank outlet	4 ft.	
	ii) Elevation increase or decrease	4 ft.	
F)	Total static head	**8 *ft.***	
G)	Friction head		
	i) Equivalent length of fittings	125 ft.	
	ii) Distance from pump to outlet	315 ft.	
	iii) Total equivalent length of pipe	440 ft.	
	iv) Total effective feet	9.04596 ft.	
	vi) Headloss through Water Meter	0 ft.	0 psi
	vii) Headloss through Zone Valve 1	0 ft.	0 psi
	viii Head at PM	0 ft.	0 psi
H)	Total friction Head	**9.04596**	
I)	**Total dynamic head**	**17.05 ft.**	
J)	**Minimum pump capacity**	**35.00 gpm**	
K)	**Estimated Velocity**	**3.82 fps**	
L)	**Choose the pump**	Little Giant 10SN (35 gpm @ 19')	

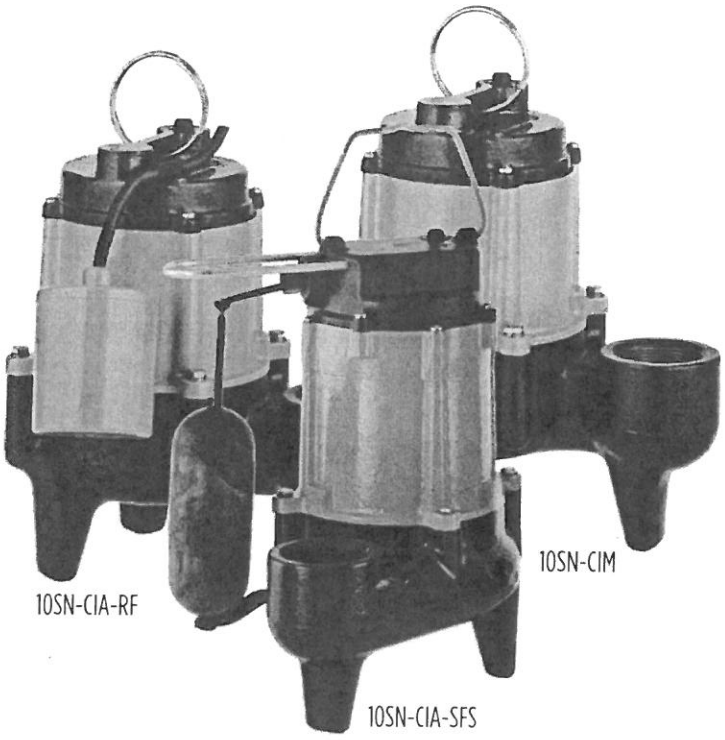
10SN SERIES - 1/2 HP

APPLICATIONS

Sewage and effluent wastewater transfer, dewatering

FEATURES

- Permanent Split Capacitor (PSC)
- Energy-saving low amp draw
- Designed for continuous duty
- 2" FNPT (51 mm) and 3" FNPT (76.2 mm) discharge models
- Handles solids up to 2" (51 mm) diameter
- Multiple switch options for automatic operation
- 140 °F (60 °C) liquid temperature rating
- cCSAus listed



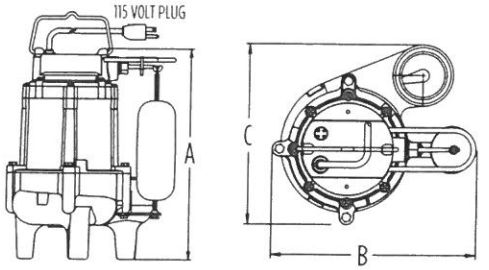
SERIES SPECIFICATIONS

Volts	Hz	Amps		Watts	Performance (GPM @ Height in Feet)			Shut-Off (ft)	PSI
		FLA	Start		5'	10'	15'		
115	60	9.5	17	1000	120	95	70	25	10.9
208/230	50/60	4.5	7.5	900	120	95	70	25	10.8

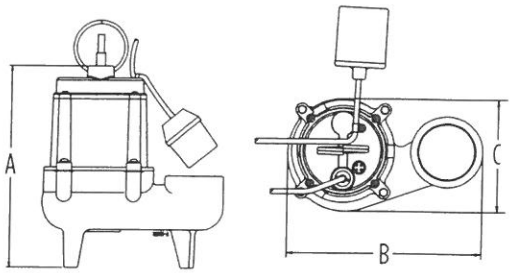
Item No.	Model	HP	Volts	Discharge	Switch Type/ Operation	On Level	Off Level	Cord	Weight
511346	10SN-CIA-SFS	1/2	115	2"	Integral Snap-Action Float	9" - 12" 22.26 cm - 30.48 cm	3" - 6" 7.62 cm - 15.24 cm	20' 6.1 m	37.5 lbs 17.5 Kg
511323	10SN-CIA-RF	1/2	115	2"	Piggyback Mechanical Float	9" - 14" 22.86 cm - 35.56 cm	2" - 6" 5 cm - 15.24 cm	20' 6.1 m	36.5 lbs 16.56 Kg
511326	10SN-CIA-RF	1/2	115	3"	Piggyback Mechanical Float	9" - 14" 22.86 cm - 35.56 cm	2" - 6" 5 cm - 15.24 cm	20' 6.1 m	37.5 lbs 17.5 Kg
511344	10SN-CIM	1/2	115	3"	Manual	-	-	20' 6.1 m	36.5 lbs 16.56 Kg
511322	10SN-CIM	1/2	115	2"	Manual	-	-	20' 6.1 m	35.5 lbs 16.1 Kg
511328	10SN-CIM	1/2	208-230	2"	Manual	-	-	20' 6.1 m	36 lbs 16.33 Kg
511345	10SN-CIM*	1/2	208-230	3"	Manual	-	-	20' 6.1 m	36 lbs 16.33 Kg

10SN SERIES - 1/2 HP

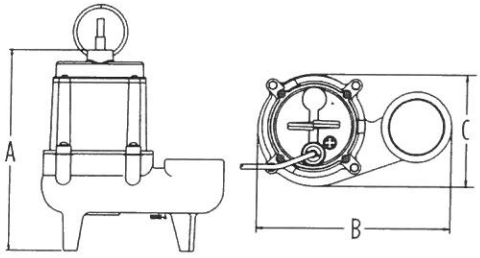
ENGINEERING DATA



10SN-CIA-SFS



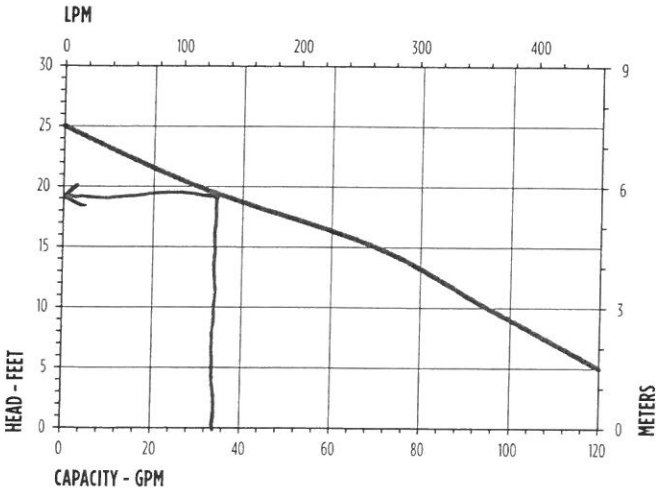
10SN-CIA-RF



10SN-CIM

Model	A	B	C
10SN-CIA-SFS	13.12" 33.33 cm	10.54" 26.77 cm	9.25" 23.5 cm
10SN-CIA-RF	11.4" 28.96 cm	11.64" 29.5 cm	6.8" 17.27 cm
10SN-CIM	11.4" 28.96 cm	11.64" 29.5 cm	6.8" 17.27 cm

PERFORMANCE DATA



CONSTRUCTION

Cover	Epoxy-coated cast iron/ *Thermoplastic
Motor Housing	Epoxy-coated cast iron
Impeller Material	Thermoplastic elastomer
Impeller Type	Non-clog
Volute	Epoxy-coated cast iron
Mechanical Shaft Seal	Nitrile with carbon and ceramic faces
Fasteners	Stainless steel
Shaft	Steel
Bearings	Upper sintered sleeve and lower ball bearings
Power Cord	SJTW **SJTOW

* On SFS models

** On 30' 10SN-CIA-RF and 10SN-CIM models

ACCESSORIES

HWAB ALARM



APPLICATIONS

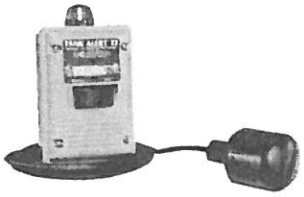
- Indoor high water alarm

FEATURES

- NEMA 1 thermoplastic enclosure
- Mechanical float switch with 15 ft (4.6 m) cable
- Alarm has red LED warning light, horn with silence switch, and test button
- 9 VDC battery backup
- UL and CSA listing

Item No.	Model	Volts	Cord
513288	HWAB	115	6' 1.83 m

303HWXT ALARM



APPLICATIONS

- Indoor/outdoor high water alarm

FEATURES

- Type 3R watertight thermoplastic enclosure
- Mechanical float switch with 15 ft (4.6 m) cable
- Alarm has red warning light, horn with silence switch, and test button
- Includes pre-mounted terminal block so enclosure can also be used as a junction box
- UL and CSA listing

Item No.	Model	Volts
513273	303HWXT	115

INDOOR DUPLEX PUMP CONTROL ALTERNATOR AND ALARM SYSTEM



APPLICATIONS

- Switch repair kit

FEATURES

- Easy-to-install, NEMA 1, 3/4 hp device
- Low-cost alternative to conventional duplex control panels
- Operates two manual sump, sewage or effluent pumps
- Alternates to standby pump if energized pump fails to turn on
- Audible alarm and red light indicator
- Operates single-phase pumps with 15 max. run amps
- cULus listing

Item No.	Model	Volts	Max. Amps	Cord
513289	IDC-115	115	15	9.5' 2.9 m

LOW VOLTAGE WATER ALARM



APPLICATIONS

- Remote water sensor and alarm
- Warns of leaks and overflows in bath, kitchen, laundry, attic, basement, or anywhere there is a potential for leaks to occur

FEATURES

- Remote sensor detects water and sounds alarm
- 85 decibel alarm sounds for three days
- Sensor and alarm can be placed up to 6 ft apart
- Sensor has both suction cup and adhesive to secure in place
- Includes wall mounting hardware
- Space saving design
- Circuit test/reset button ensures system is working
- Low battery signal when battery needs replaced
- Requires one 9 V battery (not included)

Item No.	Model	Volts
513379	HW-9	9V/DC

Sewage Disposal System Minor Modification Design

THIS PLAN IS BEING SUBMITTED UNDER PROVISION 32.1-163.6 OF THE CODE OF VIRGINIA
AND DOES NOT POSE A GREATER RISK OF MALFUNCTION AS DEFINED IN THE SHDR 350 THAN CURRENT REGULATORY DESIGNS.

TM 50-49
7380 Gordonsville Rd
Gordonsville, VA 22942
2.4 Acres

APPROVED

Bufton, Evelyn & John R Maus
P O Box E
Gordonsville, VA 22942

300 gallon per day system (2 BDR)
STE

New Sewage Ejector Station
Existing 1000 Gallon Septic Tank with effluent filter
Existing Drainfield

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Specifications	2
Site Plan	3
Septic Tank Details	4
Sewage Pump Details	5

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
PROFESSIONAL ENGINEER
11-15-17

Old Dominion Engineering
2036 Forest Drive
Waynesboro, Va 22980
Phone: (540) 942-5600
email: olddomeng@ntelos.net

1317085

November 15, 2017

General

1. Modifications or substitutions to the specified equipment or layout must be approved by the engineer.
2. The contractor should inspect the site prior to submitting an estimate to the owner. Any potential conflicts should be reported to the engineer. By submitting an estimate the contractor indicates that he has investigated the site and has found no discrepancies with the plans and specifications.
3. **A preconstruction conference is mandatory before starting installation of the system.** Contact engineer to discuss important aspects of installation. The engineer will not certify the system at the final inspection unless a preconstruction conference is done prior to installation.
4. A final inspection is required – The installation must pass inspection **by the engineer**. Notify the engineer of the planned inspection date in advance. Prior to final inspection the contractor should shoot all invert elevations and take as-built triangulation measurements. The contractor shall provide as-built measurements to all components of system to the engineer at the final inspection. The **OWNER** is responsible for paying the engineer's inspection fees.
5. If adverse subsurface conditions are encountered (rock, groundwater, utilities, etc.) contact the engineer.
6. If site conditions vary contact the engineer.
7. The contractor is responsible for maintaining all set back distances as required by local ordinances and health department and payment for all inspections by health department.
8. Installation shall be in accordance with Virginia Department of Health Sewage Handling and Disposal regulations and in accordance with erosion and sediment control guidelines.
9. A separate Project Manual contains calculations, equipment cut sheets, etc. A separate package contains AOSE soil information.
10. Notify "MISS Utility" prior to excavation.

Gravity Sewer/Effluent Main/Force Main

1. Gravity sewer from the office to the sewage ejector tank is 4" SCH 40 PVC sewer. Cleanouts every 50'.
2. Effluent mains shall be 4" schedule 40 PVC and have a slope of 6" per 100' minimum.
3. Force main and pressure piping shall be 2" Schedule 40 PVC .

Septic Tank

1. Septic Tank - existing. Check tank to make sure it is not leaking and check tees for alignment. The tank and all seams shall be waterproof.
2. The access port on the outlet end of the tank shall have a 24" waterproof riser. The riser shall be attached to the tank and sealed.. Riser shall reach the surface and shall be covered at the surface with lockable, watertight lids.
3. Zabel A300 12x20-VC-Ball effluent filter on tank.

Garage Sewage Ejector Tank

1. 24" diameter Polylok Basin with 24" Heavy Duty Lid. 50" min height. Basin to be waterproof.
2. Pipe penetrations to be waterproof with Polylok grommets.
3. Inlet to tank shall be 4" SCH 40 PVC. Outlet is 2" SCH 40 PVC.
4. The risers shall extend 2" above final grade and shall be covered at the surface with a plastic, lockable, watertight lid. The risers shall be 24" in diameter.
5. If rock is encountered in the tank hole then tank shall be bedded with 8" #68 stone. Tank shall be backfilled in layers with sufficient compaction (> 95% compaction) to avoid settling. Backfill material shall be free of debris and large stones.
6. Tank shall be backfilled in layers with sufficient tamping to avoid settling. Backfill material shall be free of debris and large stones.

Sewage Ejector Pump

1. Little Giant 10SN-CIA-RF (1/2 HP). Pump shall deliver 35 gpm @ 19 ft. Pump operation is to be controlled by an integrated piggyback float. Hardwired electrical connection in waterproof junction box.
2. Install 3/16 vent hole location before check valve per Little Giant recommendation

Alarm Panel

1) Indoor/Outdoor Little Giant Alarm 303HWXT Alarm (513273). Alarm to be installed on office. Alarm to be audiovisual and controlled by float. All electrical connections shall be hardwired in a waterproof junction box.

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

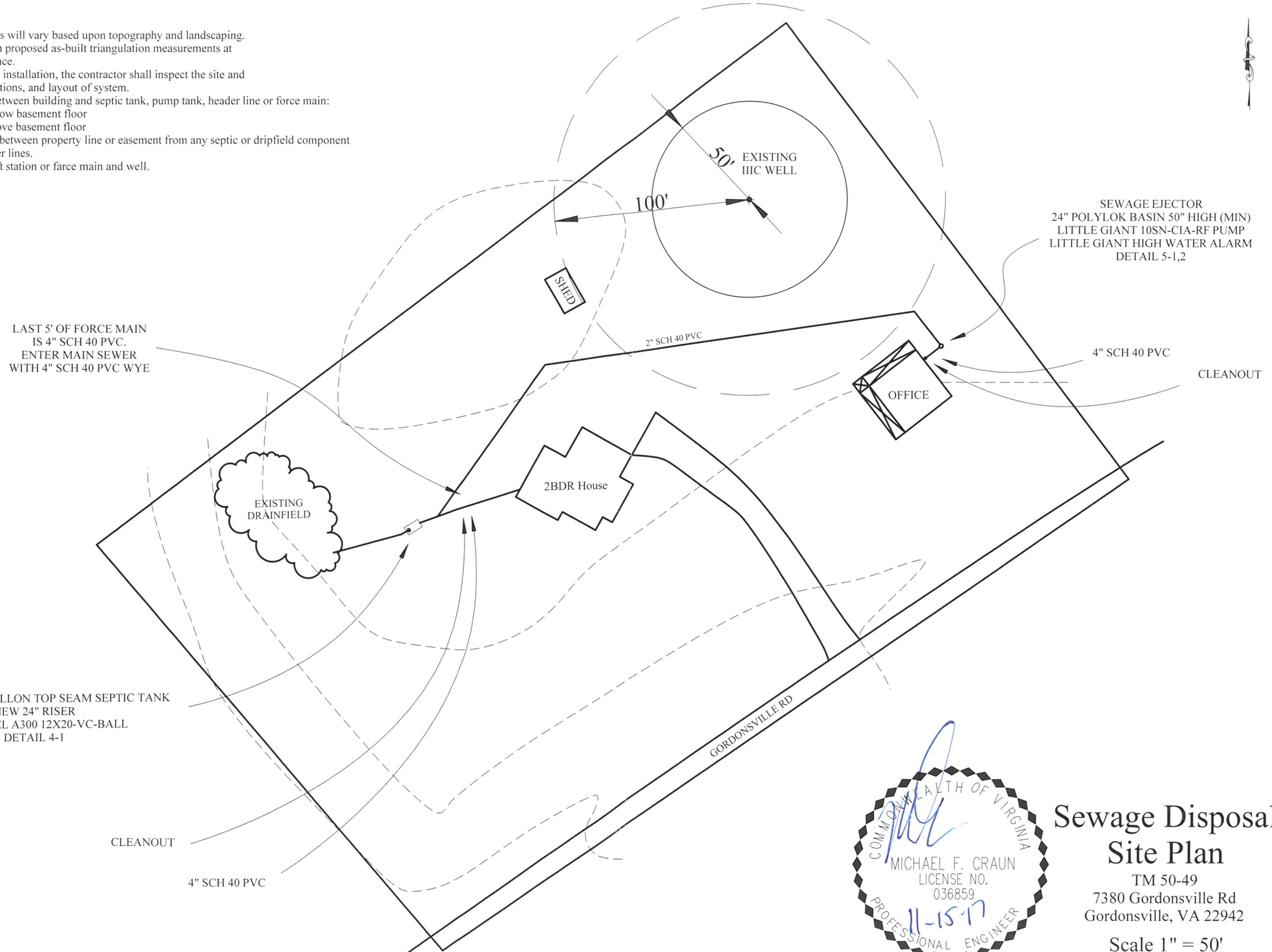
Project Notes/Specifications

Old Dominion Engineering

2

1317085

Notes:
1. Exact location of tanks will vary based upon topography and landscaping.
2. Provide Engineer with proposed as-built triangulation measurements at preconstruction conference.
3. Before pricing system installation, the contractor shall inspect the site and verify dimensions, elevations, and layout of system.
4. Separation distance between building and septic tank, pump tank, header line or force main:
   10' - when located below basement floor
   20' - when located above basement floor
5. 5' separation distance between property line or easement from any septic or dripfield component
6. 15' separation to power lines.
7. 50' separation from lift station or farce main and well.



COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Sewage Disposal Site Plan

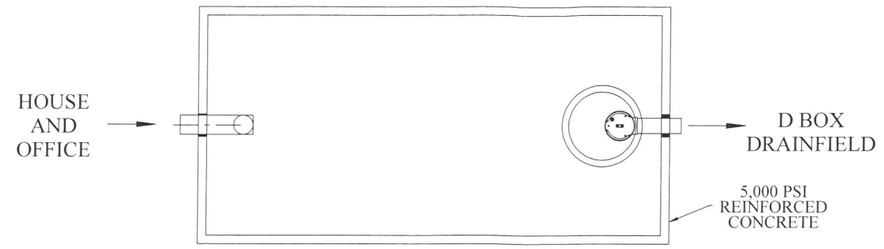
TM 50-49
7380 Gordonsville Rd
Gordonsville, VA 22942

Scale 1" = 50'

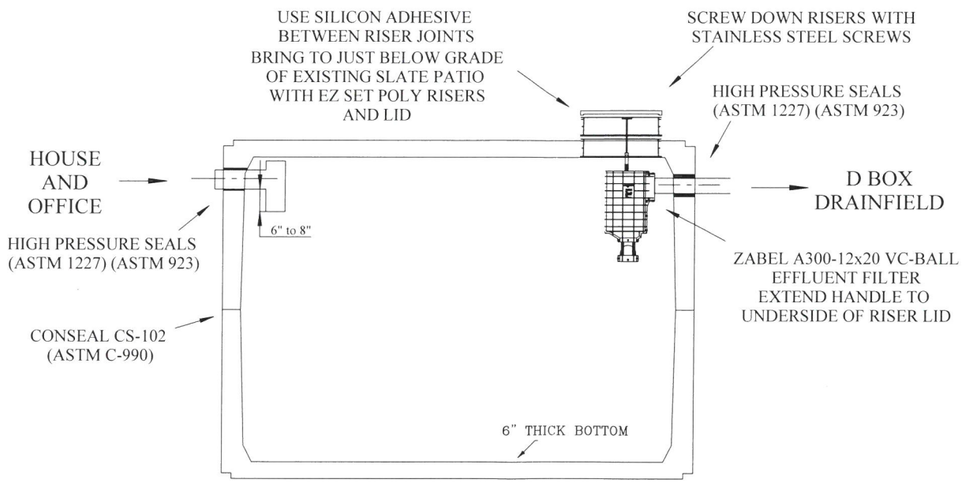
Old Dominion Engineering
2036 Forest Drive Waynesboro, VA 22980 (540) 942-5600 olddomeng@ntelos.net

3

Revision
1317085



PLAN VIEW



SECTION VIEW

NOTES:
1. SEPTIC TANK IS EXISTING 1000 GALLON CONCRETE TANK
2. CHECK INLET - PER VDH SEWAGE DISPOSAL and HANDLING REGS
3. OUTLET WITH NEW EFFLUENT FILTER AND RISER
4. TANKS PENETRATIONS MUST BE WATERPROOFED AND NOT LEAK. SEAL PIPE PENETRATIONS
5. 24" PLASTIC RISER ON OUTLET SIDE OF TANK.

1 **1000 GALLON MID SEAM SEPTIC TANK**

SECTION VIEW

Not To Scale

APPROVED

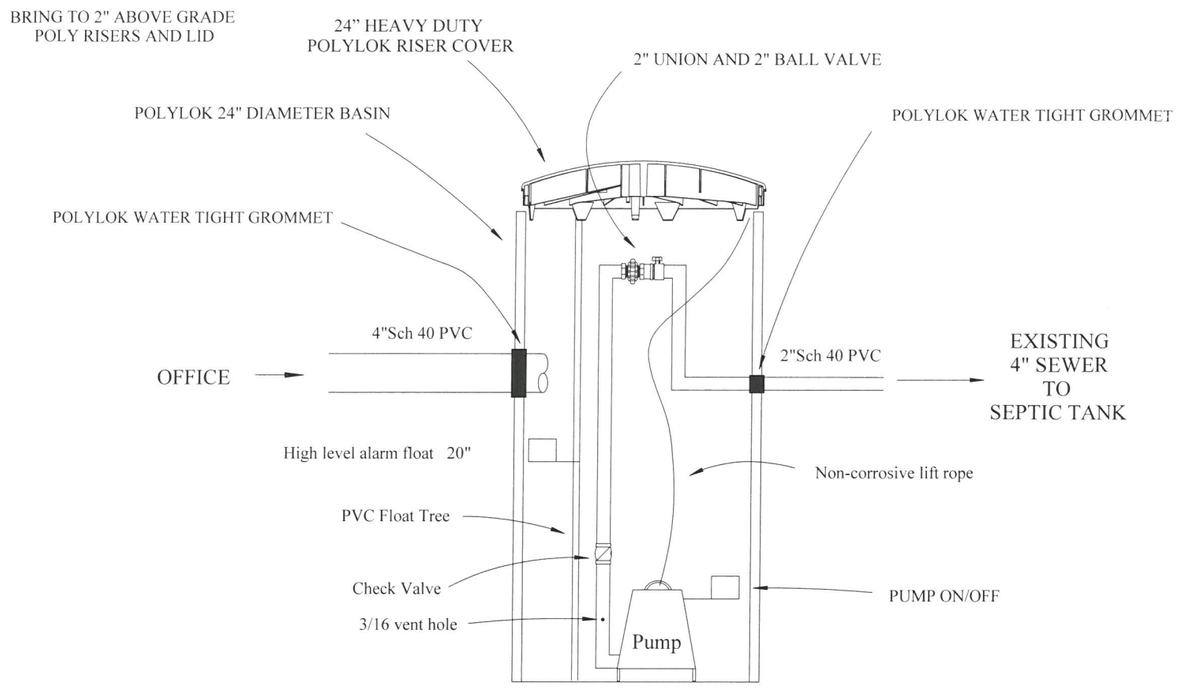
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MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Old Dominion Engineering

4

Septic Tanks Details

1317085



LITTLE GIANT 10SN-CIA-RF
SEWAGE PUMP
AUTOMATIC

NOTES:
1. SEWAGE EJECTOR PUMP TANK IS NEW 24" DIAMETER X 50" DEEP POLYLOK BASIN
2. INLET - 4" SCH 40 PVC, OUTLET - 2" SCH 40 PVC
3. TANKS PENETRATIONS MUST BE WATERPROOFED AND NOT LEAK; USE POLYLOK GROMMET.
4. 24" RISER ON TANK.
5. STRAP ALL PIPING TO TANK WITH PLASTIC STRAPS AND STAINLESS STEEL ANCHORS
6. FLOAT HEIGHTS WILL NEED TO BE ADJUSTED IF TANK DIMENSIONS VARY FROM 1.96 GAL PER INCH
7. EASY ACCESS TO VALVES AND UNIONS

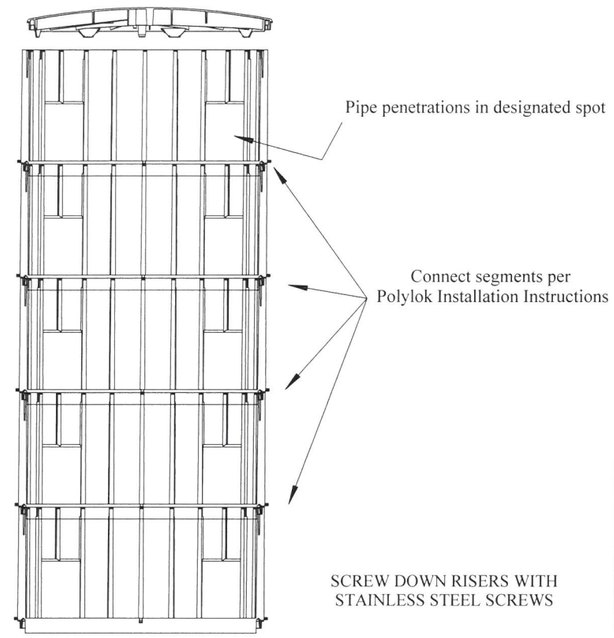
24" SEWAGE EJECTOR PUMP TANK

1 SECTION VIEW

Not To Scale

Polylok 24" Basin
One - 4" penetration (4" Polylok Grommet)
One - 2" penetration (2" Polylok Grommet)
One - 1" penetration (1" Polylok Grommet)

Water test prior to backfill



24" POLYLOK BASIN

2 SECTION VIEW

Not To Scale

COMMONWEALTH OF VIRGINIA
MICHAEL F. CRAUN
LICENSE NO.
036859
11-15-17
PROFESSIONAL ENGINEER

Sewage Ejector Details

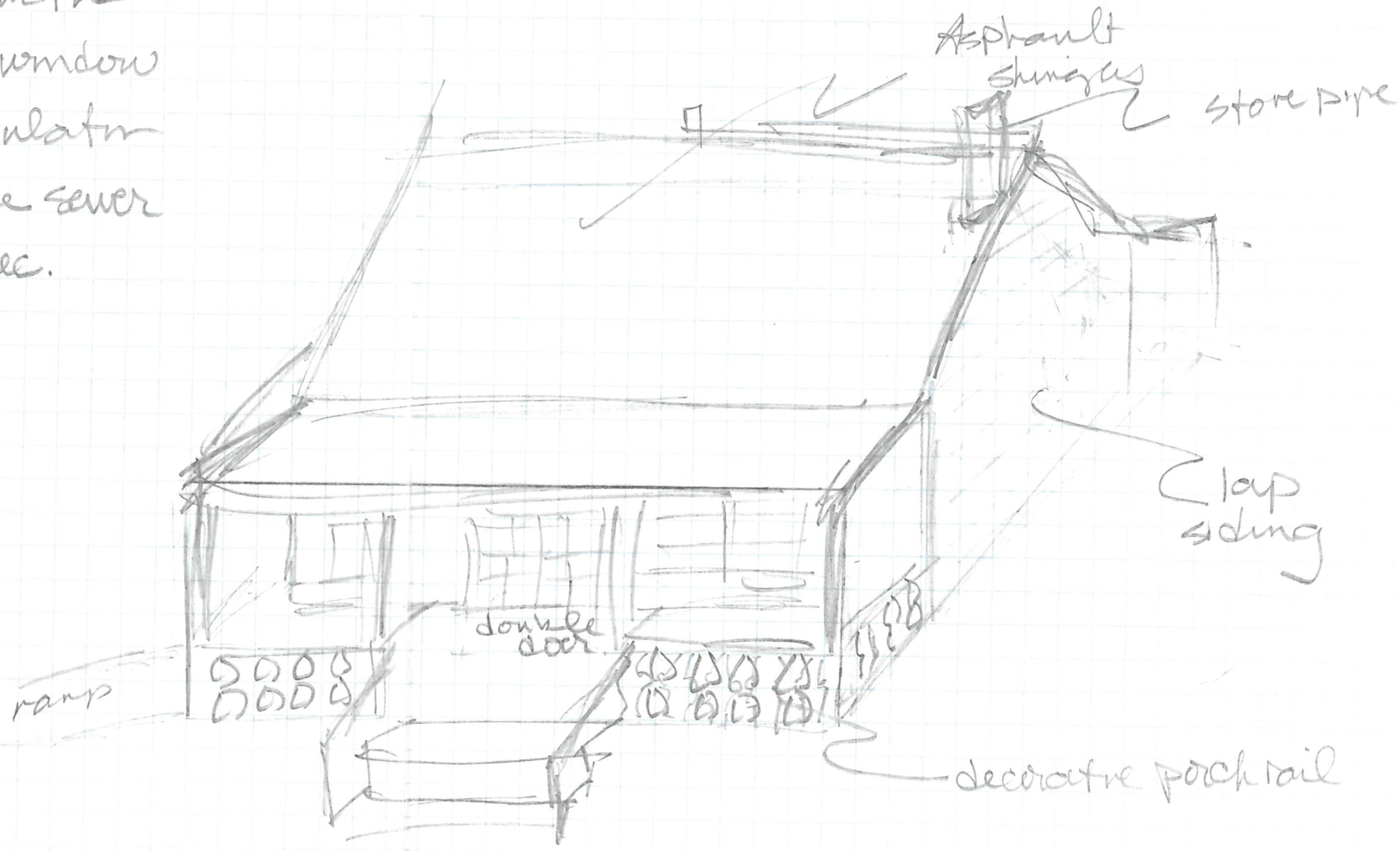
Old Dominion Engineering

5

1317085

1 story 30×30 + porch

2×6 constructn
double pane window
spray foam insulatn
tie into house sewer
water / elec.

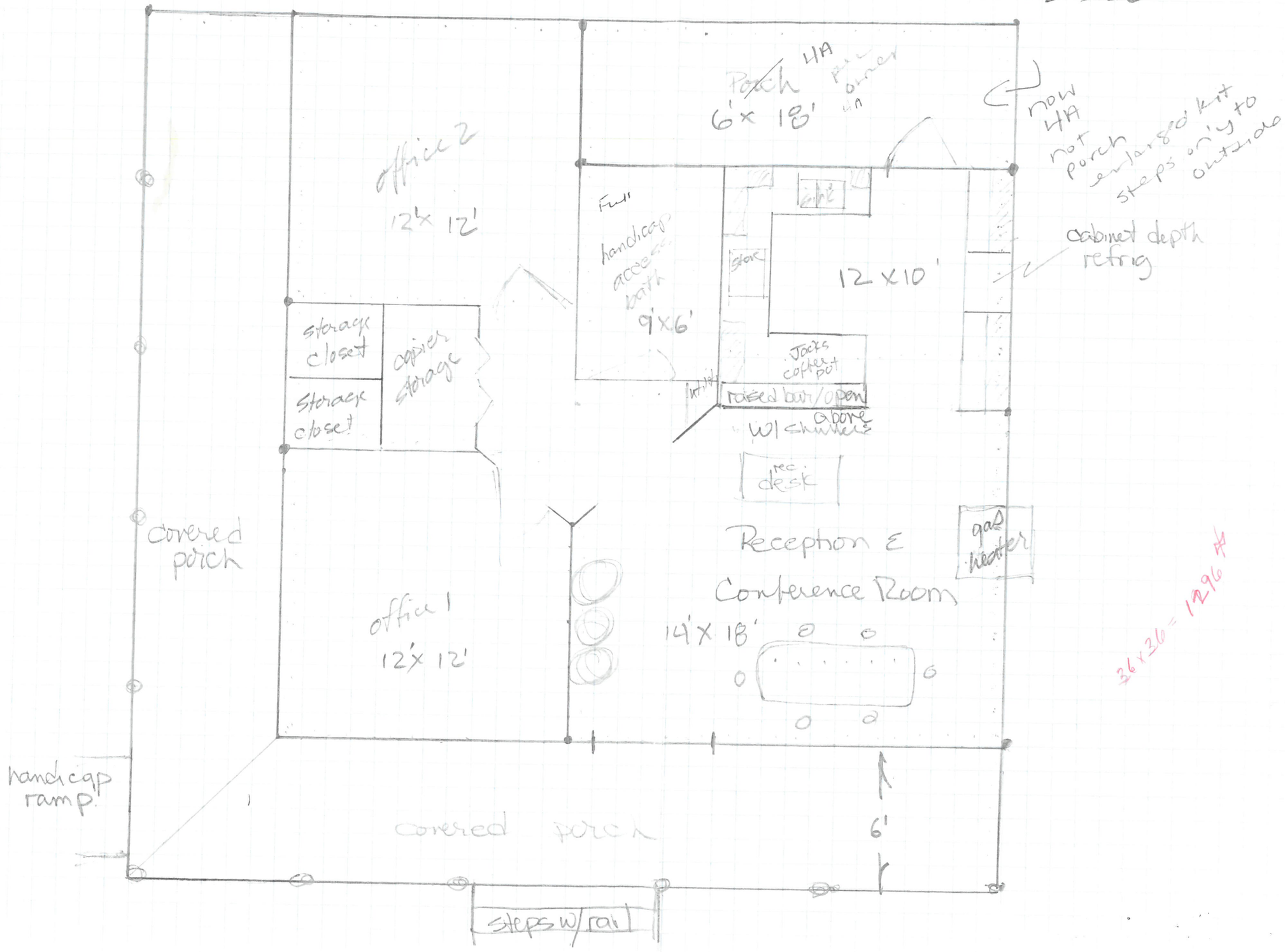


ALL WORK SUBJECT TO FIELD INSPECTION

B2017-2431 NNR

HOME OFFICE

30' x 30' + 6' porch on 2 sides



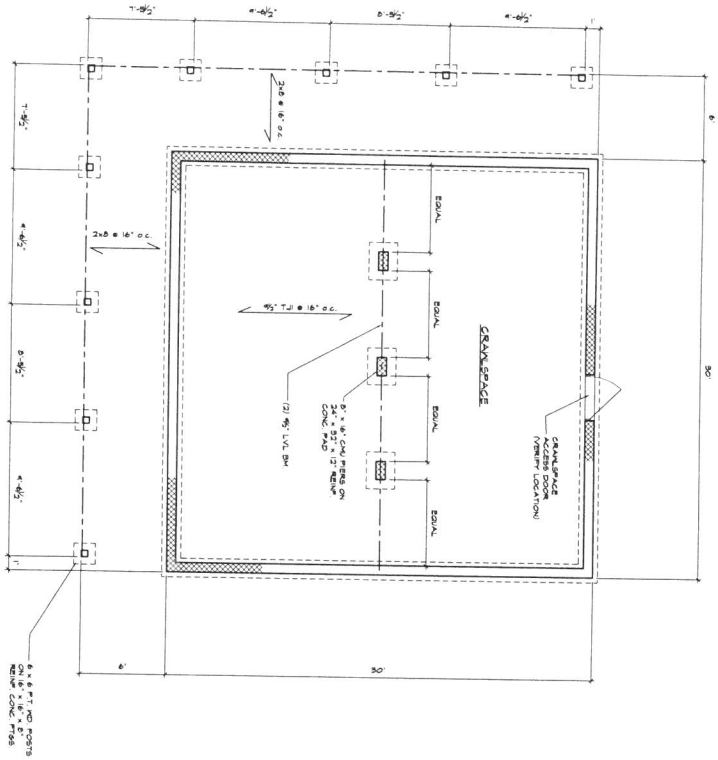
36 x 36 = 1296 #



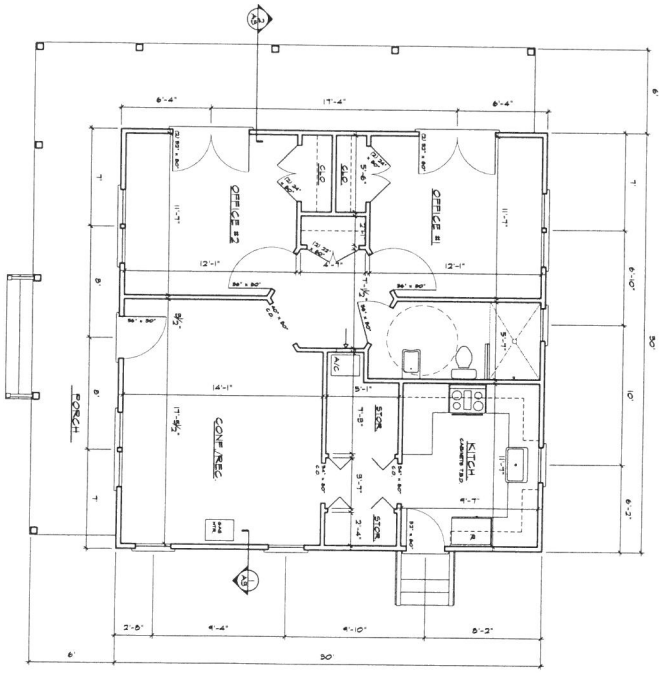




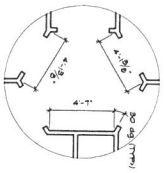




1/A1 FOUNDATION PLAN
1/4" = 1'-0"



2/A1 FLOOR PLAN
1/4" = 1'-0"



3/A1 HEX. HALLWAY DETAIL
1/4" = 1'-0"

A1	OCT. 31, 2017	Plans	BUFTON & MAUS LAW OFFICE Albemarle County, Virginia

Positive
As of: August 16, 2019 7:34 PM Z

COPY

Bd. of Supervisors of Richmond Cty. v. Rhoads

Supreme Court of Virginia

August 31, 2017, Decided

Record No. 161209

Reporter
294 Va. 43 *; 803 S.E.2d 329 **; 2017 Va. LEXIS 110 ***; 2017 WL 3765193

BOARD OF SUPERVISORS OF RICHMOND COUNTY v. JANIE L. RHOADS, ET AL.

Prior History: [***1] FROM THE CIRCUIT COURT OF RICHMOND COUNTY. Harry T. Taliaferro, III, Judge.

Bd. of Supervisors v. Rhoads, 2016 Va. LEXIS 202 (Va., Dec. 21, 2016)

Disposition: Affirmed.

Case Summary

Overview

HOLDINGS: [1]-*Va. Code Ann. § 15.2-2311(C)* was correctly applied to conclude that a certificate issued by a zoning administrator was not void ab initio where, due to its plain language and remedial nature, *§ 15.2-2311(C)* manifestly created a legislatively-mandated limited exception to the general principle that a building permit issued in violation of applicable zoning ordinances was void; [2]-The signed certificate was a written order by the zoning administrator as it clearly constituted a determination that the owners' building plans for a garage complied with the zoning ordinances; [3]-Pursuant to *§ 15.2-2311(C)*, the owners had a vested right to use their property in the manner originally approved by the zoning administrator where approval was within the administrator's delegated authority, more than 60 days had passed, and the owners materially relied upon the determination.

Outcome
Judgment affirmed.

Counsel: For BOARD OF SUPERVISORS OF RICHMOND COUNTY, Appellant: MCROBERTS, ANDREW RAY, (ESQ.), MACKENZIE, CHRISTOPHER MICHAEL, (ESQ.).

For RHOADS, JANIE L., RHOADS, EDMUND, RHOADS, CRYSTAL, RHOADS, MEADE, Appellees: MONDAY, MONICA TAYLOR, (ESQ.), WRIGHT, KATHLEEN LYNCH, (ESQ.), BUGG, ALBERT DAVIS, JR., (ESQ.), BUGG, ALBERT DAVIS, III, (ESQ.).

Judges: OPINION BY JUSTICE S. BERNARD GOODWYN.

Opinion by: S. BERNARD GOODWYN

Opinion

[**331] [*46] PRESENT: All the Justices

OPINION BY JUSTICE S. BERNARD GOODWYN

In this appeal, we consider whether the circuit court erred in applying *Code § 15.2-2311(C)* and ruling that property owners had a vested right to the use of their property in violation of a zoning ordinance, when more than 60 days elapsed after the zoning administrator issued a determination which allowed

that use, and the property owners materially changed their position in good faith reliance upon that determination.

[*47] BACKGROUND

Janie Rhoads, Edmund Rhoads, Crystal Rhoads, and Meade Rhoads (collectively, the Rhoadses) own property in Richmond County (the Property).[1] On November 13, 2013, the Rhoadses filed an application for a Zoning Certificate of Compliance (Application) [***2] to build a "2-story all unfinished detached garage" (Garage) on the Property, and attached architectural drawings of the proposed Garage. The Richmond County (County) zoning administrator, Morgan Quicke (Quicke), visited the Property, which has a one-story primary dwelling, before checking the box for "Approved" on the Application and signing the Certificate of Compliance (Certificate) on November 18, 2013.[2] The Certificate included instructions regarding how to appeal if the Application was denied. The Rhoadses completed the Garage in June 2014 at a cost of approximately $27,000.

In July 2014, Joseph Quesenberry, the new County zoning administrator (Quesenberry), informed the Rhoadses that the previously approved Garage was in violation of Richmond County Zoning Ordinance (Zoning Ordinance) Section 2-3-6 (the Ordinance), because it was taller than the primary structure on the Property. On September 24, 2014, a written notice of zoning violation was sent to the Rhoadses, advising them that the Garage was in violation of the Ordinance (Notice).

The Rhoadses appealed the Notice to the County Board of Zoning Appeals (BZA) by letter dated October 13, 2014. The stated grounds for the appeal were that the [***3] Rhoadses had received a Certificate of Compliance signed by the County's zoning administrator, the Rhoadses had relied upon the Certificate in building the Garage, and, under *Code § 15.2-2311(C)*, their "rights [had] vested and the permits for erection of the [Garage] are not subject to revocation or reversal." The BZA denied the Rhoadses' appeal, and affirmed Quesenberry's decision that the Garage violated the Ordinance.

On February 23, 2015, pursuant to *Code § 15.2-2314*, the Rhoadses appealed the BZA's decision by filing a petition for [*48] certiorari in the Circuit Court of Richmond County (Rhoadses' Appeal). The County Board of Supervisors (Board) filed an answer to the Rhoadses' Appeal and also filed a complaint for declaratory and injunctive relief against the Rhoadses, requesting a declaration that the Garage is in violation of the Ordinance and an injunction to prevent the continued violation of the Ordinance (Board Case).

On October 19, 2015, the circuit court held an *ore tenus* hearing to address both the Rhoadses' Appeal and the Board Case, and admitted into evidence a joint stipulation of undisputed facts and evidence regarding the history of the Property and the Garage project. The Rhoadses stipulated that the Garage [***4] violated the Ordinance, but for the approval of the zoning administrator, and the Board stipulated that Quicke visited the Property in September 2013, and "knew, as of that site visit, that the primary structure was one-story in height."

Meade Rhoads testified that, prior to beginning the Garage project, he and his contractor met with the County code compliance officer at the Property, and the code compliance officer suggested a two-story garage. The two-story Garage design was submitted in the Application, for the zoning administrator's approval. Quicke acknowledged that the [**332] Application showed a 14 by 32 feet, two-story garage, but testified that he did not read the Application or look at the plan attached to the Application before signing the Certificate, in his capacity as the County's zoning administrator. After

[1] Meade Rhoads was not initially a party to the two lawsuits discussed below, but he later became an owner of the Property and was added as a defendant to the injunction case brought by the Board by Order dated October 19, 2015.

[2] Quicke was both the County administrator and the acting County zoning official at the time.

receiving the Certificate, the Rhoadses built the Garage, according to the plans approved by the Certificate.

The Rhoadses asserted that the BZA erred by failing to find that their rights, in the zoning administrator's initial determination, vested pursuant to *Code § 15.2-2311(C)*. The Board asserted that *Code § 15.2-2311(C)* did not apply and that the BZA's decision should be affirmed.

On May 18, 2016, the circuit [***5] court entered its final order in both cases and held that "*Code § 15.2-2311(C)* applies, and the Rhoads[es] have established their entitlement to relief under that provision." Accordingly, the circuit court reversed the BZA decision, and entered judgment in favor of the Rhoadses in the Rhoadses' Appeal. It also denied the Board's requests for declaratory and injunctive relief, and entered judgment in favor of the Rhoadses in the Board Case as well.

[*49] The Board appeals both cases.[3]

ANALYSIS

The Board argues that *Code § 15.2-2311(C)* does not apply, because Quicke "lacked the authority to approve a plain violation of the Zoning Ordinance, and the Certificate he issued was therefore void *ab initio*." The Board also claims that *Code § 15.2-2311(C)* does not apply in this case because the Certificate was not a "determination" within the meaning of the statute. Additionally, it asserts that the circuit court erred because *Code § 15.2-2311(C)* only applies to bar the subsequent actions of a zoning administrator or other administrative officer, and not those of any other body, such as the Board or a court.

The issue on appeal is whether the circuit court correctly interpreted and applied the terms of *Code § 15.2-2311(C)*. This Court reviews the interpretation of a statute de novo. *Nolte v. MT Tech. Enters., LLC, 284 Va. 80, 89, 726 S.E.2d 339, 344 (2012)*.

> When the language of [***6] a statute is unambiguous, we are bound by the plain meaning of that language. Furthermore, we must give effect to the legislature's intention as expressed by the language used unless a literal interpretation of the language would result in a manifest absurdity. If a statute is subject to more than one interpretation, we must apply the interpretation that will carry out the legislative intent behind the statute.

Id. at 89-90, 726 S.E.2d at 344.

Code § 15.2-2311 governs appeals to a board of zoning appeals. *Code § 15.2-2311(C)* specifically provides:

> In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer *be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, [*50] decision or determination* where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation [***7] period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

(Emphasis added.)

By its plain terms, the prerequisites for *Code § 15.2-2311(C)* to apply are: (1) a "written order, requirement, decision or determination made by the

[3] The two cases, which were tried together but not formally consolidated in the circuit court, have been joined in this appeal.

zoning administrator;" (2) the passage of at least 60 days from the zoning administrator's determination; and (3) a material change in position "in good faith reliance on the action of the zoning administrator."

[**333] It is agreed that more than 60 days elapsed between the zoning administrator's initial approval of the zoning and his successor's later assertion of a zoning violation; Quesenberry did not advise the Rhoadses that the Garage violated the Ordinance until more than 240 days after Quicke signed the Certificate, approving the Garage. It is also undisputed that the Rhoadses materially changed their position in good faith reliance on the zoning administrator's approval of the zoning for their building plans, because they built the Garage at a cost of nearly $27,000.

The Board claims that the circuit court erred in applying *Code § 15.2-2311(C)* because the zoning administrator granted a Certificate that was [***8] in clear violation of the Zoning Ordinance, and that the Certificate was therefore void *ab initio* and could not be a "written order, requirement, decision or determination" under *Code § 15.2-2311(C)*. In support of its position, the County notes that this Court has previously held that a landowner had no rights in a building permit that was issued in violation of applicable zoning ordinances. *See Blacksburg v. Price, 221 Va. 168, 170-71, 266 S.E.2d 899, 900-01 (1980)* (holding that a building permit issued at variance with the zoning ordinance was "void *ab initio*" and "no vested rights were acquired [thereunder] by the permittee"); [*51] *WANV, Inc. v. Houff, 219 Va. 57, 63-64, 244 S.E.2d 760, 764 (1978)* (concluding that a building permit issued in violation of the zoning ordinance was "void"); *and Segaloff v. City of Newport News, 209 Va. 259, 261-62, 163 S.E.2d 135, 137 (1968)* (same).

As noted by the Board, prior to 1995 administrative zoning decisions that violated the zoning laws were void and property owners bore the sole responsibility for the consequences of a government's zoning mistake. *See, e.g., Segaloff, 209 Va. at 261-62, 163 S.E.2d at 137*. However, in 1995, the General Assembly enacted the "vested rights" provision currently codified in *Code § 15.2-2311(C)*. 1995 Acts ch. 424. The plain language of *Code § 15.2-2311(C)* indicates that the statute is intended to eliminate the hardship property owners have suffered when they rely to their detriment upon erroneous or void zoning decisions.

We have characterized [***9] as remedial those statutes that provide protections to those otherwise not in a position to effectively defend themselves. *See, e.g., Commercial Constr. Specialties, Inc. v. ACM Constr. Mgmt. Corp., 242 Va. 102, 105-06, 405 S.E.2d 852, 854, 7 Va. Law Rep. 2873 (1991)* (concluding that a statute regarding bond requirements for contractors who contract with public agencies was remedial, because it was designed to protect subcontractors and materialmen who could not perfect mechanic's liens against public property); *Government Emps. Ins. Co. v. United Servs. Auto. Ass'n, 281 Va. 647, 657, 708 S.E.2d 877, 883 (2011)* (explaining that "Code § 38.2-2204, the omnibus clause, is a remedial statute enacted to serve the public policy of broadening the coverage of automobile liability insurance for the protection of the injured persons"). *Code § 15.2-2311(C)* is a remedial statute.

The remedial purpose of *Code § 15.2-2311(C)* is to provide relief and protection to property owners who detrimentally rely in good faith upon erroneous zoning determinations and who would otherwise suffer loss because of their reliance upon the zoning administrator's error. A statute that is remedial in nature is "liberally construed so that the purpose intended may be accomplished," and is to be "read so as to promote the ability of the enactment to remedy the mischief at which it is directed." *Manu v. GEICO Cas. Co., 293 Va. 371, 389, 798 S.E.2d 598, 608 (2017)* (citations and internal quotation marks omitted).

[*52] Considering the plain language and remedial nature of the [***10] statute, *Code § 15.2-2311(C)* manifestly creates a legislatively-mandated limited

exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void. *See Tvardek v. Powhatan Village Homeowners Ass'n, 291 Va. 269, 276 n.4, 784 S.E.2d 280, 283 n.4 (2016)* (noting that "[a]brogation of the common law requires that the General Assembly plainly manifest an intent to do so") (citation and internal quotation marks omitted). As this Court has previously noted, "*Code § 15.2-2311(C)* . . . provide[s] for the potential vesting of a right to use property in a manner **[**334]** that 'otherwise would not have been allowed.'" *Goyonaga v. Board of Zoning Appeals, 275 Va. 232, 244, 657 S.E.2d 153, 160 (2008)* (citation omitted). The circuit court did not err in rejecting the Board's claim that the Certificate was void *ab initio* because the Certificate granted a right to use property in a manner that otherwise would not have been allowed under the Zoning Ordinance.

The Board claims that even if the Certificate was not void *ab initio*, the signed Certificate was still not a "written order, requirement, decision or determination" by the zoning administrator. We disagree.

In issuing the Certificate, the zoning administrator necessarily made a determination that the building plans complied with the Zoning Ordinance in all respects. *See* Zoning Ordinance Section 3-7-1(A) (providing that a certificate of **[***11]** compliance will be issued "for those proposals which have obtained all necessary approvals and permits and comply with this [Zoning] Ordinance") *and* Section 5-3 (defining the term "certificate of compliance" as "[c]ertification by the Land Use Administrator that the plans are in compliance with this [Zoning] Ordinance"). Although the Board argues to the contrary, it is irrelevant that the decision or determination evidenced by the Certificate makes no reference to the height of the Garage or to the zoning administrator's intent to waive the requirements of the Zoning Ordinance. Such specificity is not required by *Code § 15.2-2311(C)*. The issuance of the Certificate clearly constitutes a decision or determination by the zoning administrator that the building plans complied with the Zoning Ordinance.

[*53] The conclusion that the Certificate constitutes a determination by the zoning administrator is consistent with our prior cases involving *Code § 15.2-2311(C)*. In *Norfolk 102, LLC v. City of Norfolk, 285 Va. 340, 354-56, 738 S.E.2d 895, 903 (2013)*, we held that *Code § 15.2-2311(C)* did not apply to a "Cash Receipt" signed by a zoning administrator, because that document "was not a specific determination by the zoning administrator or any other City official that either of these businesses could use their respective premises in a manner not otherwise allowed **[***12]** under the zoning ordinances in effect at that time." Similarly, in *James v. City of Falls Church, 280 Va. 31, 44, 694 S.E.2d 568, 575 (2010)*, we held that a zoning administrator's mere "interpretation" of a zoning ordinance "lacked the finality of an 'order, requirement, decision or determination' under *Code § 15.2-2311(C)*," such that no vesting occurred.

In contrast, the Certificate was a written determination by the zoning administrator that a particular building plan on a particular property complied with the applicable zoning ordinances. It affirmatively approved the zoning for the Garage project at issue. The Certificate was a final determination, as this Court has required. *See James, 280 Va. at 44, 694 S.E.2d at 575* (a zoning interpretation lacks the finality of an "order, requirement, decision or determination" under *Code § 15.2-2311(C)*). The Certificate itself provided notice that the zoning administrator's decision was appealable, which demonstrates that the zoning administrator's involvement was final after he signed the Certificate. Thus, the Certificate was a determination by the zoning administrator which satisfied that requirement under *Code § 15.2-2311(C)*.

The Board also claims that *Code § 15.2-2311(C)* only binds a zoning administrator, but need not and

should not be considered by any other body such as a board or a court in determining if there is an [***13] enforceable violation of a zoning ordinance. In support of its position, the Board notes that this Court stated in *James* that *Code § 15.2-2311(C)* "only limits the subsequent actions of a 'zoning administrator or other administrative officer,'" and "[t]he Planning Commission, however, is neither." *Id. at 43, 694 S.E.2d at 575.*

The quoted language from *James* should not be interpreted as allowing the BZA and the Board to ignore the requirements of and to evade the application of *Code § 15.2-2311(C)* in making the [*54] determination of whether there is an enforceable violation of a zoning ordinance. In *James*, the appeal concerned a decision made by a planning commission. The planning commission, not the zoning administrator, had authority over the issue of approving the subdivision and consolidation [**335] of properties which the landowner requested. We noted that "*Code § 15.2-2311(C)* [was] not applicable" to protect a property owner against an adverse decision by a planning commission regarding the subdivision and consolidation of several properties after the zoning administrator issued an "interpretation" that such a consolidation was permitted by the Zoning Ordinance. *280 Va. 43-44, 694 S.E.2d at 574-75.* Because there was only an interpretation, and no determination by a "zoning administrator or other administrative officer," we concluded that [***14] this prerequisite for the application of *Code § 15.2-2311(C)* was not present in that case. There was no vesting of a zoning determination, because no zoning determination was made by the zoning administrator. *Code § 15.2-2311(C)* only provides for vesting after a zoning determination. *Code § 15.2-2311(C)* could not possibly apply to limit the subsequent actions of the planning commission.

The issue of whether *Code § 15.2-2311(C)* must be considered by other entities involved in the enforcement of a zoning ordinance, after a zoning administrator makes a decision or determination which is relied upon by a property owner, was not before the Court in *James*. By its terms, *Code § 15.2-2311(C)* and its vesting provisions must be considered and enforced by a BZA, a board of supervisors, or a court in making a zoning determination or reviewing its correctness, if the prerequisites for the application of the statute are satisfied.[4]

[*55] A zoning administrator is a representative of his or her board of supervisors.[5] *Board of Supervisors v. Board of Zoning Appeals, 268 Va. 441, 450-51, 604 S.E.2d 7, 12 (2004).* "[A] principal is bound by representations of his agent, made either in the scope of his employment or in furtherance of the object for which he is employed." *Nationwide Ins. Co. v. Patterson, 229 Va. 627, 632, 331 S.E.2d 490, 493 (1985)* (internal quotation marks omitted). Thus, when a zoning administrator has acted within the scope of his employment and [***15] made a "decision" or "determination" within the meaning of *Code § 15.2-2311(C)*, he or she has also bound the board of supervisors. If *Code § 15.2-2311(C)* did not bind the board of supervisors as the zoning administrator's principal, it would afford scant, if any, protection to the property owner, and would not serve to "remedy the mischief at which [the statute] is directed." *Manu, 293 Va. at 389, 798 S.E.2d at 608.* The remedial purpose of the statute requires the statute to be interpreted so as to provide relief and protection to property owners

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[4] By way of example, if a landowner appeals a zoning administrator's notice of violation to a board of zoning appeals, the board of zoning appeals should consider whether the zoning administrator had the right to issue such a violation under *Code § 15.2-2311(C)*. As we noted in *Goyonaga*, the property owner has the "burden of establishing the vesting of a right to an otherwise impermissible use of property under *Code § 15.2-2311(C)*." *275 Va. at 244, 657 S.E.2d at 160.* If the zoning administrator is barred from changing his or her prior determination by *Code § 15.2-2311(C)*, the board of zoning appeals must consider that statute in determining whether the zoning administrator erred in finding there was an enforceable violation of the zoning ordinance by the landowner.

[5] Zoning Ordinance Section 5-3 defines the "land use administrator" as "[t]he representative of the Richmond County Board of Supervisors who has been appointed to serve as the agent of the Governing Body in administering this Ordinance."

who rely in good faith upon erroneous zoning determinations.

In this instance, the approval of the Certificate was an action within the scope of the authority delegated by the Board to the zoning administrator. The issuance of the Certificate constituted a determination within the meaning of *Code § 15.2-2311(C)*. Also, more than 60 days elapsed after the zoning administrator issued his determination that the Garage complied with the Zoning Ordinance, and the Rhoadses materially changed their position in reliance upon that determination. Thus, the prerequisites for the application of *Code § 15.2-2311(C)* are present in this case.

The Rhoadses' rights in using their property in the manner initially approved by the zoning administrator vested upon fulfillment [***16] of the requirements of *Code § 15.2-2311(C)*. Once their rights vested under *Code § 15.2-2311(C)*, they were not subject to alteration [**336] by the zoning administrator, the BZA or the Board. Therefore, the circuit court did not err in applying *Code § 15.2-2311(C)* to uphold the Rhoadses' vested rights to use their property in the manner originally approved by the zoning administrator.

[*56] CONCLUSION

Accordingly, for the foregoing reasons, we will affirm the judgments of the Circuit Court of Richmond County.

Affirmed.

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