COUNTY OF ALBEMARLE
Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902-4579
Phone (434) 296-5832 Fax (434) 972-4126

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING VIA ZOOM
AGENDA
TUESDAY, JUNE 2, 2020 at 2:00 P.M.

1. Call to Order

2. Establish a Quorum

3. Deferral Request:
   A. Project Number: AP202000001 R. A. Yancey Lumber Corporation 55-111B, 55-112
      Property Owner/Appellant: R. A. Yancey Lumber Corporation

4. Public Hearing:
   A. Project Number: AP202000001 R. A. Yancey Lumber Corporation 55-111B, 55-112
      Property Owner/Appellant: R. A. Yancey Lumber Corporation
      Staff: Bart Svoboda

5. Approval of Minutes
   A. February 4, 2020

6. Old Business
   A. Training Update

7. New Business

8. Adjournment

This meeting is being held pursuant to Ordinance No. 20-A(6): An Ordinance to Ensure the Continuity of Government During the Covid-19 Disaster. Opportunities for the public to access and participate in this electronic meeting are (or will be) provided at http://www.albemarle.org/department.asp?department=cdd&relpage=24716.

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

Memorandum

To:	Members, Board of Zoning Appeals
From:	Bart Svoboda, Zoning Administrator
Date:	May 21, 2020
Subject:	**AP 202000001 R.A. Yancey Lumber Corporation** **Request for deferral**

Virginia Code § 15.2-2312 requires that the Board of Zoning Appeals make its decisions within ninety days of the filing of an application or appeal. However, the 90–day time period for appeals in Code § 15.2–2312 is directory rather than mandatory. The BZA does not lose jurisdiction to render a decision on appeal of a Zoning Administrator's action after 90 days has passed. *Tran v. Bd. of Zoning Appeals of Fairfax Cty.*, 260 Va. 654, 658, 536 S.E.2d 913, 916 (2000).

Under Rule 2(D) of the BZA's Rules of Procedure (attached), an appellant may request a deferral. The above-captioned appeal has been scheduled for the June 2, 2020 Board of Zoning Appeals meeting.

The appeal (AP2020-001) was originally scheduled for the Board of Zoning Appeals in April 2020. On March 13, 2020, the appellant requested by email that its appeal be deferred to June 2020. Due to the ongoing COVID-19 pandemic, the deferral was granted in order to plan for an electronic meeting in June 2020.

The appellant is now requesting an additional deferral in order for the Board of Supervisors (BOS) to first decide the appellant's pending special exceptions requests. The BOS was previously scheduled to hear the special exception requests prior to this appeal being heard by the BZA. However, the COVID-19 pandemic resulted in the rescheduling of the special exception requests until after the June BZA meeting.

Rule 2(D) of the BZA's Rules of Procedure (attached) outlines five factors for the BZA to consider in making its decision to grant or deny a deferral request. In this case, certain factors are favorable and others unfavorable as to a deferral.

Favorable factors

1. Consideration #1 -- A deferral may promote fairness in the process. The applicant has argued that its special exception requests have been delayed by the COVID-19 pandemic protocols.
2. Consideration #4 -- Though the outcome of the special exception requests is uncertain, a deferral may allow the appellant to resolve the underlying issues so that BZA action might be unnecessary

Unfavorable factors

1. Consideration #2 -- A deferral may be considered a convenience or personal benefit to the applicant.
2. Consideration #3 -- A deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood or the public.

Summary:

Staff recommends that the BZA follow and carefully weigh the considerations listed in Rule 2(D) of its Rules of Procedure in making its decision to grant or deny this deferral request.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
RULES OF PROCEDURE

2. Meetings

D. *Deferrals*. The BZA may defer any matter at the request of a member of the BZA, the County staff, or the applicant or appellant. The request may be made either orally at the meeting, or in writing, and may be made at any time prior to the vote on the matter. The person making the request shall state the reasons therefore. In considering a request for a deferral of a hearing of an appeal or an application for a variance pertaining to a zoning violation, the BZA shall consider the reasons for the deferral if the request is submitted by the appellant or applicant, the recommendation of staff, and the members of the BZA. In making its decision to grant or deny a request, the BZA shall consider the following factors: (1) whether the deferral would promote fairness in the process; (2) whether the deferral would be solely for the convenience or personal benefit of the appellant or applicant; (3) whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood or the public; (4) whether the deferral would allow the appellant or applicant to resolve the underlying issues so that BZA action might be unnecessary; and (5) whether the deferral would allow the BZA to make its decision within ninety days of the filing of the application or appeal, in conformance with *Virginia Code* § 15.2-2312.

A motion to defer shall either specify the date to which the matter is deferred or defer the matter indefinitely. If the motion to defer pertains to a matter for which a noticed public hearing is required and the motion is to defer the matter to a specific date, the Chair shall either close the public hearing or, if the public hearing was not opened, open and then close the public hearing, before the BZA votes on the motion.

Archived: Saturday, May 23, 2020 7:12:49 AM
From: Long, Valerie
Sent: Fri, 22 May 2020 19:35:42
To: Bart Svoboda; Jim Bowling
Cc: Patrick May (patrick@rayanceylumber.com); Marsha Alley
Subject: AP 2020-00001 R.A. Yancey Lumber Corporation - Deferral Request
Sensitivity: Normal
Attachments:
Yancey Lumber Corporation_ BZA Deferral Request Letter.PDF

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.

Bart and Jim:

Please see the attached deferral request of AP 2020-00001 on behalf of R.A. Yancey Lumber Corporation, and let me know if there is anything further you need to effectuate this request.

Thank you both for your assistance, and I hope you have a wonderful Memorial Day Weekend.

Valerie

Valerie Wagner Long | Attorney | Williams Mullen
321 East Main St. Suite 400 | Charlottesville, VA 22902-3200
T 434.951.5709 | C 434.242.6792 | F 434.817.0977 | vlong@williamsmullen.com | www.williamsmullen.com

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Direct Dial: 434.951.5709
vlong@williamsmullen.com

May 22, 2020

VIA EMAIL

bsvoboda@albemarle.org
Mr. Bart Svoboda
Zoning Administrator
Albemarle County
401 McIntire Road
Charlottesville, VA 22902

jmb@stlawva.com
Albemarle County Board of Zoning Appeals
c/o James M. Bowling, IV
St. John, Bowling & Lawrence
416 Park Street
Charlottesville VA 22902-4738

RE: AP 2020-00001 R.A. Yancey Lumber Corporation

Members of the Board of Zoning Appeals, Mr. Svoboda, and Mr. Bowling:

Our firm represents R. A. Yancey Lumber Corporation (the "Company"). In connection with Appeal No. AP 2020-00001 (the "Appeal"), and on behalf of the Company, I hereby request a deferral of the Appeal pursuant to Section 3D of the Board of Zoning Appeals (the "BZA") Rules of Procedure. Specifically, we request that the Appeal be deferred until the August, 2020 BZA meeting for the reasons stated herein.

The Company has submitted a package of Special Exception requests that directly relates to the subject of the Appeal. The Special Exception requests were originally submitted in January, 2018. The Special Exceptions require review by the County Planning Commission, and review and action by the County Board of Supervisors. Public hearings on the Special Exceptions had previously been scheduled for March 24, 2020 before the Planning Commission, and April 15, 2020 before the Board of Supervisors. Those hearings were both cancelled due to the COVID-19 global pandemic. These hearings have now been rescheduled for June 23, 2020 and July 15, 2020, which represents a three-month delay. While the Company certainly understands and appreciates the need for the hearings to be rescheduled, which the Community Development staff had the unilateral authority to carry out, the County Zoning Ordinance does not similarly authorize the staff to defer the Appeal hearing for a corresponding period of time. Only the BZA itself has the authority to grant a longer deferral. We contend that in light of the reasonable requirement by the County to delay the public hearings on the Special Exception requests due to the COVID-19 pandemic, that it would patently unfair to the Company for the BZA to not also approve a deferral of the Appeal hearing for a reasonable period of time.

If the Board of Supervisors approves the Company's Special Exception application, the Appeal will be moot and unnecessary, as it would resolve the underlying issue of the Appeal. As such, deferring the Appeal hearing until after the Board of Supervisors' action on the Special Exception would allow the Company to potentially resolve the underlying issues so that the BZA action would be unnecessary, thus promoting judicial efficiency. It would also be a prudent decision to avoid utilizing County and public resources unnecessarily.

In addition, granting a deferral would promote fairness in the process. The deferral of the Special Exception hearings was unavoidable in light of the Governor's Declaration of a State of Emergency and his numerous Executive Orders prohibiting gatherings over a certain size and other mandatory social-distancing measures. While the Community Development Department staff has now developed process and procedures to conduct public hearings electronically, the level of complexity and coordination necessary to develop such procedures required many weeks for the staff to develop and implement. As a result, despite the Company's frequent requests for the Special Exception hearings to be rescheduled as soon as possible, the earliest that the staff was able to schedule the hearings for is for June 23, 2020 at the Planning Commission and July 15, 2020 at the Board of Supervisors, both of which are after the June 2, 2020 BZA hearing.

As such, to deny this request to defer the Appeal hearing, and force the Appeal to be heard on June 2, 2020, when the Special Exceptions will not be considered until June 23 and July 15, 2020, would be unreasonably disadvantageous to the Company and would not promote fairness in the process. By contrast, approving the request to defer the Appeal hearing until the August BZA meeting would promote fairness in the process, in light of the extraordinary situation caused by the COVID-19 global pandemic.

Therefore, we ask that the BZA grant the requested deferral of the Appeal until the August, 2020 BZA meeting. This two-month deferral would be shorter than the three-month deferral of the Special Exception hearings, yet would still allow the Company a reasonable time to adequately prepare for the Appeal hearing. And in the event that the Board of Supervisors grants the Special Exceptions, the Appeal hearing would be unnecessary.

Furthermore, this deferral request is not solely for the convenience or personal benefit of the Company, in that it will promote judicial efficiency and potentially avoid wasting the time and resources of the BZA, its members, and the Community Development staff, since the Board of Supervisors' approval of the Special Exception requests would render the Appeal moot and unnecessary.

As such, granting the deferral would promote judicial efficiency, promote fairness in the process, would not be solely for the convenience or personal benefit of the Company, and would provide the Company with the opportunity to first resolve the underlying issues of the Appeal and potentially avoid wasting the time and resources of the BZA, the Community Development Department staff, and the public.

For all of these reasons, we respectfully request that the Board defer the Appeal until the August, 2020 BZA meeting. We sincerely appreciate the Board's consideration of this request.

Sincerely,

Valerie W. Long

Valerie W. Long

cc: R. A. Yancey Lumber Corporation

42614003_1

STAFF: Bart Svoboda
PUBLIC HEARING: June 2, 2020

STAFF REPORT: AP2020-00001

PROPERTY OWNER/APPELLANT: R. A. Yancey Lumber Corporation

Description of Property: R.A. Yancey Lumber Corporation is located at 6317 Rockfish Gap Turnpike in Crozet, Virginia. The primary use of the property is for the operation of the lumber business. According to current real estate assessment records, Tax Map 55, Parcel 111B contains +/- 23.24 acres and Parcel 112 contains +/- 12.50 acres, all of which is zoned HI, Heavy Industry. The parcels front on US Route 250 West, Rockfish Gap Turnpike which is an Entrance Corridor. The Comprehensive Plan designates the parcels as Rural Area 3 with a primary designation of Rural Area. (See Attachment A)

Determination and Applicant's Appeal:

Background: On December 20, 2019, the appellant was mailed a Notice of Official Determination of Violation (VIO2019-428) on property identified as 05500-00-00-111B0 and 05500-00-00-11200. This notice of violation states:

The piece of equipment constructed in the VDOT right of way and the new sorter/stacker constructed on these parcels do not meet the required setbacks.

The notice of violation served as notice to stop the activity or use immediately, noting that compliance must be achieved by January 19, 2020 in order to avoid court action. Additionally, the standard appeal language was included in the notice to allow appeal within thirty (30) days of the notice. (See Attachment B)

On January 17, 2020, an Appeal (AP2020-001) of the Zoning Administrator's Determination of Violation (VIO2019-428) was submitted to the Albemarle County Zoning Division. The appeal suggests that the Notice describes activities that are legal non-conforming uses, pursuant to Section 18-6 of the Albemarle County Code. (See Attachment C)

The appeal (AP2020-001) was originally scheduled for the Board of Zoning Appeals in April 2020. On March 13, 2020, the appellant requested by email that its appeal be deferred to June 2020. Due to the ongoing COVID-19 pandemic, the deferral was granted in order to plan for an electronic meeting in June 2020.
(See Attachment D)

The Appellant's Justification for Appeal:

On January 17, 2020, an Appeal (AP2020-001) of the Zoning Administrator's Determination of Violation (VIO2019-428) was submitted to the Albemarle County

Zoning Division. The Appellant contends that the Notice describes activities that are legal non-conforming uses, pursuant to Section 18-6 of the Albemarle County Code. (See Attachment C)

Staff Response:

Staff maintains that the findings listed within the Notice of Official Determination of Violation (VIO2019-428) are founded and accurate.

The piece of equipment constructed in the VDOT right of way and the new sorter/stacker constructed on these parcels do not meet the required setbacks of Section 18-5.1.15 of the Albemarle County Code. (See Attachments E and F)

Also, the sorter/stacker is currently in the process of being installed. A use or structure cannot be considered a legal non-conforming use or structure if the use of the property or structure did not pre-exist the applicable Zoning Ordinance.

Summary:

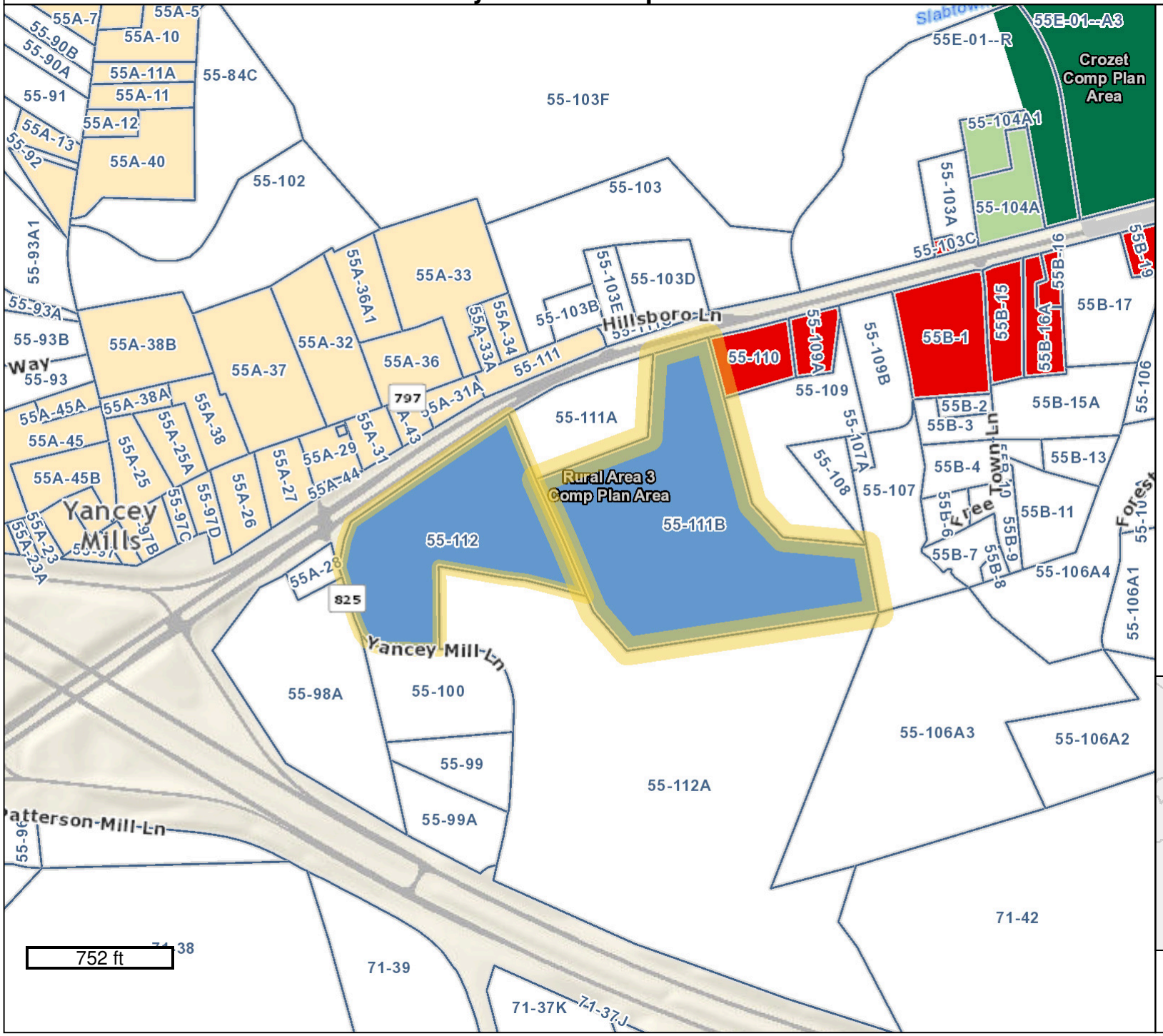
The Notice of Official Determination of Violation (VIO2019-428) was issued after site inspections and careful and deliberate review of the use and structure(s) on site. No findings exist that would indicate that the equipment in question are compliant with the Zoning Ordinance. Despite the Appellants' 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.

Attachments:

A – GIS Map of parcels
B – Notice of Official Determination of Violation (VIO2019-428)
C – Application for Appeal of the Zoning Administrator's Determination of Violation (VIO2019-428)
D – Email request for deferral dated March 13, 2020
E – Setback sketch
F – Albemarle County Code Section 18-5.1.15

AP2020-001 R. A. Yancey Lumber Corp.

Attachment A



Legend

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

Parcel Info

- Parcels

Zoning Info

Zoning Classifications

- Rural Areas
- Village Residential
- R1 Residential
- R2 Residential
- R4 Residential
- R6 Residential
- R10 Residential
- R15 Residential
- Planned Unit Development
- Planned Residential Development
- Neighborhood Model District
- Monticello Historic District
- C1 Commercial
- Commercial Office
- Highway Commercial
- Planned Development Shopping Ctr.
- Planned Development Mixed Comm.
- Downtown Crozet District
- Light Industry
- Heavy Industry
- Planned Development Industrial Par
- Town of Scottsville

Comp Plan Land Use Info

- Comprehensive Plan Areas



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.

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)

May 22, 2020

Attachment B

COUNTY OF ALBEMARLE
Community Development Department
401 McIntire Road
Charlottesville, Virginia 22902-4596

FAX (434) 972-4126 TELEPHONE (434) 296-5832 TTD (434) 972-4012

NOTICE OF OFFICIAL DETERMINATION OF VIOLATION

The Date this Notice of Determination is given is December 20, 2019. No: VIO-2019-428

R A Yancey Lumber Corp
c/o David L. Dallas
Williams Mullen
321 East Main Street, Suite 400
Charlottesville, VA 22902

Property: Parcel ID 05500-00-00-111B0
05500-00-00-11200

R A Yancey Lumber Corp
Owner of Record

Zoning: Heavy Industry [HI] District

Dear Mr. Dallas:

This notice is to inform you that the above-described Property is in violation of the Albemarle County Zoning Ordinance. This conclusion is based on the following fact that as of today:

The piece of equipment constructed in the VDOT right of way and the new sorter/stacker constructed on these parcels do not meet the required setbacks.

Because this use of the Property or structure did not pre-exist the applicable Zoning Ordinance, it cannot be considered a legal non-conforming use or structure. Accordingly, the following section of the Zoning Ordinance has been violated:

Albemarle County Code § 18-5.1.15 Sawmill, temporary or permanent, planning mills and wood yards.

This violation of the Zoning Ordinance is unlawful, and may be subject to civil penalties, criminal penalties, injunctive relief and/or other remedies, pursuant to *Albemarle County Code § 18-36.*

This letter also serves to notify you to stop the activity or use outlined above immediately. Failure to comply with this notice may result in legal action being taken against you and any other owner, tenant or other responsible party. In addition, you must bring the property into compliance by **January 19, 2020** to avoid court action. Future compliance past this date does not preclude the County from pursuing legal action

avoid court action. Future compliance past this date does not preclude the County from pursuing legal action for existing or past violation(s).

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; provided, however, that a ten (10) day appeal period applies to appeals of decisions pertaining to temporary or seasonal commercial uses, and such appeals shall be filed within ten (10) days after this decision. 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 appeals of decisions 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 outlined in *Albemarle County Code* § 18-34.3, which may be reviewed online at www.albemarle.org/countycodebza.

If you have any questions, please contact Keith Bradshaw, Code Enforcement Officer, at 434-296-5832 ext. 3014.

Lisa Green, CZA
Manager of Code Compliance
County of Albemarle

AUTHENTICATION OF RECORD/
CERTIFICATE OF MAILING
(*Code of Virginia* § 8.01-390)
(Notice of Official Determination of Violation)

I, Keith A Bradshaw, hereby certify:

1. that I am a Code Compliance Officer and an employee of the Albemarle County Department of Community Development;

2. that on Dec 20, 2019, I mailed a true copy of the record attached hereto, consisting of a Notice of Official Determination of Violation dated Dec 20, 2019 pertaining to that property identified as Parcel ID Number(s) 05-5-20 -- 00 -- 00 -- 11180 11200, to the recipient(s) identified thereon at the address(es) specified thereon; and

3. that the copy of such record which is attached hereto is a true copy of the record that was mailed.

Dated: 12-20-2019 Signed: [signature]

COMMONWEALTH OF VIRGINIA, CITY/COUNTY OF Charlottesville:

The foregoing *Authentication of Record/Certificate of Mailing* was signed, sworn to and acknowledged before me by Keith Bradshaw, Albemarle County Code Compliance Officer, this 20th day of December, 20 19.

[signature]
Notary Public

My Commission Expires: 1/3/2023

Notary Registration No. 7838165

MARSHA LYNN CUTRIGHT
NOTARY PUBLIC
REG. #7838165
MY COMMISSION EXPIRES
1/3/2023
COMMONWEALTH OF VIRGINIA

Albemarle County

Planning Application

Community Development Department
401 Mc[illegible]e Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

Attachment C

PARCEL / OWNER INFORMATION

TMP: 05500-00-00-111B0 Owner(s): R A YANCEY LUMBER CORP

Application #: AP202000001

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: White Hall Land Use Primary: Industrial

Current AFD: Not in A/F District Current Zoning Primary: Heavy Industry

APPLICATION INFORMATION

Street Address:

Entered By: Jennifer Smith 1/17/2020

Application Type: Appeal of Zoning Administrator's Determination

Project: NOTICE OF OFFICIAL DETERMINATION OF VIOLATION NO. VIO-2019-428

Received Date	01/17/20	Received Date Final		Submittal Date	
Closing File Date				Submittal Date Final	
Revision Number					
Total Fees	258				
Total Paid	258				

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	R A YANCEY LUMBER CORP	P O BOX 115	CROZET VA	22932		
Primary Contact	VALERIE W. LONG - WILLIAMS MULLEN	321 E. MAIN ST., SUITE 400	CHARLOTTESVILL[illegible]	22902	4349515709	
Applicant	DONNIE ROSE[illegible] - R. A. YANCEY LUMBER [illegible]	6317 ROCKFISH GAP [illegible]	CROZET, VA	22932	4342428047	

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2020-1 SIGN #

ZONING ORDINANCE SECTION:

Fee Amount $ 258 - Date Paid 1/17/20 By who? Williams Mullen Clark & Dobbins Receipt # 120075 Ck# 576350 By: JS.

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?): Valerie W. Long, Williams Mullen

Address 321 E. Main Street, Suite 400 City Charlottesville State VA Zip 22902

Daytime Phone (434) 951-5709 Fax # (___) ___ E-mail vlong@williamsmullen.com

Owner of Record R. A. Yancey Lumber Corporation c/o Donnie Rose

Address 6317 Rockfish Gap Turnpike City Crozet State VA Zip 22932

Daytime Phone (434) 242-8047 Fax # (___) ___ E-mail donnie@rayanceylumber.com

Applicant (Who is the Contact person representing?): R. A. Yancey Lumber Corporation c/o Donnie Rose

Address 6317 Rockfish Gap Turnpike City Crozet State VA Zip 22932

Daytime Phone (434) 242-8047 Fax # (___) ___ E-mail donnie@rayanceylumber.com

RECEIVED JAN 17 2020 COMMUNITY DEVELOPMENT

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

Project Name: Notice of Official Determination of Violation No. VIO-2019-428

Tax map and parcel: 05500-00-00-111B0; 05500-00-00-11200 **Zoning:** Heavy Industry District

Physical Street Address (if assigned):
6317 Rockfish Gap Turnpike, Crozet, VA, 22932

Location of property (landmarks, intersections, or other):
Intersection of Route 250 and Interstate 64

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:

R. A. Yancey Corporation respectfully appeals Notice of Official Determination of Violation No. VIO-2019-428 (the "Notice").

The Notice describes activities that are legal non-conforming uses, pursuant to Section 18-6 of the Albemarle County Code.

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.

Valerie W. Long
Signature of Owner or Contract Purchaser, Agent

Date: 1/17/2020

Valerie W. Long, Agent
Print Name

(434) 951-5709
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

Fee Received
255.00
Received Date
1/17/20
Received By

Marsha Alley

From:	Bart Svoboda
Sent:	Friday, March 13, 2020 7:26 AM
To:	Marsha Alley
Subject:	FW: BZA Meeting - April 7, 2020 - Preliminary Information
Attachments:	BZA Prelim Memo for 2020-04-07.doc

From: Long, Valerie <vlong@williamsmullen.com>
Sent: Thursday, March 12, 2020 5:37 PM
To: Bart Svoboda <bsvoboda@albemarle.org>; Lisa Green <lgreen2@albemarle.org>
Subject: FW: BZA Meeting - April 7, 2020 - Preliminary Information

CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.

Bart and Lisa: as we discussed earlier this week, we hereby request that the hearing on the Yancey Lumber appeal be deferred until June. Please let me know if you require anything further to effectuate this request.

Valerie Long
Williams Mullen
434-951-5709

From: Marsha Alley <malley3@albemarle.org>
Sent: Wednesday, March 4, 2020 9:51 AM
Subject: BZA Meeting - April 7, 2020 - Preliminary Information

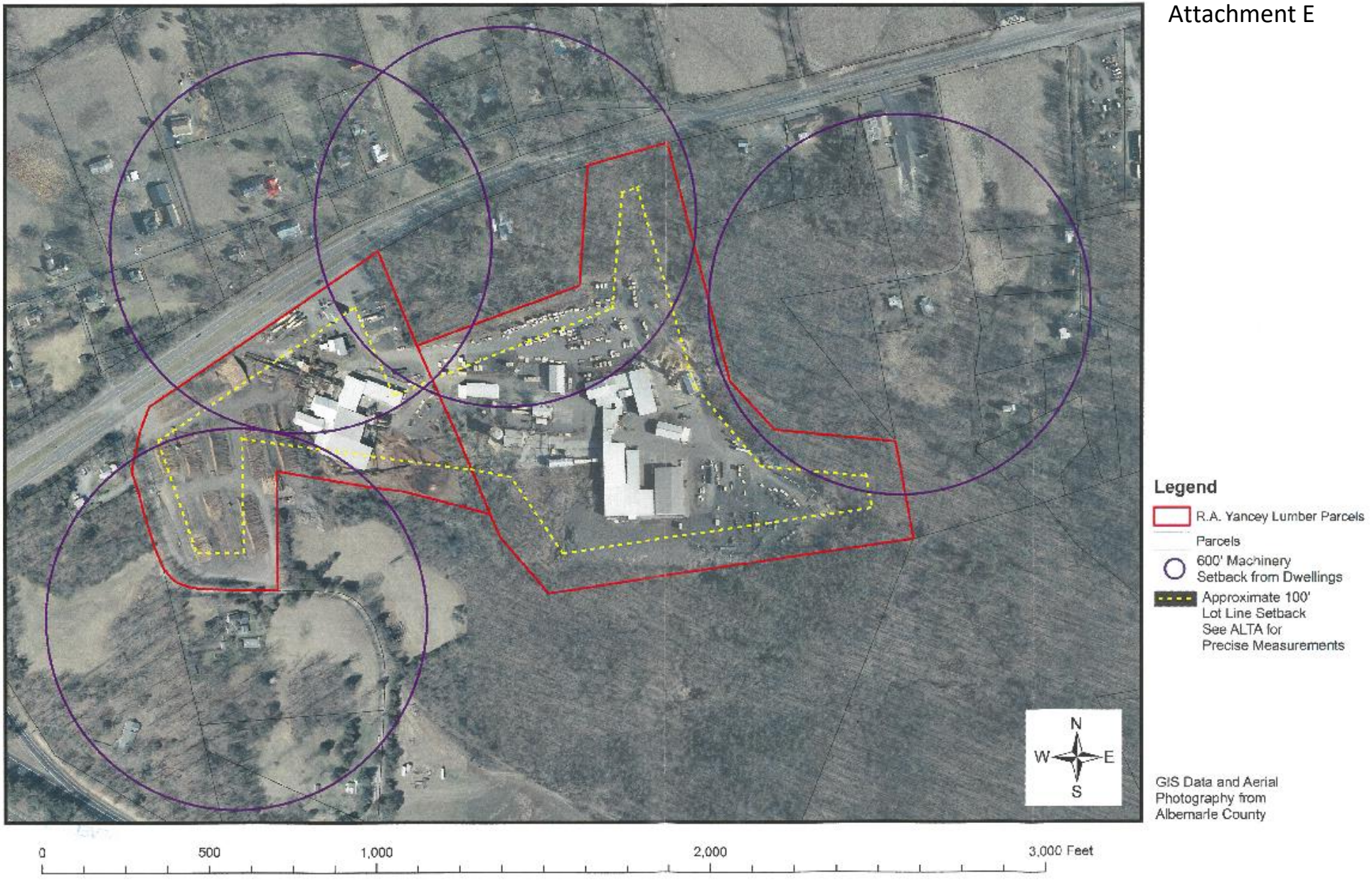
Good morning!

Attached you will find the preliminary information for the public hearings scheduled for the Tuesday, April 7, 2020 BZA Meeting. Click on the links to view information for each item.

Have a nice day!

Marsha Alley
Community Development Assistant - Zoning
401 McIntire Road, North Wing
Charlottesville, VA 22902
(434) 296-5832 ext. 3417

Attachment E



Albemarle County Zoning Ordinance

Supplemental Regulations

Sec. 5.1.15 - Sawmill, temporary or permanent, planing mills and wood yards.

Each temporary or permanent sawmill, planning mill and wood yard shall be subject to the following:

a. No structure and no storage of lumber, logs, chips or timber shall be located closer than 100 feet to any lot line. Trees and vegetation within the 100 foot setback shall be maintained as a buffer to abutting properties and uses, provided that during the last three months of operation the trees may be removed.

b. No saw, planer, chipper, conveyor, chute or other similar machinery shall be located closer than 600 feet from any dwelling on any lot other than the lot on which the sawmill, planing mill or wood yard is located.

c. No machinery used for sawing, planing, chipping or other wood processing shall operate between 7:00 p.m. and 7:00 a.m. No wood or wood products shall be loaded or unloaded between 12:00 midnight and 7:00 a.m.

d. All timbering and milling operations, including reforestation/restoration and the disposal of snags, sawdust and other debris, shall be conducted in accordance with Title 10.1 of the Virginia Code and the regulations of the Virginia Department of Forestry.

(§ 5.1.15, 12-10-80; Ord. 01-18(6) , 10-3-01; Ord. 13-18(1) , 4-3-13)

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

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

1. Call to Order
The meeting was called to order at 2:00 p.m. by Chairman John Shepherd.

2. Establish a Quorum
The BZA established a quorum, with four members present.

3. Public Hearings
A. VA201900001 Bufton & Maus PLC Law Offices
MR. SHEPHERD: Are we all set with the timer? This will be a 15-minute presentation.

MR. MACCALL: Thank you, Mr. Chairman. Francis MacCall, Principal Planner. This is a variance 201900001. The applicants are Evelyn Bufton and John Maus. I'll take questions at the end of the presentation, if there are any.

So, as noted in the report, and in the applicant's request, the applicant requests a variance from any and all of the provisions of Albemarle County Code that would prevent them from using an accessory structure on their property for a major home occupation. So, review of the variance criteria will follow in just a moment.

First, I want to just start with a quick overview of the site. The location here is, the property is located in northeast Albemarle County, is 2.4 acres, fronts on State Route 231 (Gordonsville Road), which is an Entrance Corridor, and is zoned RA, Rural Areas.

There's one dwelling and one accessory structure located on the property, at 7380 and 7382 Gordonsville Road, respectively.

As the applicant on the application, there were no specific sections of the Zoning Ordinance that were requested to be varied. After review of the request, staff believes that there are two applicable regulations of the Albemarle County Code that pertain to this request. First, Section 10.4, which requires a side setback for primary structures of 25 feet, and the second section, Section 5.2a, which provides that an accessory structure

that does not conform to the applicable setback and yard requirements for primary structures shall not be used for a home occupation. The applicable side setback here, in this case, does not appear to be met.

The following slides will show you the data we currently have regarding the location of the accessory structure. So, this drawing was submitted with the variance application, and it shows the structure at 14.5 feet here. Staff had visited the site in June of 2019 and found with a measurement that was recommended (as far as where the property line was) to be approximately 14 feet.

And then, this is the - also, some additional information that was submitted with the building permit regarding the septic disposal that, when scaled, shows the structure being 45 feet from the side property line.

So, the point of showing the three different representations of the site measurement is that staff believes that if the Board were to determine that a reasonable deviation from the setback provision is permitted, it would be best to do so with the most accurate evidence, and we do not have that at this time, as reflected in the three different representations. An updated survey of the property and improvements would shed more light on this.

So now, I'd like to review some, quickly, the history that got us to this point, as far as the application for this variance today. In September of 2017, the applicant requested information about building a law office. The applicants were informed that a major home occupation was required if they were using an accessory structure for the home business and primary structure setbacks applied.

In October of 2017, the applicant applied for a building permit for an accessory structure and described it as a new structure for a home office. The location plan provided showed no distances to the property lines. As noted earlier, during the review of the permit, the plan was scaled and showed the structure being approximately 45 feet from the side property line.

In December of 2017, the County issued that building permit, noting the minimum setbacks.

In August of 2018, eight months after the issuance of the building permit, the footing and preliminary zoning inspection were approved.

In June of 2019, eighteen months after the issuance of the building permit, the applicant applied for a major home occupation clearance for a law office, to use the accessory structure as part of the home occupation. Also, in June, as mentioned before, staff had visited the site and showed approximately 14 feet to what was described to them as the property line.

On July 30, 2019, staff provided the applicant with an official determination regarding the home occupation use. On August 12, the applicant submitted an appeal of that determination. On August 15, the County then issued the Certificate of Occupancy for the accessory structure described as a detached personal home office.

On October 1, 2019, the Board heard the appeal, which was filed earlier in August, and overturned, at that time, the Zoning Administrator's determination. At the end of October, on October 29, at the request of the Board of Supervisors, the BZA held a special meeting to rehear the Bufton Maus appeal. At that hearing, the BZA voted to defer the rehearing of the appeal so as to allow the hearing of the variance, if the applicant chose to apply. And that's where we are today, hearing the applicant's variance application.

I will now outline the qualifying conditions for granting the variance, as outlined in State and County Codes, and review staff's analysis of those conditions.

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So, under Virginia Code 15.2-2309.2, the Board of Zoning Appeals may grant, upon appeal of the 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 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.

So, 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 provide that 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 rezoning or by a conditional zoning.

So, the Zoning Ordinance outlines the following criteria for variances. ~~It's~~ Section 34.4 —states that the Board shall grant a variance if the evidence shows of either of the following: if the strict application, in terms of the ordinance, would unreasonably restrict the utilization of the property; or, the granting of the variance would alleviate a hardship due to a physical condition relating to the property.

The application must also meet all of the following: the good faith acquisition of the property and the hardship is not self-inflicted; there is no substantial detriment to adjacent properties; the condition or situation is not general or recurring; a use variance is prohibited; and a special use permit or special exception is not available.

So, evaluation of those conditions are noted here and in the report. For the first standard, staff argues that the strict application of the 25-foot side setback or structure used for the home occupation does not unreasonably restrict the use of the property. The ~~owners have – the~~ owners already enjoy reasonable use of the property through both the existing single-family residence and the new accessory structure, which may remain.

For the second standard, staff argues that no physical condition of the property created a hardship. The improvement (which is the accessory structure) was constructed in 2017, well after the effective date of the home occupation regulations.

Neither of these standards are met.

Furthermore, the application does not meet all of the following, as required by the Code: two of the five additional criteria for the variance have not been satisfied. These are the first and the fourth criteria.

As noted in the report, the proposal to use the accessory structure for a major home occupation came after the initial application and issuance of the building permit for the accessory structure. Because the applicant did not apply for the 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 home occupation filed for County review.

As noted previously, the applicant then chose to appeal the staff's decision rather than rectify the setbacks through alternative means.

Please note that even though the application meets the fifth standard, there is an alternative remedy available through a boundary line adjustment plat.

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So, as noted earlier, there was no specific section requested for a variance, even though staff has identified two sections (10.4 and 5.2a). With that said, staff does not believe that a variance from either of these sections is possible and is recommending denial for this variance application per the following factors outlined here, and in the report.

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 use of a major home occupation. Thus, that is not permitted.

The applicant may still, again, pursue a boundary line adjustment with the adjacent lot to allow the structure to meet the side setback.

Staff has provided the following motions for either denial or approval and will answer any questions the Board may have.

MR. SHEPHERD: Thank you, Francis. Do we want to hear from the - do we want to have questions of Francis now, or hear the applicant and then move forward?

MS. JOSEPH: Chair, what's your pleasure?

MR. SVOBODA: Mr. Chairman, we still have 3 minutes of our presentation left for the County Attorney.

MR. SHEPHERD: Oh, okay. Even better.

MR. SVOBODA: Thank you.

MR. HERRICK: Mr. Chair, members of the Board. Andy Herrick. I'm the Deputy County Attorney. I'm here today representing the Zoning Administrator.

So, as you all are aware, what brings the Board together today is an application for a variance in order to use a permitted structure in a way that is not otherwise permitted under the Zoning Ordinance.

And, Mr. MacCall, if you could call up the slide with 15.2-2201. I believe that's a few slides back.

So, you'll see up ahead of you, for better or worse, that when it comes to variances, there's actually two different parts of the Virginia Code - it's in 15.2-2309. But, it's also, as part of the definition of a variance itself, in 15.2-2201. And as Mr. MacCall has broken out, there's actually four requirements, and it's our belief that the application, as presented, does not meet any of those requirements that it has to meet to meet the definition of a variance.

The first one, the strict application of the ordinance would unreasonably restrict the utilization of the property. This is intended as a safety valve for a regulatory taking. It's to prevent the applicant from being prevented from any reasonable use of the property. And, in fact, the applicant already has reasonable use of the property in that not only do they have a single-family dwelling on the property that they've used, they've since added an accessory structure, which is allowable on the property. And the County does not take issue with the existence of that accessory structure on the property, just what is being proposed, just the use for which it's being proposed. So, again, the first criteria, the first standard of a definition of a variance is not met.

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The second one, such need for a variance would not be shared generally by other properties. And again, that standard isn't met because any other Rural Areas owner, wanting to use an accessory structure for a home occupation, would face the same requirements. Anybody in the same situation would require the same home occupation use clearance.

The third criteria: such variance is not contrary to the purpose of the ordinance. Well, the Rural Area Zoning Ordinance is meant to discourage commercial use of Rural Areas. It's meant to allow it in certain, very limited circumstances, and the Zoning Ordinance spells out the circumstances under which it can be used for commercial purposes. One of those restrictions is that the commercial uses through a home occupation not take place within a certain distance of the property line. So, again, allowing a use variance, in this case, would be against the purpose of the ordinance.

And then the last one, and probably the most significant one: it shall not include a change in use, which change shall be accomplished by a rezoning or conditional zoning. That's exactly what's before you today. The applicant is seeking a use variance. The County has no issue with the structure. The structure is fine and does not require a variance. It's the use that requires a variance, and that's what's before you today, is an application for a use variance which the definition specifically restricts.

So, we appreciate the good intentions of the Board. We appreciate the good intentions of the applicant; but unfortunately, this simply doesn't meet the definition of a variance that the Board can grant. And I'd be happy, and I'm sure Mr. MacCall would be happy, to answer any questions you might have.

MR. SHEPHERD: Let's, Mr. Maus, let's hear from you now, and then we will - just try to keep your questions in mind for staff so we can cover everything later.

MR. MAUS: Can you clear the computer? Okay, thank you.

Mr. Chairman, members of the Board. My name is Jack Maus. Good to see y'all again. We were here, as Mr. Herrick and staff noted, in August and October, and we are here today on the application of, I'm sorry, for a variance from the enforcement of the side setback.

The history is pretty much, is very similar to, what the County has indicated. We submitted a permit application for the building permit in October of 2017, paid the fee on that date. It was approximately two months later that the County issued the building permit showing that a 6-foot side setback was applicable. We did begin the construction in October of 2018. We finished it in 2019.

And again, just to refresh your recollection, this is the building that we're talking about. At the time when we submitted the building permit application, we submitted a floor plan which showed approximately a 1,000-square-foot building, along, which consisted of two offices and a conference room. Clearly, our intention at the time was that we were going to use this as a law office to which clients and other personnel related to our practice would be able to come and confer, which is why we had a conference room.

This is the corner of the building that has raised the County's concerns. It is about 14 feet from the side line. As you can see, the boundary line focuses on, adjoins a cow pasture. See the cows back there in the background.

Alright. So, we moved the office from rented space in Orange County, applied for a business license. We're told, well, you can't get that until you have a home occupation or zoning clearance. Then, the department refused to give the clearance. It was too close to the property line. We filed the appeal.

During our hearing on October 1, several members of the Board asked why we hadn't applied for a variance and at that point, we told you what we had been told by the Department of Community Development, that variances were not meant to cover situations like this.

So, of course, as the County indicated, the Board overturned the decision of the Zoning Administrator and continued the matter until today, (inaudible) request for a rehearing to give us the option, if we were so advised, to file the application for a variance. The Board's decision overturning the Administrator's zoning clearance denial is currently on appeal to the Albemarle Circuit Court. We have a hearing date on March 11. And we have filed the application for a variance, which is what brings us here today.

Now, unlike the zoning clearance, which was an exercise of the Board of Zoning Appeal's appellate authority, the application today, the variance application, is an exercise of the Board's original jurisdiction. Now, certainly, the County, the State law does say that a variance is defined as a reasonable deviation relating to the size, area, bulk, or location of a building or structure where the strict application of the ordinance would unreasonably restrict the utilization of the property; not shared by other properties; not contrary to the purpose of the ordinance. This is how a variance is defined in the Code of Virginia 2309. This was significantly, significantly amended in 2015. There are no appellate authorities yet that we could find that would address the amended statute. Again, the powers of the Board include the power to grant an appeal, provided that we make a showing by preponderance of the evidence that the application meets the standards. And for those who are not lawyers in the room, a preponderance of the evidence is probably the very lowest standard you can have. It should be more to like than probably about 51%.

Okay, and then, a variance shall be granted if the evidence shows the application of the ordinance will unreasonably restrict the property. And these are all the same things the County has mentioned to you. The property was acquired in good faith; no hardship created by the applicant; no substantial detriment to the adjacent property; it's not a recurring nature to make, to necessitate an amendment to the Zoning Ordinance; and does not result in a use that's not a (inaudible) permitted on the property.

So, here's what we think are the elements. Number one, good faith acquisition. We relied on the building permit that the County gave us. We submitted this application in October, fully disclosed what our intent was. Almost two months later, the permit comes out. We have no idea who said what to whom, or how it was determined that the side setback was 6 feet. Again, we submitted a floor plan with the application, and we have a reason to believe that the County considered that in deciding what the zoning or what the side setback would be. So, we believe that we acquired the right to put the building where we did, in good faith.

Now, as to whether or not this hardship was self-inflicted, the County seems to suggest that it was. Staff report says that the hardship was created by the applicant and says that's because we didn't submit the application for a major home occupation at the same time. We were not told that they had to do that, and as a result, it is impossible for us to comply with requirements that we do not know exist. This hardship was not self-inflicted. We relied on the building permit. We put exactly, even further away from the property line than the County told us we had to. And we didn't find out until the building was completely done that there was a problem.

As to whether there is substantial detriment, the staff report concedes that the application meets this requirement, or this element. Condition of the situation not recurring or general. Again, the staff report, in this case, we've met this criteria.

Use variance prohibited. Now, the County has said today that, well, what they're asking for is a use variance. This is not a use variance. The County has said previously that if this building were 25 feet away from the side line, we could use it as a law office to which people could come. We're not asking for a different use other than

what is authorized by the statute. All we're saying is that because we put the building closer than the County now says it should have been does not mean we're asking for a change in use.

And finally, the Special Use Permit or Special Exception is not available. As the County's Zoning Ordinance states, a Special Use Permit is one that's for a use that's not permitted in a particular district. Having a home occupation, having a law office for a home occupation is permitted in our district. So, this is not a situation which a Special Use Permit is available.

And the conference room, my office. We remind that, you know, the Board of Zoning Appeals is a body of citizens who is intended to exercise their own independent judgment in resolving disputes between the County and its citizens. And what you have here is a situation where we, as citizens, have relied on the representation of the County. We've acted in good faith, acted, we believe, appropriately, and the County has now said, oh no no no, you can't do that. Well, I'm sorry. It's too late for that.

The problem you're faced with is one that we believe the County government is making. It issued the building permit upon which we relied. So, what we're asking you today to do is to grant our application for variance with respect to the structure.

Thank you. That's all I have to say at this point. If you have any questions, I'd be glad to answer them.

MR. SHEPHERD: Thank you very much.

MR. MAUS: Yes, sir.

MR. SHEPHERD: Ms. Alley, how are we doing with time for Mr. Maus?

MS. ALLEY: Mr. Maus has 5 minutes and 48 seconds.

MR. BOWLING: I have one housekeeping matter. Mr. Maus moves that the evidence submitted at the hearing on October 1, 2019 be admitted before this Board for consideration, so we do not have to go over it again. The same Board that is here today was also present --

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

MR. BOWLING: The same Board that was here on October 19 -- October 1, 2019 is here today. In addition, you've received minutes of that meeting, and I think you've approved those minutes. But I think if that's what the Board wants to do, it's appropriate to have that proceeding of October 1, 2019 put into the record for today. There's a tape of that proceeding, also. And certainly, the County may be heard on this, and they may have some objections to this.

MR. SHEPHERD: That seems like a good idea to me, in that, there may be references to that prior action. I do wonder, just -- we are going to hear that again today. I wonder if we reversed ourselves or changed anything about our prior decision, would that make a difference for the variance.

MR. BOWLING: I don't know that knotty little question, but I would recommend that you either accept the record before you or not, as you see fit, as really -- that's part of his -- he's moved that that be considered, and I don't think that what you've voiced just a second ago would enter into what you decide to do today. I mean, the record speaks for itself. It's not going away. It exists.

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MR. SHEPHERD: Alright, well, I would, I think that is good. Does the County have a response to that?

MR. HERRICK: We have no objection. If the evidence that was presented at the prior hearing was accepted for purposes of today's application, there's no objection.

MR. BOWLING: Okay, thank you. I apologize for interrupting, Mr. Chairman.

MR. SHEPHERD: Okay, well, I think it's helpful to have that in the record. Does that require a motion? Or just a statement?

MR. BOWLING: You can vote -- I thought that the Board vote on that. I was paying -- listening to Mr. Herrick. Do we have a motion, to that effect, by the Board? There's no objection --

MR. HERRICK: It's up to the Board to decide that. Again, the County does not object, if the Board wishes to accept that evidence from last time.

MR. SHEPHERD: Okay. Why don't we just make a motion and vote on that, just to -- with an abundance of caution.

MR. ROBB: Mr. Chairman, I make a motion to accept the record, for the record, the actions of this Board taken on October 1, 2019.

MR. BOWLING: Not the actions, Mr. --

MR. ROBB: Related to --

MR. BOWLING: It's the evidentiary matter that was set out in the record.

MR. SHEPHERD: The evidence presented in that --

MR. ROBB: Evidence presented.

MR. BOWERMAN: Second.

MR. SHEPHERD: Those in favor of that, just say "Aye." Aye.

MS. JOSEPH: Aye.

MR. ROBB: Aye.

MR. SHEPHERD: Okay, so that's -- so, it's part of the record.

So now, we're at the point where we would have a public hearing. I think both parties have more time, if you wish to add to your statements.

MR. HERRICK: Well, if there are no public comments, then this would be the County's, actually, both parties' opportunities to offer rebuttal. And by way of rebuttal, I would respond in much the same way that we did at the prior hearing which is, in his argument, I think Mr. Maus is confusing the permission needed for a building versus the permission needed for a home occupation clearance. The County has no objection to an accessory

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structure in this location. It was properly approved in its current location. But the standards for allowing a home occupation use are different. We would suggest that both applications were properly handled and properly analyzed by the County.

I fully sympathize with the Board's desire to find, basically, a simple solution for this problem. Unfortunately, the variance application that's been filed today really isn't the simple solution that's available to the Board.

The simple solution, and one that staff has suggested both to Mr. Maus previously, and in its presentation today, is to have the property surveyed. A survey might show that no variance was needed if, in fact, the building was more than 25 feet from the property line. Conversely, it might show that a 14.5-foot variance is inadequate if, in fact, the structure is even closer to the property line. But we're missing some crucial information that we won't have without a survey, and the survey will show exactly how far it is from the property line. And then, a decision can be made as to whether a boundary line adjustment with the neighboring property is available, or how wide a variance might be appropriate to be applied for.

But again, I would suggest that the simple solution is not appealing the prior finding, is not getting a use variance today, but is to get a survey and then to seek a boundary line adjustment with a neighboring property to allow a full 25-foot setback that will allow qualification for a home occupation use. That would be the simple solution, rather than the application that's pending today.

So, that would be all I have in the way of rebuttal. I don't know whether the Zoning Administrator or Mr. MacCall have anything else to add.

MR. MACCALL: I do not.

MR. SHEPHERD: Mr. Maus?

MR. MAUS: Thank you, Mr. Chairman. I understand what the County is saying, and maybe in the County's mind, this is simplest. But at what point does the County stop trying to bleed its citizens -- an application for this, an application for that? Now, what they're talking about is, well, maybe what you ought to do is spend more money for a survey to see whether or not there's a problem.

Now, the survey that we've included in our materials is the last survey that was done of the property. It was done in 1917, when General George Patton, actually, it was Colonel back then, Colonel Patton and his family donated these 2.4 acres to Albemarle County School Board to be used for public use. The property's never been surveyed since then. We don't know. Obviously, things were more imprecise than they are today.

But, you know, first, the County said, well, go ahead and appeal the zoning determination. Now, let's try for a variance. Now, well, maybe let's go ahead and spend $4,000-$5,000 for a surveyor, and then see whether or not the fence really defines a property line. And if it does, then we could spend some more money and see about buying some property from your neighbor, if the neighbor's willing to sell. I mean, at what point does this stop? It should stop right now, when the Board says, look, you know, they relied on the building permit. They put the property -- they're not looking for a use variance. All we're looking for is the right to use the property for what we told the County from the very beginning we wanted to use it for. And it's a legitimate use in our district. It is for the use to have a law office at which people can come and meet with their lawyer.

I understand the concern about rural districts. On our road, several miles down, is Keswick Winery. They have more people in a day there than we have in a month in our office. You know, we are not doing anything that is going to disrupt the nature, the rural nature, of this district. We're just trying to, you know, rely on -- we've

relied on what the County had told us. We built an office, and we're just asking for the ability to use that to meet with our clients. And the easiest way to do that is for this Board to grant the application for a variance. It's not a use variance. It is the right -- it's a side setback variance. It's the right to use that building for the purpose for which it was always intended, for which had been disclosed to the County from the get-go. Thank you.

MR. SHEPHERD: Thank you. Also, as a matter I've overlooked, I want to open the public hearing. Seeing no one present from the public, I'm now closing that public hearing. Thank you, Mr. Svoboda.

Okay. So, the matter is now before us. I have things I want to say. I'd like to hear others hop in first.

MS. JOSEPH: Okay. I'd like to ask Mr. Svoboda, Mr. Herrick -- when was the ordinance amended to add major home occupations? Do you know? Can you recall?

MR. SVOBODA: 2011, I believe, is when we updated that.

MS. JOSEPH: So, it was nine years ago. Okay, thank you.

I honestly feel that this is not changing the use. The use is approved for, in this district, as long as you comply with the setbacks. I mean, that can happen in a commercial zone. You can have setbacks that you're invading, but it doesn't mean that you're changing the use in any of this. And I'm maybe not making sense with that, but I don't honestly see this variance as changing the use of the property.

I do really agree with staff that this should have been surveyed. We should know what we're talking about. We have 15 or 14 feet with a question mark. We don't know. We don't know whether it's 6 feet, 5 feet, 4 feet. We don't know it's 25, as Mr. Herrick said. We really don't know.

This is something that really needs to be done, and the building needs to be shown with a survey line that shows somebody went out there and checked with this and made sure that they were in compliance. I mean, that's what we do. I mean, I have sold houses, and I've always had to have a survey done. So, I don't know -- and built things. And we know people have to have surveys done, so I don't consider that, I know it's an extra expense for you, but I think it's a really important piece of information that Albemarle County needs to have.

So, I appreciate what you're saying. As far as hardship is concerned, I do consider it a hardship because there's been so much miscommunication between the applicant and staff, and I don't think it was intended on either part. I don't think the applicant looked and said, oh, great, now it's only a 6-foot setback. I mean, that's what the information that they received from the County, and I think that they acted in good faith, and just went ahead and did what they were doing. And I don't think the County is to blame for not continually reminding Mr. Maus that he had originally come in looking for a major home occupation. So, I can see where this happened.

I think when the Board -- the intent of this portion of the ordinance was what Mr. Herrick was talking about, is commercial activities within the Rural Areas, and needing to meet some sort of setback so that it wouldn't be imposing upon the neighbors. I understand that there's a cow field. I get that. But I also don't know what's going to be there in the future. And I also think that we should be cognizant of the fact that your neighbor may be affected by this. We don't know. I mean, we don't know what happens to cows when there's a lot of traffic next door. Probably nothing, but the point is, is that we have to protect your neighbor's interest also, and I think that when the Board constructed this ordinance, that's exactly what they were trying to do. So.

MR. SHEPHERD: I'd like to actually hit some of the same points from a slightly different angle. But, just to get my own thoughts on the record, here.

For starters, I want to put this all in the context of the history that Mr. MacCall laid out that went through all of the steps, beginning with the application for a building permit that made reference to a home -- I think it was a home business. I'm not looking at it, at the moment. And it indicated, to me, that there had been discussions with the County, from the beginning and throughout, that at least from the, from Mr. Maus' point of view clearly stated his intention of wanting to have an office on the property that was going to have clients visiting there.

I also remember from that record that he had received an email from staff that indicated that there was a 25-foot setback for a major home occupation. To me, that adds up to miscommunication on both sides. But I definitely see this as being on both -- that the miscommunication was on both sides and therefore, it cannot be wholly self-inflicted by one side. I divide the blame, or the explanation, or whatever you want to call it, based on the communication.

We also have to talk, well, I also want to address the question of this being a use variance. I'll start by saying, I think whether this is reasonable, whether this is a hardship, whether this was self-imposed or self-inflicted, all of those things are matters of opinion where reasonable people can disagree about how hard is a hardship, how much blame to apportion for, you know, the root of the problem.

But I think this, the concept of calling this a use variance, is just wrong. When you look at the State definition for a variance, it makes a distinction between deviations in the location of a building as being one of the things that is allowed under a variance, and as a -- mentions a prohibition against anything that would require a rezoning.

This is -- Ms. Joseph said, the use -- a major home occupation use is permitted in the Rural Areas. The term that I recall using was a use variance would be, "tantamount to a rezoning," and this is not a rezoning. This is -- this use is permitted within the vast confines of the Rural Area zoning district. And the defect here is the distance of the building from the property line, which is remedied by a variance, not a rezoning. I think that that's just -- you know, I appeal to a higher authority to have that resolved. I just don't think we're dealing with a use variance, here. And I just want to really say that.

I also want to make -- the other criteria that we're facing, as they consider this, has to do with the reasonable use of the property. Mr. Herrick, you had mentioned something about, you know, sort of, if we did -- that if we granted this, then everyone -- anyone with an accessory building, you know, closer than 25 feet to the property line would have this available to them, from -- a consistent practice would lead to that. But I think that also going back to the long history of the review of this permit, and all the communication on all sides that went into it, this thing started as a request for a use that was reasonable. And to say that it -- to now say that they have -- I think it's unreasonable to say that what was a reasonable use of the property is now an unreasonable use of the property because of this misunderstanding, if that makes sense.

But I just don't -- I feel like a distinction has to be made between this use of the property, with the history of the decision making leading to the building being 14 feet, or whatever it is, from the property line, is different from an accessory building that exists next to a property line.

Those are my three points. I would like to hear more about how to address this -- you know, the exact location of the building, and the survey. I agree that we should address that in some way, just as the County has -- offers that up as a situation. Ms. Joseph has also indicated -- I think that's -- I think -- my looking at that is that -- I mean, clearly, my thinking is trying to take both sides of this into account. I think part of the obligation here is to look at the intent of the setback -- and, you know, it's there for a reason. And I think to the extent possible,

we should, you know, provide no more, you know -- if we extend the approval for the variance, it should be for no more than what's already there, and I would also see a benefit in actually mitigating that setback encroachment with some kind of a barrier landscaping, or something. I'd like to think about that some more.

MR. ROBB: Mr. Chairman, I have -- you know, I sympathize, as I think everybody knows, with the applicant, but I remember precisely making a big point back on October 1 out of not having a provable property line. There needed to be a survey, and how do we know -- if we don't know where that line is, how can we rule on anything? And I, of course, voted the way I did.

But the second thing, which I was adamant then, this property should be surveyed. The County doesn't know where the property line is, and neither does the applicant, so how can we deal with the problem that was created by the property line? Now, it would seem to me that to ignore that advice, which we all seem to agree was appropriate -- or maybe we don't, but to ignore it is bothersome, troublesome to me.

And secondly, I look at the, page 4 here of the information we have received in our packet that says under 15.2-2201, the BZA cannot approve a use variance. Is that still the law?

And then, which the BZA is not authorized to grant. Is that still the law?

MR. BOWLING: The statute specifically says that you're not to approve a variance for a change in use.

MR. ROBB: Therefore, how can we possibly -- if the statute, the law said we can't grant a variance, what are we doing trying to talk about granting a variance?

MR. SHEPHERD: I would like to take a shot at that. I am very confident, and I believe that this is not a use variance. A use variance would be permitting the activity, the use, that was not otherwise permitted in the district. A use variance would be to have a restaurant in this house. That would be a use variance. Or, a movie theater. If you're showing movies at night and selling tickets, that would require a use variance because movie theaters are not permitted in the Rural Areas. You'd have to do your movie theater in a Commercial zoning district.

But a major home occupation is a permitted use in the district. So, we're not granting a use variance. We're changing the location of the variance -- of the use.

MR. BOWLING: And where the staff disagrees with the Chairman, Mr. Robb, is that the staff is saying that granting a change in location by approving 6 feet -- or 14 feet instead of 25 feet would be a change in use. And so, the issue is, do you take the fact that, at the time that the application was made, a major home occupation was a permitted use, which it was at that time, since major home occupation came into existence in 2011, and the application was made after 2011. And do you interpret that word to mean the purpose for which the property is going to be used, or do you go more broadly as the County staff suggest?

One of the problems in this area is that, I think as Mr. Maus pointed out, is that there was a major change in the language for variance in the State Code in 2015, and there really hasn't been much in the way of interpretation in fleshing it out. All the cases that people argue about are based upon prior statutory language, which is different than what's set out in the Code today. I don't know if I helped you or hurt you, Mr. Chairman, Mr. Robb.

MR. ROBB: Is there a legal definition of use?

MR. BOWLING: Well, I think it's a commonsense definition, but --

MS. ALLEY: Mr. Bowling --

MR. ROBB: The sentence is not common.

MS. ALLEY: Excuse me, Mr. Bowling? If you could please speak into your mic.

MR. BOWLING: One of the things that a Board of Zoning Appeals is is a quasi-judicial body. You're not an administrative body. You're a quasi-judicial body, and it's for you, as a whole, the majority of a quorum, to determine what things mean based upon the facts that are brought before you in this particular situation.

MR. ROBB: Mr. Chairman, are you arguing that, therefore -- I think you've already said it, that this isn't a use issue.

MR. SHEPHERD: That is my opinion. I would like to read the definition of a variance -- of the State Code definition of variance in the record here. It's about seven lines.

Variance means, in the application of a zoning ordinance, 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. It's a variance. When the strict application of the ordinance would unreasonably restrict the utilization of the property and such need for a variance shall not be generally shared by other properties, and provided such variance is not contrary to the purpose of the ordinance.

Here comes a use variance. It shall not include a change in use, which change shall be accomplished by a rezoning or a conditional zoning.

There's a very clear distinction between a use variance and a permitted variance, I think. I'm not trying to be argumentative here, but I'm -- this is one where I'm trying to make a strong point. Well, you know, I just hope I'm doing this in a respectful way and not being argumentative.

MR. ROBB: Mr. Chairman, in the event that the property that we're dealing with now were to change hands, would that affect anything related to our decision?

MR. SHEPHERD: I believe a variance runs with the land.

MR. BOWLING: That's correct.

MS. JOSEPH: Right, so --

MR. BOWLING: You could put restrictions on it.

MS. JOSEPH: Right.

MR. BOWLING: You're allowed to put -- in granting a variance, the Board may impose such conditions regarding the location, character, and other features of the structure or use as it may be necessary in the public interest.

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MR. ROBB: What happens if the -- I guess you could ask this question of any property in Albemarle County -- the property, adjacent properties were sold and surveyed, and found that the property in question, Mr. Maus' property is, in fact, on the property of -- on the adjacent property.

MR. BOWLING: If that were the case, sir, then the problems that the landowner's having with the County and the Board of Zoning Appeals are the least of his problems, and he would have a private --

MR. ROBB: That's true. I'm looking at --

MR. BOWLING: He would have a private dispute with the adjoining landowner, who would claim that he was trespassing, and please move your structure, which is outside of the purview of the Board of Zoning Appeals' ability to grant a variance.

MR. ROBB: I understand and agree. I was just looking at the crystal ball to see what could happen.

MR. BOWLING: I don't know why a survey -- I thought the County required a survey in these kinds of situations. I don't know enough -- I mean, I don't, off the top of my head, I don't know whether that was required or not. I know the applicant didn't want to do a survey, and the County didn't require one, in this particular case.

MR. MACCALL: What's required at the building permit is that -- for them to submit a plat of the property, or a legal description.

MR. BOWLING: Which he did.

MR. MACCALL: Right.

MR. BOWLING: Okay. And you generally accept that as --

MR. SVOBODA: That's correct.

MR. SHEPHERD: Excuse me. Was that submitted with the building permit, or later, only with this variance? I thought that the building permit and the -- all of the issues that flowed from it were based on GIS maps that were based on the tax map, not -- I think the survey was the first we saw --

MS. JOSEPH: Yeah. If you look back at the minutes, I asked for the survey and why it wasn't submitted with the building permit, and was told that you all could not find that within the records, so that the building permit, nor the legal description, had been submitted.

MR. MACCALL: And that may have been the case, but I believe that there are usually reasonable exceptions that are made, and the sketch that was provided with the Health Department ~~-- I mean, it~~ showed the location. <u>that we were --</u> I can't speak to exactly how that was interpreted.

MS. JOSEPH: It doesn't -- that part doesn't matter at this point, Francis. I mean, I guess the point is is that when you look at the application for a building permit, it clearly states that you either need the plat, or you need a legal description. And neither of those -- so, I guess I'm back to my miscommunication discombobulation amongst everybody that was dealing with this.

DRAFT

So, I do want to ask Mr. Bowling a question. It was intriguing that you said that there are conditions that can be placed upon the variance. Is that correct?

MR. BOWLING: Yes.

MS. JOSEPH: Okay.

MR. BOWLING: And Mr. Herrick talked about that.

MS. JOSEPH: Okay, so, you actually could place a condition on this that it could never, ever be used for an Airbnb. Is that correct? Or as a rental unit?

MR. BOWLING: Off the top of my head, that's a tough one.

MS. JOSEPH: Yeah, it is a tough one.

MR. BOWLING: But that's -- but basically, you say we're granting this. You know, I think that's a reasonable condition that the applicant stated before you that he wants to use the property for a law office.

MS. JOSEPH: And this runs with the land, so that looking at the layout myself, it looked like a little apartment to me, or a little house, because there's all kinds of wonderful things in there.

MR. BOWLING: And the question is, is that something you deem necessary in the public interest?

MS. JOSEPH: Well, yes, because there's all kinds of regulations concerning homestays now that this would definitely not meet the setbacks.

MR. BOWLING: Alright, well then, that's -- maybe if you can give justification for it, then that's something you could impose.

MS. JOSEPH: Okay. Am I right, Francis?

MR. MACCALL: You are correct. –

MS. JOSEPH: Thank you.

MR. MACCALL: And the same is for major home occupations. There are regulations that regulate setbacks.

MR. BOWLING: Is it the staff's position that if the Board grants the variance, that it would not have the requirements of a major home occupation, unless the Board sat those requirements out by reference?

MR. SVOBODA: Bart Svoboda, Zoning Administrator. Say that again so I can understand.

MR. BOWLING: Is it staff's position that the Board needs to set out the requirements of a major home occupation that's set out in the ordinance if it grants the variance -- if it wants to have those requirements applicable to any granted variance?

MR. SVOBODA: That still may be a little too wordy for me. I don't quite understand.

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MR. BOWLING: Does the staff -- if the Board grants the variance, would the staff like to see the requirements of the major home occupation attached to that variance as a condition?

MR. SVOBODA: If you are -- I'll answer it probably generally, which is if the Board wishes to place conditions upon the variance, they need to be clear as to the distance to the property line, and also what uses would be prohibited that may be a detriment to the public that they would not want to see in there. So, the example that --

MR. BOWLING: So, staff's position is that the major home occupation conditions are self-enforced, and we don't need to deal with that. Is that correct?

MR. SVOBODA: Staff's position is that I don't make determinations up here in the microphone.

MR. BOWLING: How about the Zoning Official's?

MR. SVOBODA: Yeah, the Zoning Administrator doesn't make determinations at the microphone. But our position in this hearing is that we don't believe it qualifies for a variance.

MR. BOWLING: I understand that, but that isn't what we asked.

MR. SVOBODA: Right. If the BZA wishes to place conditions upon the variance to mitigate the impacts, they just need to be clear to what those are, whether it's setback, whether it's screening, or whether it's the type of use that would be permitted, or not permitted, in that particular structure.

MR. SHEPHERD: I would suggest, if we're sort of sensing a consensus coming here, that if we approve this, that it would be clearly for only what is shown on the building permit.

MS. JOSEPH: Okay.

MR. SHEPHERD: For one thing. And not -- I'm reluctant to try to imagine other things that could happen in the building, even though when I look at it, I can certainly move in there --

MS. JOSEPH: Yep.

MR. SHEPHERD: It just needs a -- it's a three-day job to put a shower in there, and that's a house. It's a dwelling.

MS. JOSEPH: Yup.

MR. SHEPHERD: But it could be other -- but other things could happen to that building as well, I think, to try to imagine things that could go wrong. But to --

MS. JOSEPH: So, totally restricted to this, to a major home occupation.

MR. SHEPHERD: Yes, as shown in the building permit. So, the building can't get any bigger towards that line. And I would also -- I have not formulated this condition yet, but I'm sensing support on all sides for either a survey, or at least identification of where that line is so if the building --

MR. BOWLING: If you're going to do a survey, do a survey. If you're not going to do it, don't do it, because -

MR. SHEPHERD: No, I'm --

MR. BOWLING: (Inaudible) the survey, you haven't identified where the location of the building is.

MR. SHEPHERD: Yes, I was only offering that you could survey that one line of the property. I don't know why you would do that once they're out there, why you wouldn't set two more --

MR. BOWLING: That's certainly reasonable.

MR. SHEPHERD: But what we're -- but what I would be interested in requiring is to verify that the building -- my minimum requirement would be that the building is at least 6 feet from the property line, which is a number that comes from the ordinance as the absolute minimum any building can be built relative to a side property line. And I'd also --

MR. BOWLING: And that's certainly a condition you can put on this.

MR. SHEPHERD: Yes. I mean, we can talk about whether or not that should be a survey of the four corners, or just the line. And also, in another part of the condition would be some kind of a screening to mitigate the impact on the adjacent property, which is caused by the setback encroachment. I don't have the exact language figured out, but I think we're heading in that direction.

MS. JOSEPH: Mr. Chair, when you reference the building permit, are you referencing this? Because the building -- I guess what I'm trying to figure out is what are you referencing? I mean, if --

MR. SHEPHERD: I was referencing the whole -- all the information that's shown in the file. But now, that might be contradictory, and I'm not sure that works.

MS. JOSEPH: That's what I'm wondering.

MR. SHEPHERD: I hadn't thought it through that far.

MS. JOSEPH: Okay, because the permit itself really sort of says that it's going to be a home office, and then it says the setbacks are 6, or whatever. So, I'm -- what are we trying to regulate, here?

MR. SHEPHERD: So, maybe it's not the building permit, but it's the building.

MS. JOSEPH: Yes.

MR. SHEPHERD: It's that a major home occupation is allowed in the existing building. The building can't get any bigger, and it can't move.

MS. JOSEPH: Okay.

MR. SHEPHERD: Does that address it?

MR. BOWLING: That's already the status of it without sticking it in there.

MR. SHEPHERD: Without --

MR. BOWLING: Can't expand upon the use without going back to the County, can you?

MS. JOSEPH: No. You're right. That's (inaudible).

I do -- I know it's been repeated several times. I live next to cows, and that's what would be seeing the building. But I still feel that in other instances, when setback variances have been granted, there's been some mitigation. So, instead of some sort of fence that may be gone, I would like to see vegetation. I don't know if the County still uses that old list of suggested screening trees, et cetera. And I don't know -- 90 something it came out? I don't know when it came out. 2002? Whenever. But if you still use that, it's something that -- I'd like to see something from 4 to 6 feet in height planted.

The public hearing is closed right now.

MR. BOWLING: Excuse me, the public hearing is closed.

MR. MAUS: Mr. Chairman?

MS. JOSEPH: Can he still -- it's up to the Chair.

MR. BOWLING: You can ask -- you can direct questions to the applicant and the County staff.

MR. SHEPHERD: I would like to just hear your comment on the landscaping.

MR. MAUS: All I was going to say is that --

MS. ALLEY: Excuse me, Mr. Maus? Please address them through the microphone.

MR. MAUS: I don't know it would show a picture, we have -- we've already planted landscaping bushes there that are going to ultimately grow from 4 to 6 feet tall and wide. But they came in buckets, so they're only about this big now. They're working on growing to height.

MS. JOSEPH: Where were they planted, sir?

MR. MAUS: Along the fence. Let me see where I can get back to the -- oh, you've got the -- alright, so let me go back to -- we have planted bushes here, here, and here, and there. There are four along the way already that are in the growing process, but they're very young. It's going to take a little while to grow out of the buckets they were in when we put them there.

We started planting vegetation along there, and we have no problem with putting more.

MS. JOSEPH: Okay.

MR. MAUS: We've already done that.

MR. SHEPHERD: Thank you.

I think what we want to do is, for one, I feel like the comments that have come from here have addressed the three points in the staff report that were justifying the denial of the variance. You address the reasonable clause,

the self-imposed clause, and the use clause. Are there any other -- and I want to just leave a clean record that could be understood in the future. I think those are covered. Does anyone want to reinforce any of those points, or add to them in terms of just the justification for an approval?

So, I guess we're covered that way. So, I think I'm now -- I think we've come to the point where I would ask for a motion, which is going to require the formulation of a condition.

MR. SVOBODA: Mr. Chairman, I have a question, if it's appropriate. On the -- if you choose to reduce the setback to a certain distance from the property line is how I've heard it talked about, can we specify which property line -- whether it's side, or rear, or front?

MR. SHEPHERD: Yes. Thank you.

MR. SVOBODA: Yes, sir.

MS. JOSEPH: Well, looking at this World War I plat here, it's designated as North 32, and a quarter West. It's 300 feet. I don't know if that's enough to describe that.

MR. BOWLING: Oh, no, you just refer to the plat.

MS. JOSEPH: Refer to the plat.

MR. BOWLING: Refer to it for the record. Remember, you're just talking into a machine, so you need to identify the plat that you're referring to, and then identify the point at which you want to put your distance limit.

MS. JOSEPH: Okay. I'm trying to identify the -- there is no deed book and page reference on this.

MR. BOWLING: But it's in the record, and you can read it.

MS. JOSEPH: But it's in the record. Okay. It's in the clerk's office of Albemarle Circuit Court, September 22, 1917. It was -- "this deed was presented to me at said office with certificate annexed and plat attached admitted to record. Signed --" I think it's W. Maupin, Clerk. It's indicating a line -- it's -- how do I define this line? It's just defined on this plat as North 32, and a quarter West, 300 feet.

MR. BOWLING: The point closest to the fence is what you're referring to?

MS. JOSEPH: I'm referring to that line and in reference, how close is this building. So, the building also needs to be located on something that is submitted to County staff that shows the distance from this property line.

MR. BOWLING: Is this something, what you're referring to, is a plat or a survey, or --

MS. JOSEPH: Well, a plat normally has the --

MR. BOWLING: At least one side of the building?

MS. JOSEPH: At least one side of the building, yes.

MR. BOWLING: Alright. Would that be the side of the building closest to the adjoining property line? I'm sorry.

MS. JOSEPH: That would be the side of the building closest to the property line showing the distance that has been surveyed by a licensed surveyor from that side of the property to the property line that is found by the surveyor.

MR. BOWLING: Of the adjoining property.

MR. SHEPHERD: It's the nearest property line to the corner of the building.

MS. SHEPHERD: Well, what building are we referencing? I guess we're referencing that. I'm just trying to relate back to this so that we have some reference plat.

MR. BOWLING: And it's not the Board's fault that neither the County nor the applicant submitted the survey, and part of the problem, as Mr. Herrick said, is that it really calls out for a survey of some kind.

MS. JOSEPH: Yeah. And, the building can be not closer than 6 feet from that property line at any point.

MR. SHEPHERD: Okay, so, I want to reduce this to writing. So, let me make sure -- are we all on board that we are moving towards an approval, but we're working on the --

MR. ROBB: I'm thinking.

MR. SHEPHERD: Okay.

MR. ROBB: And I'd like to ask another question or two.

MR. SHEPHERD: I don't want to jump ahead.

MR. ROBB: Had this -- well, I'd like to grant it, but -- I'm still struggling with this matter that relates to use. I'm still struggling with trying to understand quite what the -- I'm reading the ordinance, the Code, here.

If this building was not being built -- had not been built -- if the addition had not been built, if it was a piece of vacant land, and the applicant came before this Board, there was no building there, and asked for a variance, would the Board grant a variance?

MR. SHEPHERD: I would vote against it because it was self-imposed. They could move it over.

MR. ROBB: That's right. Exactly right. He could correct the location of the building. Then, there would be no further problem, before he built it. Yes. And we're arguing, I guess -- what I was sympathetic with the applicant about was, he built it, I believe honestly thinking he was -- he had the right information from the County, and inspectors, and so forth. So, I don't think there was a devious-eyed plan to get into this situation.

MR. BOWLING: No, and from the record that's before you, and certainly you can also find that there wasn't any devious plan on the part of the County. There wasn't any deviousness in this process at all.

MR. ROBB: Exactly right. But we're still stuck with --

MR. BOWLING: You're stuck with an existing law office.

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MR. ROBB: My argument, from going back to October 1, is that property should be -- should have been surveyed. You say, okay, well, it would cost $5,000 -- or I have no idea what the survey would cost. But I submit that's -- I'm using the commonsense argument. That's what I would have done. I would have made sure that there was -- that where the property line -- I wouldn't want to build a property -- build on a property that I didn't know for sure whether I owned it. So, now, we're trying to -- excuse the expression -- "bail out" this good man and his business over this misunderstanding.

The use hasn't changed since the time that he built the building. So, I seek, Mr. Chairman, to make it easy for me.

MR. SHEPHERD: I think our conditions are going to address your --

MR. ROBB: Well, if the conditions are based on the question related to identifying the conditions for a major home occupation, that should be enough. Weren't there conditions for that particular description of property?

MR. SHEPHERD: I guess we don't have to say anything else as far as the regulations pertaining to home occupations. That's all in the supplemental regulations.

MR. ROBB: It's all spelled out in the ordinance.

MR. SHEPHERD: Yes.

MR. BOWLING: It wouldn't hurt to say that they apply here, if that's what you want to do.

MR. ROBB: The value's starting to set some sort of precedent that -- we are bound to miss something.

MR. BOWLING: I understand, too, but it's hard to figure out how we'll have to worry about a precedent like this one. I suppose it's theoretically possible.

MR. ROBB: If this Board, Mr. Chairman -- if this Board has the authority, and I'm getting the information that we do have the authority, to grant this variance, then it just seems to me that the variance should be enforced, or our decision should be enforced, by the definition of a major home occupation, period. You start adding more to it, more detail to it, like -- it just opens the door for more issues.

MS. JOSEPH: Mr. Robb, do you agree that a survey needs to happen here?

MR. ROBB: Absolutely.

MS. JOSEPH: Okie dokie. I think that's what we boil this down to.

MR. ROBB: And if we're -- Mr. Chairman, if we're talking about hedges and, you know, partitions and all the rest of it, that has nothing to do with use. And if we're arguing that the reason we're going to make this our position to grant this variance is based on use, what does a hedge have to do beside the property? What does a fence have to do?

MS. JOSEPH: Well, if that is your stumbling block --

MS. ALLEY: Excuse me, Ms. Joseph? Can you use your mic?

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MS. JOSEPH: If that's your stumbling block, then that can be removed, okay?

MR. ROBB: My stumbling block is I would like to see -- I'm agreeing with you. I think there should be a survey.

MS. JOSEPH: Okay, okay. I'm just going to say this in a short sentence. A lot of times, when you're mitigating the effects of something, you will ask for something additional from the appellant because it relates to the setback issue itself. If you feel totally uncomfortable about anything additional other than the survey showing the exact distance, and not going closer than 6 feet, then I'll remove my thoughts on any kind of vegetation between there. But that's what I was thinking.

MR. ROBB: First of all, vegetation is not permanent.

MS. JOSEPH: And neither is a fence.

MR. ROBB: Fences aren't permanent.

MS. JOSEPH: Right.

MR. ROBB: Property lines are permanent.

MS. JOSEPH: That's fine. Okay. However, if you make it a condition that vegetation has to stay permanent -- just saying. If it's a condition the vegetation has to stay there. If it's a stumbling block, I will shut up right now.

MR. ROBB: Well, I'd like to solve the --

MR. BOWERMAN: Is there anymore that needs to be solved?

MR. SHEPHERD: Just the --

MR. BOWERMAN: I think it's pretty clear.

MR. SHEPHERD: The wording of the two --

MR. BOWERMAN: Did it meet your concern? I mean, is there anything more that needs to be that changes the ultimate outcome of this? It seems to be pretty clear, at this point, what we're doing.

MR. BOWLING: Well, you need to -- somebody needs to make a motion. You need to accept the merits, or not approve it. And then, somebody needs to make a second and then, the Board can have further discussion, at this point. That may be appropriate, Mr. Chair.

MR. SHEPHERD: That will make sure that we're -- we will establish a sense of the Board, at this point. Is there a motion? There's actually a motion suggested in our -- at the end of the staff report that we might do so --

MR. BOWLING: There's two motions -- one to approve, and one to not approve.

MR. SHEPHERD: Right. We get to pick one.

MR. BOWLING: Actually, they're up on my screen.

MR. SHEPHERD: Is there a motion?

MS. JOSEPH: I move to grant the variance application VA201900001 Bufton and Maus, and staff requests the Board to explicitly --

MR. BOWLING: Well, let's -- now, we need a second.

MR. SHEPHERD: Is there a second for that?

MR. BOWERMAN: Second.

MR. SHEPHERD: So, now we need further discussion.

MR. BOWLING: One of the things that staff has requested that the Board explicitly state the variance terms and the legal basis. I think that's a reasonable request. But to do that, the Board -- it seems, to my mind, the Board's going to have to make certain findings, which are addressed in the findings of fact, that they declare that they found, which are the legal findings to support their decision. Do you want me to guide you through this, Mr. Chairman?

MR. SHEPHERD: That would be good. I think I'm prepared to do that. I think -- so, we're on the standards that we're agreeing with staff on several of the criteria.

MR. BOWLING: Well, I'm going to go directly to the Code and the findings that you're required to make under Virginia Code Section 15.2-2309, okay?

MR. SHEPHERD: Okay.

MR. BOWLING: And where I'm going to read from is the findings that are set out in 15.2-2309, Section 2, beginning with the second paragraph, okay? I can start reading, if that would be a help to the Board, or I can just be quiet at this point and proceed. What's the Board's pleasure?

MR. SHEPHERD: So, I think we have -- by identifying the criteria, I think we know what we are looking at.

MR. BOWLING: Well, the first thing you need to find -- you have to find that the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of this property, or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property; or improvements therein, at the time of the effective date of the ordinance; or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, the landowner. That's the first statutory requirement, as far as your findings go.

MS. JOSEPH: They were all "or's," right?

MR. BOWLING: Right. So, which one of these findings is amenable to the Board? There's three of them. If the evidence shows that a strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or, that the granting of the variance would alleviate a hardship due to the physical condition relating to the property, or improvements thereon, at the time of the effective date of the ordinance; or, 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.

MR. SHEPHERD: I would suggest that, as I said earlier, that I think that with the building permit and the understanding that the applicant had of the building permit application, that he established that constructing a major home occupation is an additional reasonable use of the property. And I think --

MR. BOWLING: And that would go to Section I, in the next line -- 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.

MR. SHEPHERD: And I, again, go back to the building permit and say that it was -- this whole situation was created by miscommunication on the part of both sides.

MR. BOWLING: Right, and then, the statute goes on to say, the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

MR. SHEPHERD: I agree with the County's opinion that it does not -- that it meets that criteria.

MR. BOWLING: And, of course, the entire Board -- the majority of the quorum of the Board has to agree to that. But then, and then, the next is that the condition or situation of the property concerned is not of general or recurring in nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

MR. SHEPHERD: No.

MS. JOSEPH: Agree.

MR. BOWLING: And lastly, or almost lastly, the granting of the variance does not result in the use that is not otherwise permitted on such property or change in the zoning classification of the property.

MS. JOSEPH: Agree.

MR. BOWLING: And finally, the relief or remedy solved by the variance application is not available through a Special Exception process that is authorized in the Zoning Ordinance.

MS. JOSEPH: Agree. So, could you specify that Code section again, please?

MR. BOWLING: It's defined -- well, we just talked about them. They are the findings in Virginia Code Section 15.2-2309(2) beginning with the second paragraph -- set out in the second paragraph.

MS. JOSEPH: And I think you said it was "H."

MR. BOWLING: No, not "H." 15.2-2309, subparagraph 2.

MS. JOSEPH: Subparagraph 2, but there was one specific in there within the "or's" that I think you referenced.

MR. BOWLING: I can't --

MS. JOSEPH: Okay, never mind.

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MR. BOWLING: There isn't any "H."

MS. JOSEPH: Okay, I'm making that up. Sorry.

MR. BOWLING: Probably not making it up.

MR. BOWERMAN: Does the maker of the motion except all those changes? So does the second.

MR. BOWLING: One final question: is the survey part of the motion? As I understand it is, or --

MR. SHEPHERD: I think we have -- I assume that that is going to be a condition.

MR. BOWLING: (Inaudible) outlined by one of the Board members as to what point the distance be established. But is the survey to be a complete physical survey of the property, or is it to be a line only on the sides of the property that are adjacent to the adjoining property?

MS. JOSEPH: It would be to the line that's specifically impacts the home occupation building.

MR. BOWLING: Is that the entire -- all sides of the building? Physical surveys would involve locating --

MS. JOSEPH: Right.

MR. BOWLING: The building on the property itself.

MS. JOSEPH: It is the side of the building that is closest to that particular line that is located on this plat.

MR. BOWLING: That you described previously.

MS. JOSEPH: That I described previously that was submitted by the applicant.

MR. BOWERMAN: Agree.

MR. SHEPHERD: And do we still want a condition that says it is limited to only this -- only what's in front of us, which --

MS. JOSEPH: I think that's -- I mean, that's something that I think is understood, yes?

MR. BOWLING: Well, I might --

MS. JOSEPH: Maybe not?

MR. BOWLING: I can't speak for you, ma'am.

MS. JOSEPH: Okay.

MR. MACCALL: Mr. Chairman --

MR. SHEPHERD: Add a condition that runs along this line, subject that this approval or a major home occupation per 5.2a in the supplemental regulations is limited to the existing structure shown on Building

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Permit 201702431NNR. Does that -- earlier, we were talking about wanting to clarify and limit it to just what we -- what was before us and wanted to make sure that it didn't allow any other activities in the building that would require a variance.

MS. JOSEPH: Francis said something --

MR. MACCALL: I wanted to make sure that was clarified so that we don't, as Mr. Robb had pointed out, if somebody buys the property in 10 years, comes back to us, and wants to use the structure for something else, that this doesn't affect that in that way. So, it's not -- for some reason, however this is worded that it's interpreted that we can't allow it just to be used as a standard storage building, which would be, an accessory structure use. So, I think Ms. Joseph noted as far as maybe not allowing it to be used for a BnB or a homestay, now, is what BnBs are referenced as.

So, I just wanted to make sure that's clarified so that we can review that to that point, so we can be comfortable that we're not going to have to make another decision in 10 years on something else.

MR. BOWLING: So, is that -- what Mr. Shepherd just said, does that satisfy you, or would you like to see more?

MR. MACCALL: Well, one point, as far as referencing 5.2a, that is the section that specifically references any accessory structure that does not conform to the applicable setback and yard requirement for a primary structure shall not be used for a home occupation. So, if you refer to 5.2a, I think there's some crossover there, that unless it's specified that's what's being granted as a variance from that line, is that particular one. — I don't know if that's the appropriate way to address that or not. But if you just reference 5.2a, you're conflicting with actually what we would still more than likely want to apply, as far as the regulations for major home occupations.

MR. SHEPHERD: So, do you want another sentence that says something like, all other applicable -- all other regulations in 5.2a must be met? I mean, the variance is the bridge from --

MR. BOWLING: I think what I'm hearing you saying, sir -- if you're going to do a variance, you want it to go to what they say in the -- it's an unnumbered page of the staff report -- "Written Description or Request for Variance." From the owners themselves, they request a variance from 18-10.4 of the Albemarle County Code, which provides that a side setback for primary structures in Rural Areas is 25 feet, except the (inaudible) limits it to 6 feet; and Albemarle County Code, Section 18-5.2a, which provides in relevant part 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. That's from the applicant's submittal to you.

Is that correct, Mr. Maus?

MR. MAUS: Could you repeat that, please?

MR. BOWLING: I'm just reading from your application. You understand where we are? Mr. Shepherd incorporated the home occupation requirements, and the staff brought up the point that one of the home occupation requirements is to meet the setback requirements, so you have to accept, as modified, by the language that you've asked for in your request for variance.

MR. MAUS: Right. I mean, I understand that -- I'm not sure, Mr. Bowling, I'm grasping exactly what you're saying, but, you know, part -- I mean, all we're asking for is we be allowed to use the 6-foot side setback -- actually, just the 25-foot side setback not apply to this use of our building for a law office.

MR. BOWLING: But except for that, all other requirements under the major home occupation ordinance of the County would be in full force and effect?

MR. MAUS: Yes, sir. As far as we know, we're fully compliant with this. I'm not aware of any other reasons the County's going to come back and say, well, sorry, you got the variance, but you still can't use this home occupation, or major home occupation.

MR. SVOBODA: I can't guarantee you don't meet the other property line setbacks without the survey, so, you know, that's -- there's no guarantees on what those distances are until they're measured and certified by a surveyor. I don't know that, so I think what Mr. Shepherd and Mr. Bowling are trying to get at is we want to narrow the variance to the use -- not the use, to the building as identified at 6 feet on the information that was submitted in regards to the property line, as identified by Ms. Joseph.

MR. BOWLING: Okay, that's correct. Six feet or more.

MR. MAUS: So, when you're talking about the setbacks from the property lines, you're also talking about the front property line, too? The roadway? I mean, do we have to have that part surveyed as well? Or is it just the side?

MR. SVOBODA: From my understanding of the condition of the variance that they're -- the conditions for the variance that they're discussing is the side line.

MR. MAUS: Okay.

MR. BOWLING: But also, what he's saying, if that they go out there and measure the front setback and find out you're short, then he can come back and say that you're in violation of that.

MR. MAUS: I understand. And we're pretty sure that that's okay -- the 75-foot setback.

MR. SHEPHERD: That was the only violation that the County identified before --

MR. MAUS: Was the side setback.

MR. SVOBODA: The only thing that was identified is that it did not meet the primary structure setback for the side setback. So, again, how far -- right off the front, it's -- I can't remember if the exact distance was pulled for that, either, but the inspection that was made by the building inspection office identified that it appeared that it met the 6 and the 75. So, whether distances were fully pulled, I don't know, but per their approval of the preliminary zoning inspection, that's -- it's understood that it did meet those setbacks -- the 75 and the 6, at least.

MR. SHEPHERD: Does an accessory structure have to meet the primary 75-foot setback?

MR. SVOBODA: Yes, yes it does.

MR. SHEPHERD: So, that has been inspected, and that should be something you can rely on.

MR. BOWLING: What the gentleman just said, though, that I heard --

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MR. SVOBODA: And it has been CO'ed, so what inspection was done at that time for the Certificate of Occupancy -- again, without seeing the exact record of that, but the inspector is understood to be measuring those distances to make sure it meets at least the minimums that are identified -- the 75 and the 6, at that time.

MR. BOWLING: Why don't you just require that it won't be running to the road, too, just showing that the setback distance from the road be part of this?

MS. ALLEY: Mr. Bowling, if you could speak into your mic.

MR. BOWLING: You can require that the setback -- that the survey also show the setback from the road of the corner of the building closest to the road.

MR. SVOBODA: And I would reference that as the front property line.

MR. BOWLING: I think it is called the front property line. Thank you, sir. Do you see what we're talking about?

MR. SHEPHERD: Or you could say -- I think, also, this is -- so, what we are -- to state it in the reverse, we are only approving a variance of a setback encroachment of the side property line that is no greater than 6 feet. I mean, that is that the building is at least 6 feet -- that the existing building is at least 6 feet from the side line.

MS. JOSEPH: Any portion of the existing building.

MR. SHEPHERD: So, a licensed surveyor must certify that any portion of the existing building is at least 6 feet from the side property line?

So, it seems like we're -- would you like me to read that again, just to make sure, and I think we can set that in concrete?

So, one condition of this approval is that a licensed surveyor must certify that any portion of the building of the existing building is at least 6 feet from the side property line.

MR. ROBB: That's on the east side.

MR. BOWERMAN: Didn't you classify it as the front someplace?

MR. ROBB: On the east side of the building, right?

MR. MAUS: Okay, did you say each side, or east?

MR. ROBB: East.

MR. MAUS: East. Okay, east or northeast, probably, because 231 runs --

MS. ALLEY: Mr. Maus, if you're going to address them, can you please go through the mic?

MR. MAUS: I guess, Mr. Robb, east is close enough. 231 runs in a northeast direction from Shadwell up to Gordonsville. It's actually the north --

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MR. ROBB: (inaudible)

MS. JOSEPH: North.

MR. MAUS: More than north side.

MS. JOSEPH: Well, according to the plat --

MR. MAUS: It's east.

MS. JOSEPH: It's the east side.

MR. MAUS: Okay. I'll go with east.

MS. JOSEPH: We have to be more specific about the building? Or is it implied that the building is what we're talking about?

MR. BOWLING: I think, if it's clear in your mind --

MS. JOSEPH: It's clear in my mind.

MR. SHEPHERD: I think that if we reference the building permit, that's -- the plans are all there as part of the application. I think --

MS. JOSEPH: That's fine.

MR. SHEPHERD: Alright. So, I think I'm close to having that -- we're working on two conditions, right? Or only the survey? Are we --

MS. JOSEPH: It's the other one.

MR. SHEPHERD: So, are we no longer limiting this just to the home occupation? I mean, just to --

MR. BOWLING: I thought you did limit it to the home occupation, sir.

MR. SHEPHERD: And that would be the other condition.

MS. JOSEPH: Okay.

MR. SHEPHERD: Right?

MS. JOSEPH: Okay.

MR. SHEPHERD: And this approval is for a major home occupation, per 5.2a -- or, no. This is where we want to get into Mr. Bowling's other code sections, that that's what we are varying. Right?

MR. ROBB: 5.2, 201.

MS. JOSEPH: Do you want to look at home occupation?

MR. SHEPHERD: Yeah, I'm not quite sure of what I'm trying to write, here. No, we were -- I started it as just referencing the home -- the supplemental regs, and the building permit. But the comment from Mr. Bowling was that we should be referencing the -- that the variance is confined to --

MR. BOWLING: No, the staff -- if you're talking about that the staff asked you to explicitly state the variance terms and the legal basis. And that's the discussion that I'm (inaudible). Virginia Code Section 15.2-2309(2), second paragraph.

MR. SHEPHERD: Mm-hmm.

MR. BOWLING: And you made those findings.

MR. SHEPHERD: We made those findings.

MR. BOWLING: And adopt those findings into your resolution, your motion.

MS. JOSEPH: Staff was saying that if we reference the major home occupation, then we're also referencing the fact that it has to meet the setbacks that are listed in there. So, that was something that you either need to reference that, minus that.

MR. SHEPHERD: So, this approval is for a variance of the side setback?

MS. JOSEPH: Yeah.

MR. SHEPHERD: Or a home occupation --

MS. JOSEPH: Major.

MR. SHEPHERD: Major home occupation, per 5.12a, or -- I guess, the supplemental regulations found in 5.2a, and limited to the existing structure shown on Building Permit 201702431NNR. Does that work for staff?

MR. SVOBODA: Would you like to read it one more time?

MR. SHEPHERD: I'll try. I can't read my own writing.

This approval is for a variance of the side setback to --

MR. BOWLING: Of not less than 6 feet.

MS. JOSEPH: Do you -- does staff do an action letter to the applicant after this, because you don't seem to be writing any of this down.

MR. SHEPHERD: I mean, are we going to just pull this off the tape? Alright, I feel like -- okay.

This approval is limited -- is a modification -- is that off to a good start? I've got to start over. Too many changes.

This approval is limited to a modification of the side setback to allow a major --

MR. BOWLING: Well, of -- you need to say a side setback of not less than 6 feet.

MR. SHEPHERD: I was leaving that out because it's in the next condition. I mean, it's going to be right there.

MR. BOWLING: Alright. Well, then, I've lost the track. I'm sorry.

MR. SHEPHERD: I think we have an approved condition for the survey line and the minimum 6 feet.

MR. BOWLING: Well, the variance is for the 6 feet. It's not a condition. It's a variance of not less than 6 feet.

MR. SHEPHERD: Okay.

MS. JOSEPH: Just put it in there so it's clear. Please. Thank you.

MR. SHEPHERD: This approval is limited to a modification of the side setback of not less than 6 feet to --

MR. BOWLING: I guess it should be -- instead of "of," it should be "to not less than 6 feet."

MR. SHEPHERD: Modification of the side setback --

MR. BOWLING: To.

MR. SHEPHERD: To.

MR. BOWLING: Not less than 6 feet.

MR. SHEPHERD: Not less than 6 feet to allow a major home occupation --

MR. ROBB: Mr. Chairman?

MR. SHEPHERD: Yes.

MR. ROBB: Can I throw a monkey wrench into that verbiage, here? Suppose they get out there and survey and find out that that building is now 5 feet.

MR. SHEPHERD: That's a problem.

MS. JOSEPH: He's got a problem.

MR. ROBB: So, I'm willing to accept the present position of the building as of this date.

MR. BOWLING: The trouble with that, sir, is that it's floating out there in space, and nobody knows where it is.

MR. ROBB: Nobody knows where what is?

MR. BOWLING: The present location of the building.

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MS. JOSEPH: In relation to the property line.

MR. BOWLING: That's why you want to have a survey and tie it to this point.

MR. ROBB: So, we have a survey and find out it's 2 feet from --

MR. BOWLING: Well, then he's going to have to come back.

MS. JOSEPH: Because then, he really didn't comply with what he thought staff was telling him, that it had to be 6 feet.

MR. ROBB: Okay, as long as that's under --

MR. BOWLING: What's up to you is what you're going to do with it.

MR. SHEPHERD: Almost got this --

This approval is limited to a modification of the side setback to not less than 6 feet to allow a major home occupation as described in the supplemental regulations, in 5.2a, and shown on the building permit.

You think you have that?

MS. ALLEY: I do. Would you like for me to re-read that?

MR. SHEPHERD: That would be perfect.

MS. ALLEY: So, I have Ms. Joseph making a motion to grant the variance application VA2019-00001 Bufton and Maus. I have Mr. Bowerman seconding that motion, with discussion taking place, and a condition being applied to read, "This approval is limited to a modification of the side setback to not less than 6 feet to allow a major home occupation as described in supplemental regulations, in 5.2a, and shown on the building permit."

MR. BOWLING: What about the conditions for the survey? Where does that come in?

MR. SHEPHERD: Do you have, "The licensed survey must certify…"

MS. ALLEY: I did not have that. I started with what you were doing there.

MR. SHEPHERD: Alright. Ready for that?

The other -- the second condition is subject to a licensed survey -- a licensed surveyor must certify that any portion of the building is at least 6 feet from the side property line.

MR. BOWLING: Is that the motion, Mr. Chairman?

MR. SHEPHERD: So, those are the two conditions. So, it's a motion that we approve the variance --

MR. BOWLING: Well then, you also need to add the Board makes the finding set out in Virginia Code Section 15.2-2309(2), as previously discussed.

MS. ALLEY: Would you like for me to take votes?

MS. JOSEPH: I thought we had already acted on that. No?

MR. BOWLING: No, you need to do it as part of your motion.

MS. JOSEPH: Okay.

MR. SHEPHERD: So, can you state that again and just make sure that Marsha's got it, and then --

MR. BOWLING: Well, first --

MS. JOSEPH: Okay, I'm going to amend the motion to include -- okay?

MR. BOWLING: The Board makes the following findings set out in Virginia Code Section -- findings of facts set out in 15.2. The Board finds that the facts before it satisfy the requirements set out in Virginia Code Section 15.2-2309.2, second paragraph.

MS. JOSEPH: 15 point what, second paragraph?

MR. BOWLING: Second para -- 15.2-2309.2, second paragraph.

MS. JOSEPH: Anything additional?

MR. BOWLING: That's enough. Previously, as previously discussed in the Board's meeting.

MR. SHEPHERD: Because the minutes will verify that discussion.

MS. JOSEPH: Okay. I will amend my motion to include the following: that the Board finds that it satisfies Section 15.2- --

MR. BOWLING: That the facts before it.

MS. JOSEPH: That the facts before it satisfy Code Section 15.2-2309.2, the Code of Virginia.

MR. BOWLING: Second paragraph.

MS. JOSEPH: Second paragraph, as previously discussed at the Board meeting. This approval also contains the two conditions that were described by Chairman Shepherd.

MR. BOWERMAN: Second agrees.

MR. SHEPHERD: Okay, so, can you call a roll?

MS. ALLEY: Mr. Bowerman?

MR. BOWERMAN: Yes.

MS. ALLEY: Ms. Joseph?

MS. JOSEPH: Aye.

MS. ALLEY: Mr. Robb?

MR. ROBB: Yes.

MS. ALLEY: Mr. Shepherd?

MR. SHEPHERD: Yes.

Whew. Thank you very much. Where the small things are the hard things. Okay.

MS. JOSEPH: Okay. Now, do we negate this rehearing, at this point?

MR. SHEPHERD: Well, we have a couple more things to do, and that is one thing. We have that, and we also have to approve the minutes.

MS. JOSEPH: Well, shouldn't we just deal with this?

MR. SHEPHERD: What is the next thing?

MS. JOSEPH: The next thing is a rehearing of that appeal.

B. Rehearing of AP201900004 Bufton & Maus, PLC

MR. SHEPHERD: Okay. So, I would like to make -- I'm not sure what the County's position might be on this, but I want to suggest that in light of this variance, which I believe is a much -- is one that is consistent with the appeal that we -- as we dealt with it before. But I feel like the variance is a much more direct, straightforward way of dealing with this. And I also appreciate the opportunity to put conditions on it. I feel like this is -- that we've handled this, that the variance handles the whole situation in a good way.

And with that, I would like to -- with -- work towards just reversing our prior decision having to do with the Zoning Administrator's determination.

I don't know if we want to actually have a hearing on this. If staff has a different position, then we can make a presentation, or if that's -- if we can do that without a discussion.

MR. HERRICK: Mr. Chair, members of the Board. Andy Herrick, again, on behalf of the Zoning Administrator. If the Board is inclined to reverse its decision of October 1, the County has no objection. I did not come prepared for a presentation on it today. The petition that we had filed in October is before you all, but again, if the Board were to reverse its decision of October 1, the County would not object.

MR. SHEPHERD: Thank you. Yeah. Is there a motion?

MS. JOSEPH: I move that the Board --

MR. SHEPHERD: Oh, wait a minute.

MR. BOWERMAN: Let's hear from the applicant, too.

MR. SHEPHERD: Oh.

MS. JOSEPH: Sorry, sorry.

MR. SHEPHERD: Good point. Sorry. I shouldn't make assumptions.

MR. MAUS: That's okay, (inaudible). Jack Maus for the applicant. I think I concur with your conclusion, Mr. Shepherd, that the variance is a cleaner way to do this, and that there would be -- we wouldn't object to the Board's reversing its decision, reversing the Zoning Administrator and just -- end that part of the process. I think the variance covers what we needed done. Thank you, sir.

MR. SHEPHERD: Okay, thank you.

MR. BOWLING: So then, you need to make a motion to that effect, if that's what the Board agrees to.

MS. JOSEPH: To reverse the decision?

MR. BOWLING: Yes.

MR. SHEPHERD: Okay, do you want to go in now? Sorry, we're going to have to take a quick break.

Actually, why don't we take a recess for everybody? Let's take a five-minute break. Come back here at ten after.

(Recess ends at 4:11 p.m.)

The next item on the agenda, which is the reconsideration of the appeal 201900004. And I understand there is no staff report for this, at this point?

MS. JOSEPH: They gave us one.

MR. SHEPHERD: Yeah, okay. So, I'm now going to open the public hearing.

Hearing no one wanting, or seeing no one wanting to speak, the public hearing is closed. So, now it's in front of us for a decision. And, as I say, I would entertain a motion that would reverse our prior decision of October 1, and of appeal 201900004, and uphold the Zoning Administrator's determination.

MR. BOWLING: And part of that, I think it's all in the record, if I'm correct. It's all in the record that both -- that the applicant and the County agree to that procedure?

MR. SHEPHERD: Mm-hmm.

MR. BOWLING: Madame Clerk, is that correct?

MS. ALLEY: That is correct.

MR. SHEPHERD: Yes. So, both went on the record, spoke to that.

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MR. HERRICK: Actually, if I could just clarify, the County did not object to that.

MR. SHEPHERD: Okay.

MR. BOWLING: The County did not object to it.

MS. JOSEPH: Did not object.

MR. SHEPHERD: And for the -- I mean, I invite the motion for the reasons I stated earlier. Anyone else have any comments?

Don't have a motion yet. Is there a motion?

MR. BOWLING: I thought you made one.

MS. JOSEPH: So moved.

MR. SHEPHERD: Okay. Call the roll?

MS. ALLEY: I'm sorry. I missed the second.

MS. JOSEPH: David?

MR. SHEPHERD: I think Mr. Bowerman made the motion, and Ms. Joseph seconded.

MS. ALLEY: Mr. Robb?

MR. ROBB: Aye.

MS. ALLEY: Ms. Joseph?

MS. JOSEPH: Aye.

MS. ALLEY: Mr. Bowerman?

MR. BOWERMAN: Aye.

MS. ALLEY: Mr. Shepherd?

MR. SHEPHERD: Aye.

MR. BOWERMAN: Well, does the Board of Supervisors take any action on this? It was their decision to give it back to us, to appeal it.

MR. HERRICK: So, as Mr. Maus had indicated, the Board had appealed that determination to the Circuit Court, and it's pending. We have a hearing date pending for the Circuit Court on that.

It's pending. It's pending in the Circuit Court.

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MR. BOWERMAN: What will they do? I mean, the Court.

MR. HERRICK: That will be up to the judge.

MR. BOWERMAN: Okay.

MR. SHEPHERD: Okay. So, I would hope that the variance, that the action today, the record of this meeting would be attached to that. Alright.

MR. MAUS: Mr. Chairman?

MR. SHEPHERD: Yes?

MR. MAUS: If the basis for the County's taking the -- overturning the Zoning Administrator's opinion to Circuit Court was based on this Board saying they were wrong. If the Board's now saying they're right, then really, that moots the matter that's in the Court. There's nothing for the Court to decide, anyway. So, I would anticipate filing a motion to dismiss the current proceeding because there's no adverse -- no decision adverse to the County that can now appeal before the Court. Thank you.

MR. BOWLING: When are the minutes prepared for the meeting? I would think both attorneys could notify the Court of what happened here today. Am I correct, Mr. Herrick?

MR. HERRICK: I'll wait for further instructions from the Board of Supervisors.

MR. BOWLING: Okay. No, I mean, I understand your further instructions, but this is what the Board of Zoning Appeals just did. But they'll be -- the Court will be notified that the Board met and rescinded its previous action of --

MR. HERRICK: That may or may not come up in the scheduled hearing.

MR. BOWLING: Okay. Well, it's the part -- then, you know, the Secretary has some duty under the statute to send the record. And then, I don't --

MR. HERRICK: Mr. Bowling, with all due respect, I don't want to try the case in front of the BZA again.

MS. JOSEPH: Well, that's fine. I'm the Secretary. What do you want me to do?

MR. BOWLING: Well, we won't have the minutes by then.

MS. JOSEPH: Okay.

MR. BOWLING: I'm not following the point, but that's fine.

MR. SHEPHERD: Well, I think we've made our ideas clear.

MS. JOSEPH: Okay.

4. Approval of Minutes
A. January 7, 2020

DRAFT

Mr. Shepherd said he understood that Ms. Alley made a couple of small corrections to the minutes.

Ms. Alley said yes. She said the Board members were provided earlier with a draft copy of the minutes, and since that time, she had identified two minor corrections that she wanted to note. She said the first of the revisions would be on page 8, in the last two paragraphs where they see the word "rules" should be revised to "roles."

Ms. Joseph asked who was speaking.

Ms. Alley replied that Mr. Shepherd was speaking in one sentence and Mr. Rinehart in the other. She said both were interpreted as "rules" when both of those words should have been "roles."

Mr. Shepherd said this seemed right.

Ms. Alley said the other revision was on page 12, paragraph 6. She said Mr. Herrick was speaking, and he made a reference to the "close of the meeting," which should actually read "close of the hearing."

Ms. Alley said those revisions had been made on the copy that was submitted for approval and were ready for signature, if so approved.

Ms. Joseph asked Ms. Alley about page 4, where there was an interesting sentence that never stopped which read, "There was a discussion regarding training sessions being recorded. There was some concern that…" and it ended.

Ms. Alley said evidently, the concerns were discussed in the next paragraph. She said the paragraph was modified and that the partial sentence was not removed. She said this sentence could be removed as well.

MOTION: Mr. Robb moved that the Board approve the minutes from the meeting of January 7, 2020, 2:00 p.m. Ms. Joseph seconded the motion, which carried unanimously (4-0). (Mr. Rinehart was absent.)

5. Old Business

A. Training Update

Mr. Svoboda said everyone had agreed to a May 5 training date. He reminded the Board members to check the date they marked on their calendars.

Ms. Joseph asked if the training would take place at the regular time in that room.

Mr. Svoboda replied yes.

6. New Business

There was no new business.

7. Adjournment

MOTION: At 4:21 p.m., Mr. Bowerman moved to adjourn the meeting. Ms. Joseph seconded the motion, which passed unanimously (4-0). (Mr. Rinehart was absent.)

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,

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Marcia Joseph, Secretary Board of Zoning Appeals

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