



COUNTY OF ALBEMARLE
Department of Community Development
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**ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING VIA ZOOM
AGENDA
TUESDAY, JANUARY 5, 2021 at 2:00 P.M**

1. Call to Order
2. Establish a Quorum
3. Annual Organizational Meeting
 - A. Election of Officers
 - B. [Review and Re-Adopt Rules of Procedure](#)
 - C. [Review and Adopt 2021 Meeting Schedule](#)
 - D. [Review BZA Annual Report for 2020 \(revised\)](#)
4. Public Hearings:
 - A. There are no public hearings scheduled.
5. Approval of Minutes
 - A. [December 1, 2020](#)
6. Old Business
7. New Business
8. Adjournment

This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(14), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster. The opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website on the Board of Zoning Appeals home page and on the Albemarle County calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received. <https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals>.

BOARD OF ZONING APPEALS ELECTRONIC MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) electronic 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 unused 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. For staff and applicants, there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments**.

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 BZA during the public hearing, please follow the instructions below:

- Log in/call in early.
- Via Web: Use the "Raise Hand" icon to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.
- Via Phone: Press *9 to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.

If you do not sign up to speak prior to the meeting, an opportunity to sign up will be given prior to the close of the public hearing. When this opportunity is announced, follow the directions above to notify the BZA Clerk that you would like to provide comment on a public hearing item.

Time keeping is conducted through a timer. Each speaker is allotted **three (3) minutes** to comment. The timer will commence when you begin speaking; you will be notified when three minutes has ended, and you are requested to bring your comments to a close as your microphone will be muted after several seconds.

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

- When called to address the BZA, please state your name. For uncommon spellings, please spell your name for the record.
- Address comments directly to the BZA as a whole - open public debate is prohibited.
- You may email written statements and other relevant material to BoardofZoningAppeals@albemarle.org to be included in the record.
- If you represent a group or organization, you may identify the group to be recognized.
- If you exceed your allotted time, you will be asked to end your comments and the microphone will be muted.
- If a speaker does not use all allocated time, the unused time may not be shared with another speaker.
- Speakers are permitted one opportunity to comment during each of the public comment periods per meeting.

Additional Guidelines for Applicants and Appellants addressing the Board:

- 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.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS RULES OF PROCEDURE

The Albemarle County Board of Zoning Appeals, under the authority of Virginia Code § 15.2-2308 and Albemarle County Code § 18-34.1, establishes the following rules of procedure:

1. Officers

- A. Chair. At its annual meeting, the Board of Zoning Appeals (“BZA”) shall elect a Chair who, if present, shall preside at the meeting and at all other meetings during the year for which elected. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.
- B. Vice-Chair. At its annual meeting, the BZA shall elect a Vice-Chair, who, if present, shall preside at meetings in the absence of the Chair and shall discharge the duties of the Chair during his absence or disability.
- C. Secretary. At its annual meeting, the BZA shall elect a Secretary. The Secretary may be either a member of the BZA or another person. The duties of the Secretary shall include keeping and maintaining custody of the records of the BZA, drafting and signing all correspondence necessary for the execution of the duties and functions of the BZA, and such other duties as these rules may provide and the BZA may, from time to time, assign.
- D. Recording Secretary. The Zoning Administrator, or his or her designee, may serve the BZA as its Recording Secretary. The duties of the Recording Secretary shall include keeping the minutes of the BZA’s meetings and such other duties as these rules may provide and the BZA may, from time to time, assign.
- E. Other Offices. At any of its meetings, the BZA may create and fill any other offices as it deems necessary.
- F. Term of Office. The Chair and Vice-Chair shall be elected for one-year terms, and until their respective successors take office. Either or both officers may be re-elected for one or more additional terms.
- G. Vacancies in Office. Vacancies in office shall be filled as soon as practicable using the election procedures provided herein.
- H. Absence of Chair and Vice-Chair. If the Chair and Vice-Chair are absent from any meeting, a present member shall be chosen to act as Chair.

2. Meetings

- A. *Annual Meeting.* The first meeting of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, the Vice-Chair and the Secretary.
- B. *Regular Meetings.* The BZA shall meet in regular session at the time and place and on the day or days established for regular meetings. The BZA may subsequently establish a different day, time, or place to conduct its regular meetings by passing a resolution to that effect.

If the Chair, or the Vice-Chair if the Chair is unable to act, finds and declares that weather or other conditions are such that it is hazardous for BZA members to attend a regular meeting, the meeting shall be continued to the next regular meeting date. This finding shall be communicated to the members of the BZA and to the press as promptly as practicable.

Without further public notice, a regular meeting may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the BZA is complete.

- C. *Special Meetings.* The BZA may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the BZA finds necessary and convenient.

A special meeting shall be held when called by the Chair or requested by two or more members of the BZA. The call or request shall be made to the Recording Secretary and shall specify the matters to be considered at the meeting. Upon receipt of the call or request, the Recording Secretary, after consultation with the Chair, shall immediately notify each member of the BZA and the County Attorney's Office. The notice shall be in writing and shall be mailed or delivered to each BZA member or to his or her place of residence or business or by electronic communication at least five (5) days prior to the special meeting. The notice shall state the time and place of the special meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at the meeting unless a quorum of members is present. The notice may be waived if the time of the special meeting was fixed at a regular meeting, if a quorum of members is present at the special meeting, or if all members sign a waiver for the notice.

Whenever state law requires public notice of a special meeting of the BZA, the Recording Secretary shall provide such notice in accordance with *Virginia Code* §15.2-2204.

3. **Order of Business**

- A. *Agenda Established by Secretary.* The agenda for each regular meeting shall be established by the Secretary in consultation with the Chair.
- B. *Organization of the Agenda.* The agenda of each regular meeting shall be organized in substantially the following order, subject to change at the request of the Chair and with the consensus of the other members of the BZA:
- (1) Call to order.
 - (2) Establish quorum.
 - (3) Matters deferred from previous meetings.
 - (4) Scheduled matters: hearings on special use permits, variances and appeals.
 - (5) Work sessions.
 - (6) Review and approval of minutes of previous meetings.
 - (7) Old business.
 - (8) New business.
 - (9) Adjournment.
- C. *Time Limits for Applicants, Appellants and Other Speakers.* The BZA shall offer an equal amount of time in a hearing to the applicant/appellant and County staff. The applicant/appellant and County staff shall each be allowed a total of fifteen (15) minutes to present its respective case at the outset of the hearing, and five (5) additional minutes to present rebuttal or closing remarks at the close of the hearing. Each person other than a party to the case or his/her legal representative(s) shall be allowed one appearance not to exceed three (3) minutes. A speaker may not reserve any initial speaking time for rebuttal or transfer any time to another speaker. The time limits set forth herein shall not include any time during which the applicant or other speaker is responding to questions asked by the BZA. The Recording Secretary shall act as the timekeeper. The BZA Chair may set alternate time limits to those listed herein at his/her discretion, provided that they are identified at the BZA meeting prior to the meeting at which these new limits would be used.
- 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.

4. Quorum

A majority of the members of the BZA shall constitute a quorum for any meeting of the BZA. A majority of the members of the BZA present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting from day to day or from time to time. A meeting may not be adjourned to a date and time beyond the date fixed for the next regular meeting.

If, during a meeting, less than a majority of the members of the BZA remains present, no action can be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

If disqualifications under the State and Local Government Conflict of Interests Act (Virginia Code § 2.2-3100 *et seq.*) leave less than a quorum, the remaining member or members of the BZA shall have authority to act for the BZA by a unanimous vote.

5. Voting Procedures

- A. Approval of Motion. Except as otherwise provided in subparagraphs (1) and (2) and in paragraph (H), each decision of the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a

member and properly seconded by any other member. Any motion that is not seconded shall not be further considered.

1. *Variances, Special Use Permits and Other Matters.* At least three (3) affirmative votes shall be required to grant a variance, to grant a special use permit, or to decide in favor of an applicant on any other matter upon which the BZA is required to act upon under the Zoning Ordinance.
2. *Appeals.* At least three (3) affirmative votes shall be required to reverse any appeal from an order, requirement, decision or determination of an administrative officer.

B. *Time for Vote.* Any matter before the BZA requiring a public hearing shall not be decided by the BZA until the public hearing has been held. The BZA may, however, in its discretion, defer the holding of a public hearing or consideration of such matter, in conformance with paragraph 3(D) above.

C. *Manner of Vote.* The vote on a motion pertaining to any variance, special use permit, appeal, or application for interpretation of the district map shall be by roll call vote. Any other matter may be either by roll call vote or voice vote, in the discretion of the Chair; provided that a roll call vote on such a motion shall be required if requested by a member of the BZA. For each roll call vote, the Recording Secretary shall record the name of each member voting and how the member voted on the motion. For each voice vote, the Recording Secretary shall record the result of the vote.

D. *Tie Vote.* A tie vote shall defeat the motion voted upon.

E. *Effect of Defeat of Motion to Deny.* The defeat of a motion to deny a matter shall not be deemed to be approval of the matter. In such a case, the Chair shall call for another motion.

F. *Abstention.* If any member abstains from voting on any motion, he shall state his abstention. The abstention shall be announced by the Chair and recorded by the Recording Secretary.

G. *Motion to Amend.* A motion to amend a motion before the BZA shall be discussed and voted by the BZA before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the BZA for its consideration. If the motion to amend is not approved, the original motion is again before the BZA for its consideration.

H. *Previous Question.* The discussion of any motion may be terminated by any member moving the “previous question.” Upon a proper second, the Chair shall call for a vote on the motion of the previous question. If approved by a two-thirds majority of those voting, the Chair shall immediately call for a vote on the original

motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

I. ***Motion to Reconsider.*** Any decision made by the BZA may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.

J. ***Motion for Rehearing.*** Any decision made by the BZA may be reheard upon the granting of a motion for rehearing approved by at least three affirmative votes. The motion may be made only after consideration of a written application by the person requesting rehearing, which shall be filed within thirty (30) days after the date of the BZA's original final decision. The BZA may grant the motion if it finds that the decision has not already been appealed to the Circuit Court and: (1) new evidence can be presented that, in the opinion of the BZA, is relevant and material to the decision but could not have been presented at the original hearing; or (2) in the opinion of the BZA, one or more relevant and material conditions or situations have changed so as to bear on the BZA's original decision. If the BZA grants the motion, it shall set the date for rehearing. Notice of the rehearing shall be provided as otherwise required for the matter being reheard.

6. Final Decision

A. ***Date of final decision.*** For the purpose of calculating the time in which an aggrieved party may submit a petition for writ of certiorari in Circuit Court requesting the court to review the decision of the BZA, the date of the BZA's final decision shall be the date on which the BZA took its final vote on the merits of the matter.

B. ***Deferral of final decision.*** If the BZA elects to defer its final decision, nothing in this rule prevents the BZA from obtaining a consensus of its members on the matter to be decided and requesting one or more of the parties to prepare a proposed written decision to be considered when a final vote is taken.

C. ***Effect if written decision adopted after final decision.*** The date of the BZA's final decision shall not be extended if the BZA later adopts a written decision.

7. Amendment of Rules of Procedure

Any of these Rules of Procedure may be amended by a majority vote of the BZA at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

8. Suspension of Rules of Procedure

These Rules of Procedure may be suspended by the majority vote of the members of the BZA present and voting. The motion to suspend a rule may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the BZA; provided, however, approval of a motion to suspend the rule shall not permit the BZA to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law including the Albemarle County Zoning Ordinance.

9. Rules of Procedure not Covered by These Rules of Procedure

Any rules of procedure not covered by these Rules of Procedure shall be governed by the current Robert's Rules of Order.

* * * * *

(Adopted: 1-5-2016)
(Last Amended: 04-02-2019)
(Re-adopted: 01-07-2020)

2021 Submission and Review Schedule

Board of Zoning Appeals

Deadline for Filing (3 P.M.)	First Advertisement	Second Advertisement	Board of Zoning Appeals Meeting COB Auditorium
Monday	Monday	Monday	No sooner than Tuesday
Nov 10 2020	Dec 21 2020	Dec 28 2020	Jan 05
Dec 01 2020	Jan 18	Jan 25	Feb 02
Jan 05	Feb 16	Feb 23	Mar 02
Feb 02	Mar 22	Mar 29	Apr 06
Mar 02	Apr 19	Apr 26	May 04
Apr 06	May 17	May 24	Jun 01
May 04	Jun 21	Jun 28	Jul 06
Jun 01	Jul 19	Jul 26	Aug 03
Jul 06	Aug 23	Aug 30	Sep 07
Aug 03	Sep 20	Sep 27	Oct 05
Sep 07	Oct 25	Nov 01	Nov 09
Oct 05	Nov 22	Nov 29	Dec 07
Nov 09	Dec 20	Dec 27	Jan 04 2022
Dec 07	Jan 17 2022	Jan 24 2022	Feb 01 2022
Jan 04 2022	Feb 14 2022	Feb 21 2022	Mar 01 2022
Feb 01 2022	Mar 21 2022	Mar 28 2022	Apr 05 2022

Please note, these deadlines apply only to variance applications and special use permit applications for offsite and electric message signs. These deadlines do not apply to appeals of any order, requirement, decision, or determination of a zoning official. Such appeals shall be filed in accordance with State Code Section 15.2-2311. They shall be filed in a timely manner or the decision shall become final and unappealable. Such appeals will be scheduled for the next appropriate meeting after filing.

Bold italics = submittal/meeting day is different due to a holiday/election, etc.

Dates with shaded background are not 2021.

2022 dates are tentative.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
2020 ANNUAL REPORT

I. INTRODUCTION

Virginia Code § 15.2-2308 requires that the Board of Zoning Appeals (BZA) submit a report of its activities to the governing body at least once each year. The following report outlines the BZA's activities during 2020.

II. PERSONNEL

The BZA consists of five members appointed by the Circuit Court for a term not to exceed five years. The BZA members during the year 2020 were:

<u>Member</u>	<u>Term Expiration</u>
<i>John Shepherd, Chairman</i>	Appointed May 23, 2017 for a five-year term to expire May 22, 2022.
<i>Edgar S. Robb, Vice Chairman</i>	Reappointed May 16, 2019 for a five-year term to expire May 23, 2024.
<i>Marcia Joseph, Secretary</i>	Reappointed May 23, 2020 to complete the term to expire May 23, 2025.
<i>Edward "Bo" Carrington</i>	Appointed July 1, 2020 to complete the term to expire May 23, 2023. (Previously the term of David Bowerman.)
<i>Randy Rinehart</i>	Reappointed May 23, 2016 for a five-year term to expire May 23, 2021.

III. OPERATING PROCEDURES

Regular meetings of the BZA are held the first Tuesday of each month starting at 2:00 p.m. Special meetings may be called when the regular schedule does not provide sufficient hearing time. These special meetings may begin at 1:00 p.m. The BZA operates with Rules of Procedure adopted January 5, 2016, last revised April 2, 2019, and most recently adopted January 7, 2020.

IV. EXPENSES

The BZA does not have a separate budget. Compensation and mileage are included within the budget of the Department of Community Development. Funding for BZA salaries in the fiscal year 2020-2021 was consistent with prior years. BZA members are paid \$45 per meeting. Compensation expenses for calendar year 2020 totaled \$1,845.00. Compensation expenses for FY2019-20 totaled \$945.00. Compensation expenses for FY 2020-21 total \$1,260.00 to date.

In June 2019, the BZA retained the legal services of James M. Bowling, IV of St. John, Bowling, Lawrence, & Quagliana, LLP. The letter of agreement stipulated that services would be charged at the rate of \$250 per hour not to exceed \$2,000 for FY2018-19. The budgeted amount of \$5,000 for FY2019-20 was allotted for BZA legal counsel. The budgeted amount of \$5,000 for FY2020-21 was allotted for BZA legal counsel. According to the letter of agreement, Mr. Bowling will provide legal services even if his billing exceeds the budgeted amount of \$5,000. Legal counsel expenses for FY2019-20 totaled \$2,900.00. Legal counsel expenses for FY 2020-21 total \$2,875.00 to date.

County staff working with the BZA includes the Director of Zoning (Zoning Administrator), Chief of Zoning (Deputy Zoning Administrator), Deputy County Attorney, Planners and Code Compliance Officers. Support staff includes the Recording Secretary (Community Development Assistant II).

V. ACTION SUMMARY

The BZA held nine meetings in calendar year 2020. Training sessions were held at two of the meetings. The number of submittals and actions considered by the BZA in 2020 are shown in the following tables:

Appeals

One appeal application was heard in 2020.

<u>Application #</u>	<u>Appellant or Project Name</u>	<u>Action</u>	<u>Issue</u>
AP2020-003	Appeal of Zoning Administrator's Determination regarding North Pointe	Affirmed the Zoning Administrator's determination (5-0) December 1, 2020	Determination regarding North Pointe construction entrance on Pritchett Lane

Requests for Deferral

Two requests for deferral were heard in 2020.

<u>Application #</u>	<u>Appellant or Project Name</u>	<u>Action</u>	<u>Issue</u>
AP2020-001	R.A. Yancey Lumber Corporation	Deferred decision to August 4, 2020 (4-0) June 2, 2020	Appeal Notice of Violation
AP2020-001	R.A. Yancey Lumber Corporation	Deferred decision to September 1, 2020 (4-0) August 4, 2020	Extend the deferral to allow the BOS to act on submitted Special Exceptions

Motion for Rehearing

One motion for rehearing was heard in 2020.

<u>Application #</u>	<u>Appellant or Project Name</u>	<u>Action</u>	<u>Issue</u>
AP2019-004	Buften & Maus, PLC	Reversed decision from October 1, 2019 and upheld the Zoning Administrator's Determination (4-0) February 4, 2020	Determination regarding setbacks for Major Home Occupation

Special Use Permits

Two special use applications were heard in 2020.

<u>Application #</u>	<u>Applicant or Project Name</u>	<u>Action</u>	<u>Issue</u>
SP2020-009	North Pointe Middle Entrance Sign	Approved with conditions (4-0) July 7, 2020	Construct entrance sign in public right-of-way
SP2020-011	Pantops Corner Bundle Sign	Approved with conditions (5-0) September 1, 2020	Construct bundle sign on Stony Point Road

Variances

Two variance applications were heard in 2020.

<u>Application #</u>	<u>Applicant or Project Name</u>	<u>Action</u>	<u>Issue</u>
VA2019-001	Buften & Maus, PLC	Approved with conditions (4-0) February 4, 2020	Setback variance for accessory structure to be used for Major Home Occupation
VA2020-001	Corbett Agricultural Barn	Granted the variance with conditions (5-0) December 1, 2020	Setback variance for agricultural barn

VI. COURT ACTION

During 2020, two decisions of the BZA were the subject of Circuit Court appeals:

- October 1, 2019 Decision of the BZA in AP2019-004 – On October 31, 2019, the Board of Supervisors appealed the BZA's reversal of the denial of a home occupation clearance. At issue was the BZA's reliance on VA Code 15.2-2311 (C) in making its decision.

- February 4, 2020 Decision of the BZA in VA2019-001 -- On March 3, 2020, the Board of Supervisors appealed the BZA's granting of a variance that had reduced the setback at issue in AP2019-004. At issue was staff's position that the granting of the variance created a use variance.

In both cases, the BZA compiled and returned its official record to the Circuit Court, as required by **Virginia Code** § 15.2-2314. By law, the BZA is not an active participant in Circuit Court proceedings beyond compiling and submitting its record.

Following a resolution of the underlying issues, on December 18, 2020, the County Attorney filed for a voluntary non-suit (withdrawal) of both County appeals.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
VIRTUAL MEETING
TUESDAY, DECEMBER 1, 2020 – 2:00 P.M.

Board Members: John Shepherd
Marcia Joseph
Ed Robb
Randy Rinehart
Edward (Bo) Carrington

Staff Members: Bart Svoboda, Zoning Administrator
Francis MacCall, Deputy Zoning Administrator
Frank Pohl, County Engineer
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.

Mr. Shepherd explained that they would address the variance on the agenda first and then the appeal that concerns North Pointe at Pritchett Lane. He said before starting the hearing for Pritchett Lane, there would be another chance for people to sign up for the public hearing, so no one has lost their chance to speak on that as the board moves ahead with the variance. He said the variance would likely take anywhere from half an hour to an hour, as a guess, and he wanted to give everyone an idea of what to expect with that.

Mr. Shepherd said many are familiar with Zoom meetings, but he had heard from at least one person that it was their first one. He said he would start by reading certain things that have to be said that make this a legal public hearing.

Mr. Shepherd welcomed everyone to the meeting. He said he hoped there would be some good discussions and outcomes for both hearings, and he thanked everyone for their participation.

Mr. Shepherd read the following statement into the record: “Good afternoon. As Chairman of the Albemarle County Board of Zoning Appeals, I call the meeting for December 1, 2020 to order. This is an electronic meeting. Please be patient as we become familiar with this meeting alternative and virtual process.

“This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(14), ‘An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.’ BZA members who are electronically present at this meeting are Ed Robb, Randy Rinehart, Bo Carrington, Marcia Joseph, and myself.

1
2 “The opportunities for the public to access and participate in the electronic meeting are posted on the
3 Albemarle County website, on the Board of Zoning Appeals homepage and on the Albemarle County
4 Calendar. Participation will include the opportunity to comment on those matters for which comments from
5 the public will be received.”
6

7 **2. Establish a Quorum**

8 Mr. Shepherd established a quorum and asked board members to announce their names as being present for
9 the record.
10

11 Mr. Ed Robb, Mr. Randy Rinehart, Ms. Marcia Joseph, Mr. Bo Carrington, and Mr. John Shepherd all
12 announced their presence.
13

14 Mr. Shepherd introduced Mr. Andy Herrick, County Attorney; Mr. Jim Bowling, Attorney for the Board of
15 Zoning Appeals; Ms. Marsha Alley, Recording Clerk; Mr. Francis MacCall, who would be presenting the
16 variance; Mr. Bart Svoboda, Zoning Administrator; and Mr. Frank Pohl, County Engineer. He said there
17 would be more introductions upon hearing the appeal.
18

19 **3. Public Hearings**

20 **A. VA2020-00001 Corbett Agricultural Barn**

21 MR. SHEPHERD: We now want to turn this to a public hearing for Project Number VA2020-00001, Corbett
22 Agricultural Barn. Property owner is Michael and Michelle Corbett, and the staff for this variance hearing is
23 Francis MacCall.
24

25 So, with that, Francis, you have 15 minutes for your presentation. You can share that time with your attorney,
26 Andy Herrick. With that, I invite you to begin.
27

28 MR. MACCALL: Thank you, Mr. Chairman. Does everyone see my screen?
29

30 MR. SHEPHERD: One other thing, is Mr. Corbett here, or someone presenting for Mr. Corbett?
31

32 MR. MACCALL: I believe I saw them in the attendees section.
33

34 MR. SHEPHERD: OK. Marsha, can we verify that and let Mr. Corbett sort of enter the – come to the floor
35 and enter the gallery?
36

37 MS. ALLEY: I have now promoted Mr. Corbett to panelist, so give him just a moment to arrive there. Mr.
38 Corbett, if you could just let us know that you are present.
39

40 MR. CORBETT: We are present.
41

42 MS. ALLEY: OK. There we go. So, everybody's where they need to be.
43

44 MR. SHEPHERD: Good to see you, thanks for being here.
45

46 MR. CORBETT: Mr. Chairman?
47

1 MS. ALLEY: Mr. Corbett, right now, Francis MacCall is going to make his presentation, and we just wanted
2 to make sure that you were in the gallery as well.

3
4 MR. CORBETT: Thank you.

5
6 MS. ALLEY: If you could just mute your mic.

7
8 MR. MACCALL: So, can everybody see my screen?

9
10 MS. ALLEY: Yes.

11
12 MR. MACCALL: Alright. Thank you, Mr. Chairman. Francis MacCall, Deputy Zoning Administrator. This
13 is a variance, 2020-00001 Corbett Agricultural Barn. The proposed variance application is to reduce the front
14 setback to allow the construction of an agricultural barn.

15
16 Here's a quick overview of what I'll be going over for the variance application. The property is in the
17 western portion of the County, at 8979 Dick Woods Road, and is zoned RA Rural Areas. In the RA Zoning
18 District, for any structure, the district requires a front setback of 75 feet from the front property line. The red
19 square shows the proposed location of the barn and will be noted throughout the presentation.

20
21 Here, we see the overall topography of the area and the property itself and the proposed barn's relation to the
22 property line. I'll zoom in on this so you can see a little closer.

23
24 Moving on for a little closer look, we see the building site and the proposed barn location. As noted in the
25 staff report, the building sites on the property are the areas where there is no floodplain, critical slopes, or
26 stream buffer. The preferred location for any structure is to be in a building site. Being a farm building,
27 which this application's structure is proposed as, the structure is exempt from the Uniform Statewide
28 Building Code and is not required to be in a building site.

29
30 That said, the area where the proposed barn is located is in a building site, thus not disturbing the stream
31 buffer, but would not meet the required 75-foot setback as required by the ordinance. For context, here is
32 where the 75-foot setback would place the barn.

33
34 Now, to the specifics of the request from the applicant. The applicant is requesting a variance from the Rural
35 Areas setback requirement to reduce the front setback of 75 feet to 36 feet to allow for the construction of the
36 agricultural barn. I'll zoom in a little closer here as well. As noted in the staff report, the applicant applied for
37 a permit to construct a barn for their agricultural operation. After review of the application, staff informed the
38 applicant that to issue the permit for the barn in the proposed location, a variance would be required to be
39 approved by the Board of Zoning Appeals. At this time, that permit has not been issued for the barn.

40
41 Here, we see the parking area for the dwelling that is on the property. The applicant can explain in more
42 detail, but the retaining wall constructed many years ago for the parking area began to fail. The potential to
43 improve the wall and incorporate a barn into the use with their agricultural operation presented itself.
44 Submittal of a building permit brought the issue of the barn's location to light and the request before you
45 today.

46
47 Another picture of the site.

1
2 So now, to the specific regulations for granting a variance. It must be shown that a request for a variance
3 meets both the definition of a variance as provided in Virginia Code and the criteria outlined in the Zoning
4 Ordinance. Both are outlined in the staff report.

5
6 Please note that both the definition and the criteria require that it be shown that the strict application of the
7 ordinance would unreasonably restrict the utilization of the property.

8
9 As noted in the staff report as well, here's a quick overview of staff's analysis. The one criteria that staff is
10 unable to provide a definitive recommendation for is whether the strict application of the 75-foot front
11 setback would unreasonably restrict the utilization of the property or not.

12
13 So, to that, the question for the board that staff has not been able to offer a recommendation for is, "Does the
14 strict application of the 75-foot front setback unreasonably restrict the utilization of the property?" Further
15 deliberation of those facts by the board is needed after the hearing of the applicant's presentation.

16
17 Staff does believe that granting the variance would alleviate a hardship due to physical conditions relating to
18 the property and believes that the five additional criteria for granting a variance have been met.

19
20 Here are two possible motions, both in bold, for action by the board. I'm available for questions, as are other
21 staff members, as needed. I will now yield any additional time here to the Deputy County Attorney for any
22 additional comments, and I can bring this motion back up once we get to that point in the deliberations.

23
24 MR. SHEPHERD: Thank you, Francis. Mr. Herrick, do you wish to add to that?

25
26 MR. HERRICK: So, Mr. Chairman, members of the board. I'm Andy Herrick with the County Attorney's
27 Office. I really don't have much more to add beyond what Mr. MacCall has already presented. As he pointed
28 out, part of the definition of a variance is that the strict application of the ordinance would unreasonably
29 restrict the utilization of property.

30
31 Despite the applicant's good intentions and the other positives of this application, the staff is simply not able
32 to make that finding definitively, and that's why staff can't recommend this variance. But as Mr. MacCall
33 pointed out, that is something that the board can and should consider and discuss: again, whether or not the
34 strict application of the ordinance would unreasonably restrict the utilization of the property. That's all I have
35 to add to Mr. MacCall's presentation.

36
37 MR. SHEPHERD: Good, thank you. With that, I'm going to follow a script here. Let me make sure I'm in
38 the right place. So now, Mr. Corbett, I want to turn it over to you and invite you to make your case.

39
40 MR. CORBETT: OK, thank you. Let me see if we can share our screen to show the presentation.

41
42 MS. ALLEY: Mr. Corbett, if you let me know when you're ready, I'll let you know when we'll begin your
43 time.

44
45 MR. CORBETT: OK, thank you. Can everybody see my screen?

46
47 MS. ALLEY: We can.

1
2 MR. CORBETT: OK.

3
4 MS. ALLEY: Your time begins now.

5
6 MR. CORBETT: OK, thank you. Good afternoon, Mr. Chairman, esteemed members of the Board of Zoning
7 Appeals, and County staff. Last fall, after a three-year search in Western Albemarle County, we fell in love
8 with a 13-acre farm named Whistling Hollow, in Afton, and placed it under contract. Until 2015, it was a
9 successful family farm for over 30 years, raising sheep, geese, and ducks. Sadly, this farm had not been
10 maintained by the most recent owners, who neglected the outbuildings, pastures, stream buffer, and garden
11 bed for the past five years by allowing their horses to damage a delicate ecological refuge area.

12
13 Since we purchased the farm a year ago, in December of 2019, we have actively restored the garden beds,
14 started growing crops for a local CSA market, established a new flock of chicken layers, and are actively
15 partnering with a newly formed nonprofit called Pasture to Produce in Earlysville, who has donated over
16 6,000 pounds of fresh produce to local food pantries this past growing season. I'm a strong believer in giving
17 back to the community.

18
19 As a bit of background, I've been an active volunteer firefighter and paramedic for over 25 years. I'm
20 currently a physician assistant at a local skilled nursing facility in Charlottesville, providing daily healthcare
21 to our most vulnerable County residents, especially in this current pandemic.

22
23 In preparation for buying the farm, I contacted the County Engineer, Frank Pohl, who is with us today, in
24 November of 2019, before we actually closed on the property, to discuss rehabilitating and sensibly
25 expanding the historic 90-year-old farmhouse rather than demolishing it, which was an option that was
26 presented which we never considered, as well as constructing a new barn to be built adjacent to the
27 farmhouse, as we would be building all this within or next to the stream buffer. I stressed to him throughout,
28 and as well throughout this process of my interactions with County staff, is that we want to follow the rules
29 and hope to avoid any surprises in the future.

30
31 He assured me – Mr. Pohl assured me that the farmhouse addition would be grandfathered in as an existing
32 structure and could be extended within the stream buffer, and that the barn would be allowed to be
33 constructed if the land disturbance was under 10,000 square feet and we submitted the appropriate farm use
34 exemption form, which we did submit in July, which then prompted the review and subsequent variance
35 application.

36
37 I asked him if there were any other processes or permits to be performed, which he replied, "I don't think so,
38 but you may need Health Department approval." During many subsequent emails and a phone conversation,
39 the need to explore the property line setbacks was not mentioned.

40
41 We submitted the farm building form in July of 2020 and were surprised to learn that the barn did not meet
42 current setback requirements, and we would need to build in a different location encroaching into the stream
43 buffer.

44
45 The barn, which we are proposing and you can see on the screen, is a classic traditional structure. It was
46 intentionally designed to minimize any new land disturbance and fit the existing topography of site features.
47 This barn will allow us to replace several dilapidated outbuildings; house our farm vehicles, including the

tractor and implements; and provide a space to process our crops. Our intention is to be good stewards of the farm and make conscientious choices to restore the health and productivity of the riparian area, pastures, and garden beds.

We hope to build the current design in the proposed location for the following reasons. The barn is designed to minimize additional cut and fill by taking advantage of a retaining wall recently rebuilt to stabilize the only existing parking area on the site, which has been severely compromised. When the property was purchased, the current parking and access area was held up by a pressure-treated six-by-six retaining wall that was failing due to poor DIY construction, lack of care, and many years of significant water runoff from a neighboring property. As you can see from the picture, this was the only picture I could find, unfortunately, but you can see at the front that the six-by-six beams are perched fairly precariously at a 30-degree angle, and it was very concerning to us when we purchased the property.

Due to increase in the heavy rains, it was clear that we would have no place to park and no means to access our house at grade. Upon removing the failing wood retaining wall, as you can see in this picture, severe storms resulted in further erosion of the parking pad, creating a dangerous situation, and required an immediate installation of the concrete wall and backfilling. As you can see in the picture, the erosion did continue until we backfilled against the concrete wall.

With the increased frequency of extreme rains and flooding, we have seen the stream behind our property – well, behind the house, within the property – jump out of its banks numerous times. We urgently see the need to invest in stream stabilization and revegetation strategies. We fear that adding another structure in the stream buffer will further compromise the function of the stream protection zone to absorb floodwaters as well as put the structure and its uses at risk.

By taking advantage of already-established infrastructure – mainly, the driveway, parking area, and retaining wall – these features do not need to be created or expended into the productive pasture of the sensitive buffer areas. A strict enforcement of the setback requirement could result in either an unsightly and expensive causeway from the existing parking area or the need for a new access to it to be built through the stream buffer, as well as a significant redesign of the barn building.

We are currently in the process of restoring and expanding the old farmhouse, which is located just 9.5 feet, as you can see from this picture, from Dick Woods Road. This makes for quite a noisy time, especially with the construction down the street on another project.

The barn to be located approximately 50 feet north of the farmhouse will be 36 feet from the property line, from the right-of-way. The proximity of the original house to the road makes the farm feel significantly set back from the road in proportion and is 8 feet lower than the road, which you cannot see on this plot, but it's pretty obvious in person. The barn will also be significantly obscured from the road by a new privacy fence that was just built, and it's still out of the riparian buffer, which we are seeking to remediate.

The proposed location minimizes disturbance from construction in the stream protection area. We are working to improve the condition of the stream buffer for water quality, habitat, and flood mitigation purposes, and we don't want to offset our progress by converting a section of the stream protection area to a new building site. We are now being regularly visited by a blue heron in our stream, which we see as a positive sign that we are on the right track for stream restoration.

1 We have met with both Cory Kirtland, who is the local NRCS District Conservationist, and Anne Marie
2 Roberts of the James River Association, utilizing their organization resources to achieve these important
3 stream buffer restoration goals. They have both confirmed the wisdom and the benefits of our proposed barn
4 location. We are actively in the process of establishing the farm. And you can see, this is the plan that we
5 submitted to the James River Association Watershed Restoration Program that shows, in green, the proposed
6 areas where we would be doing stream buffer restoration. And we are being told that this would likely
7 happen this spring with new plantings.

8
9 This program with James River Association, for those of you who don't know, has a goal of planting over
10 74,000 new seedlings throughout the river basin within the next three years, and we would love to be a part
11 of that.

12
13 We have spoken with all of our adjacent resident neighbors through this process, who have all pledged their
14 support of the barn project and offered no objections. Their names, quickly, are John and Marian Easter,
15 Robert and Lynn Johnson, Gilbert and Etta Towlard, and Peter Gadwa.

16
17 We appreciate the time and effort of the County staff to evaluate our variance application as well as the
18 guidance of our local Supervisor, Ann Mallek, who may be attending today's hearing, but I didn't see her
19 show up in the attendance list. We appreciate her site visits and her support of our agricultural endeavors.

20
21 A relevant point stood out from Mr. MacCall's presentation, which states that staff believes that the
22 property's physical conditions create a hardship for adequately locating the barn within a building site and
23 meeting the required setback, and that the five additional criteria for granting the variance had been met. We
24 believe that we have provided sufficient evidence to meet the requirements of County Code 18-34.4 in order
25 to grant a variance. We believe that the strict application of the terms of the ordinance would unreasonably
26 restrict the utilization of the property now and in the future.

27
28 We thank you for working with us to find a mutually beneficial solution, which we all honestly believe is in
29 the best interest of the environment, our County, and our lovely farm. We sincerely believe that the most
30 logical solution is to take advantage of the existing topography and site layout, minimizing any new land
31 disturbance, protecting sensitive areas, and restoring agricultural use of this land, which is so important in the
32 County as we struggle with new development on a daily basis.

33
34 We plan to spend a great deal of time and money repairing and enhancing the current riparian buffer. Putting
35 the barn further down onto the property from the current parking will not only damage the pristine area we
36 are trying to seek to preserve, but also infringe on the delicate stream buffer. These plans reflect the best
37 practices and priorities enjoined by the County. Thank you again for your consideration. We really do
38 appreciate it. Michael and Michelle.

39
40 MR. SHEPHERD: Thank you, Mr. Corbett.

41
42 MR. CORBETT: Thank you, Mr. Chairman.

43
44 MR. SHEPHERD: And Mrs. Corbett as well. Thank you for being here and for that good presentation. Is
45 there anyone from the public who wishes to speak? We want to – we'll prepare to open a public hearing now
46 if someone wants to speak to this issue.

1 MS. ALLEY: Mr. Chairman, I do not see any hands raised for your announcement, and I also did not have
2 anyone sign up prior to the meeting.

3
4 MR. SHEPHERD: OK. So, with that, I'm going to close the public hearing. And now, we can – there's time
5 now for staff and the applicant both to add additional comments if they wish to. We go – turn it back to you,
6 Mr. MacCall, if you wish – you have another five minutes if you wish to clarify anything.

7
8 MR. MACCALL: I do not have any additional clarification in need.

9
10 MR. SHEPHERD: OK, thank you. Mr. Corbett, do you want to get something – anything else to add?

11
12 MR. CORBETT: I did want to thank the County staff and the volunteer board members for your time. I must
13 say, we have been so impressed with the professionalism, the courteousness, friendly nature of everybody
14 that we've interacted with in the County. Having lived in some larger urban areas nearby, we are not used to
15 this. So, my hat's off to everybody that this has been a – could be a very unnerving process that would cause
16 somebody to lose a lot of sleep, but we feel very comfortable working with everybody, and we're very glad
17 of the decisions that we have made. So, thank you.

18
19 MR. SHEPHERD: Thank you. So, with that, I want to turn the discussion to board members. I want to just
20 sort of go down the list and ask for you – any comments, questions, discussion you wish to engage in,
21 starting with Mr. Rinehart.

22
23 MR. RINEHART: Chairman, I visited the site yesterday, and incidentally, to the Corbetts, your daughter was
24 – I think it was your daughter, pardon me, it was pretty far away – was out on the porch, and I was a little
25 nervous of scaring her or having a dog that was not going to invite me in, so I did not announce my visit.

26
27 Mr. Chairman, I have, really, no questions. I support this variance, but I'll wait to hear from my fellow board
28 members.

29
30 MR. SHEPHERD: Thank you. Ms. Joseph?

31
32 MS. JOSEPH: I just have a, well, not just – I always have a lot to say. But I'd like to ask the Corbetts, and
33 also Mr. MacCall, whether or not you checked the side setback on that, because it was making me nervous
34 when I looked at one of the illustrations. Has that been checked?

35
36 MR. MACCALL: Yes. I'm confident that it meets the 6-foot side setback that would be permitted for
37 accessory structures.

38
39 MS. JOSEPH: OK, thank you. I do feel that this is a hardship for the County if you decided to push this back
40 into the WPO buffer. I think it's important for us to, when we have an ordinance like that, to adhere to it. So,
41 to push the barn back into the buffer means that there's a lot more disturbance going on. In terms of the barn
42 building itself, but also access to et cetera, et cetera, you're going to have to have some major pathways to
43 get equipment into that barn.

44
45 I do feel that I would like to add some conditions onto this, if it is approved, that would reflect that the design
46 of the barn should be as you have submitted. That is something that the BZA can ask for. You have
47 submitted these beautiful drawings of the barn, and because it will only be 36 feet away from the property

1 line, I would like us to consider adding that as a condition, that the barn itself be as reflected in Attachment B
2 and that also, the footprint dimensions of this barn be as reflected in Attachment B because when you
3 approve a variance, it runs with the land. And if this thing is ever-- excuse me, your beautiful barn is ever -- if
4 you decide to expand it, then you'd need another variance. OK? So, that was one thing I was thinking about.

5
6 The other thing I was thinking about is that you've shown us a sketch as Attachment A, and I would like us
7 to consider another condition that says that the barn will be located -- and I guess attorneys can help me out
8 here -- in general accord, or whatever, as the location is illustrated on Attachment A. And again, this is just
9 giving us and future generations an idea of what was approved here. OK?

10
11 And the other thing is -- I'll ask Mr. Pohl if he'd like to add to this -- but I was wondering if he feels that
12 there's any sort of mitigation plan that is required within this 100-foot WPO buffer if all they do now is place
13 the barn in this location.

14
15 MR. POHL: For the barn, it appears the barn is outside of the stream buffer, so there would be no, in my
16 opinion, there's no impacts to the barn where proposed and therefore wouldn't trigger any mitigation
17 requirements.

18
19 MS. JOSEPH: OK. And the other question I have for you, Mr. Pohl, is do you know anything about the
20 James River Association and their advocacy for stream buffer renovation?

21
22 MR. POHL: Do you have any specifics?

23
24 MS. JOSEPH: Have you ever heard of them before? I guess I had never heard of them before.

25
26 MR. POHL: I have heard of them.

27
28 MS. JOSEPH: Yeah, and I don't know what work they've done or what their reputation is. That's all I was
29 asking is if you'd ever heard about them.

30
31 MR. POHL: I've heard of them. I've never worked with them.

32
33 MS. JOSEPH: OK, thank you.

34
35 MR. POHL: You're welcome.

36
37 MS. JOSEPH: That, Mr. Chair, is pretty much all I have, or as comments are. But I'd like us to consider
38 those conditions.

39
40 MR. SHEPHERD: Yes. Thank you, Ms. Joseph. Mr. Carrington.

41
42 MR. CARRINGTON: Thank you, Mr. Chairman. I agree with my fellow board members, in general. I agree
43 with Mr. Rinehart that I think this is an application that we can support, or a request we can support. And I
44 also think that Ms. Joseph's conditions are reasonable. I'd be obviously interested in hearing from the
45 applicant, whether that's acceptable or not. But in general, I'm supportive of this request.

1 MR. SHEPHERD: OK, thank you very much. I have some comments also. I will just sort of lower the
2 suspense in the room by saying I'm also supportive of this application, but have some questions having to do
3 with process and just a couple of things.

4
5 One, I just have to say I was surprised when I visited the site on Sunday to find that the full foundation for
6 this building has been constructed. And I just want to say, I would have appreciated that being in the staff
7 report. It changed my thinking about it from looking at the application and wondering if the building was in
8 the right place or not, or if it should move. Just – I was thinking I had some leeway there. And when I saw
9 that the foundation was a poured concrete foundation to the – already installed, to me, it changed my
10 thinking about it, and I just don't think that was a – I think it was not a good service to the board.

11
12 I would also say that it brings up the question that if we were thinking about not approving this, then we'd
13 get into all sorts of issues having to do with – having gotten some assurance from County officials that
14 something was OK when it wasn't. We would trigger that remedial state code provision that we grappled
15 with about a year ago. And I just want to say, it would have been helpful to me to have that in the staff
16 report. I think it should have been.

17
18 And along that line, I want to just make another thing clear. There are three different ordinances that are in
19 play here: the Water Protection Ordinance, the Building Code, and the Zoning Ordinance. Mr. Pohl, you are
20 not the zoning person. You are administering the Water Protection Ordinance, and I don't see where you
21 have – I'm not calling you out on not warning them about zoning regulations, about setbacks and stuff, so
22 that's not – I'm very interested – I'm glad you are attending the hearing because I wanted maybe some help
23 and guidance on understanding the buffer. But that's what my request was about for that. Just want to say
24 that as well.

25
26 So, I also have a question regarding the two sort of threshold criteria – one being whether granting the
27 variance would leave an unreasonable restriction, and the other has to do with does the land pose a hardship.
28 And I view those two things – there's an "or" between them. And Mr. MacCall, I want to understand – I
29 want to clarify that and ask why – I mean, when I look at that, I see that while the request may or may not be
30 – alleviate an unreasonable restriction, which I kind of think it does. But I think we could – couldn't we just
31 – because there was an "or" between those two paragraphs, just set that aside, and if you are finding that this
32 does alleviate a hardship, I wonder why there's not a recommendation to approve this.

33
34 MR. HERRICK: Mr. Chair, I realize that you were directing that question to Mr. MacCall, but if I might
35 attempt to answer that question?

36
37 MR. SHEPHERD: Fair enough.

38
39 MR. HERRICK: In 15.2-2309, you're correct – there is an "or." But in order for the variance to be adopted,
40 the definition section, 15.2-2201, contains an "and." And I realize we're now getting into the legal minutiae
41 here, but the definition of "variance" does include an "and," and it does require that the strict application of
42 the ordinance would unreasonably restrict utilization of the property.

43
44 As we discussed in the refresher training session last month, there's no way around the "unreasonable
45 restriction" requirement because it's an essential part of the definition.

46
47 MR. SHEPHERD: OK, thank you. So, when we're making our final determination – yes, Mr. Bowling?

1
2 MR. BOWLING: And I want to point out that the statute was amended fairly recently, but has not yet been
3 interpreted by the Virginia Supreme Court. But I think the staff laid out its dilemma pretty well, but I think
4 it's within the board's province to make a finding not only that there's a hardship here caused by the stream
5 buffer requirements, but that strict application of a 75-foot front setback would unreasonably restrict the
6 utilization of the property. Both findings are necessary in this particular case.

7
8 MR. SHEPHERD: OK, thank you.

9
10 MR. BOWLING: I think that, really, the board's role is different than the staff's role and important
11 prospectus because you're a quasi-judicial body.

12
13 MR. SHEPHERD: Thank you. Mr. Robb?

14
15 MR. ROBB: A little introduction here of myself to the applicant, and that relates to the fact that I lived in the
16 Afton area from 1971, so I'm very familiar with the property and went by it many, many times during my
17 life. And I really admire what you're trying to do. I think that it's very reassuring to know that young folks
18 want to make a difference here. And I also realize you have your hands full with that project.

19
20 MR. CORBETT: Yes, thank you.

21
22 MR. ROBB: Now, having said all that good stuff, there is a metal building adjacent to your property. Is that
23 correct?

24
25 MR. CORBETT: Correct. That's part of the property, yes.

26
27 MR. ROBB: That metal building that is shaped as a barn, as a shed.

28
29 MR. CORBETT: Yes, sir.

30
31 MR. ROBB: Is that part of the property?

32
33 MR. CORBETT: Yes.

34
35 MR. ROBB: And how far is that from – how long – has that been there quite a while? I don't remember,
36 frankly, having seen that before. It looks like a relatively new metal building.

37
38 MR. CORBETT: Based upon pictures we have located, it's probably been there 15 to 20 years is my guess.
39 Looking at some of the things that are failing, the roof is leaking at this point, so it was put in by not the
40 people we bought it from, but the owners before that.

41
42 MR. ROBB: OK, well, that building is – doesn't – is it 75 feet back from the road?

43
44 MR. CORBETT: It's my understanding that it is. Yes, sir.

45
46 MR. ROBB: It is? And as I look at this topo map here, you have two parcels, right?

1 MR. CORBETT: Yes, sir.
2
3 MR. ROBB: And how much frontage do you have on the road?
4
5 MR. CORBETT: We've actually never had that measured. I'm guessing about a quarter of a mile, but don't
6 quote me on that.
7
8 MR. ROBB: So then, it's possible that you could put a building elsewhere on that property. Or somebody
9 could. Is it divisible?
10
11 MRS. CORBETT: The problem – the critical slopes.
12
13 MR. CORBETT: Between the critical slopes and the stream buffer, it was determined by County staff that
14 there was very, very few building sites on this property. Anything with road frontage, you're looking at with
15 the barn. Anything further south is not a building site.
16
17 MR. ROBB: Is it divisible? That's my question. With that many feet of frontage, is it a divisible piece of
18 property.
19
20 MR. MACCALL: Mr. Robb, it is not. The two parcels no longer can be subdivided. They have to stay the
21 size that they are, or there could be boundary line adjustments, but there are no new lots that can be created.
22
23 MR. ROBB: I see. But there's other building sites, considering you have two parcels. Are there building sites
24 if, in other words, as I understand it, to grant a variance like this, you're basically – it says there will be no
25 other properties in that vicinity that would require a variance. Is that right?
26
27 MR. MACCALL: Let's see the way that that is worded.
28
29 MR. SVOBODA: Bart Svoboda, Zoning Administrator. Francis, correct me if I'm wrong, but if we were to
30 determine the building sites under the current definition, there isn't one that would meet setback on that
31 particular parcel. Is that correct?
32
33 MR. MACCALL: On the subject parcel or the adjacent parcel?
34
35 MR. SVOBODA: Subject parcel.
36
37 MR. MACCALL: I don't believe so. It's very tight. It's hard to tell on the backside. Like I say in the report,
38 there's a description of the two. We did not measure both of them, so it would be – you'd have to cross that
39 stream to get to the other area that is – and do that stream crossing. So, whether it then meets adequately for a
40 dwelling or some other structure, that was not evaluated during this. But it is pretty tight, compared just with
41 some rough estimates that our GIS tools allow.
42
43 MR. SVOBODA: I don't know, Mr. Robb, if that addresses your question about getting into the buffers and
44 near the stream that you would have to cross the stream to get into any other areas.
45

1 MR. ROBB: With two parcels and that much frontage, however, I think if I recall correctly, what you're
2 saying is on that particular parcel and all the parcels in that general vicinity, there is no other parcels that
3 would require a variance – that could be affected by a variance. Right?
4
5 MR. MACCALL: I think the question you're asking is criteria to – that such need for a variance would not
6 be shared generally by other properties. Is that the question?
7
8 MR. ROBB: Well, so you're saying we can't – they can't subdivide this property.
9
10 MR. MACCALL: That's right.
11
12 MR. ROBB: Now, then – but there's other areas on the property where, if a variance is granted, he could ask
13 for a variance in other places, other spots on this property. Right? I'm sorry to say "he." I say, "they could."
14
15 MR. MACCALL: I believe that they would have the opportunity to ask for another variance, but how likely
16 that would be granted with whatever might be granted here, or with this application, or with any of the
17 conditions that might be placed on the variance.
18
19 MR. SVOBODA: If there's concern about the variance traveling, let's say to a different structure, you could
20 condition the variance to be specific to this structure.
21
22 MR. MACCALL: And I believe that's what Ms. Joseph was trying to get to with the addition of the
23 conditions.
24
25 MR. ROBB: Well, that's correct, but there's two parcels. We're only dealing with one parcel here.
26
27 MR. SVOBODA: Yes, the other parcel is not subject to the variance.
28
29 MR. ROBB: Correct. Therefore, could there be a variance in the future related to that supposed – you can't
30 see into the future, of course. I wish I could. Is it possible that the Corbetts would sell one of those parcels,
31 and there could be another request for a variance? Is that correct?
32
33 MR. SVOBODA: Yes.
34
35 MR. ROBB: Or they could ask for another variance. But the fact that we've set precedence by providing a
36 variance here –
37
38 MR. SVOBODA: Each parcel would be reviewed on its own merits, so we would have to look at that parcel
39 specifically, see if any other regulation would be applicable there, like if there is a single-family house on
40 that parcel already, things like that. And so, we would have to look at each one specifically. A decision such
41 as this doesn't necessarily present itself as precedence because each one of these is an individual decision
42 based on the criteria and the circumstances of each individual parcel.
43
44 MR. ROBB: Correct.
45
46 MR. SVOBODA: So, there's nothing that would bind a decision or force an approval of a variance on an
47 adjacent piece, or any other piece within the proximity or zoned the same.

1
2 MR. ROBB: That's correct. How far with this – with the new – with the variance that we're discussing, the –
3 I'm going to say the south end of that barn – how far would it be from the buffer?
4

5 MR. MACCALL: It's a guesstimate, but it could be anywhere between 5 to 10 feet, as far as the backside of
6 that. Again, it's a guesstimate, with the tools that we have at our disposal.
7

8 MR. ROBB: And then, one other question, just to satisfy my curiosity. The idea that it would unreasonably
9 restrict the utilization of the property – could I ask Mr. and Mrs. Corbett to explain to me how this variance
10 would make a difference, or how not granting it would make any difference related to the reasonableness of
11 the property?
12

13 MR. CORBETT: We have a vision of a productive family farm, as I outlined in my presentation, that we
14 have been searching for for many, many years. I see that the – having this barn on the property greatly
15 expands our ability to do things such as to transition from a backyard gardener who might be able to provide
16 greens for my family's meals to having the capability to provide food for the Pasture to Produce project.
17 Working with produce, it's important to have facilities to be able to process and to clean the produce as it
18 comes out of the field. We don't have the facilities to do that, currently. I feel that it's an important piece,
19 and this is the only spot that we have reasonably determined that we are able to build this sort of facility.
20

21 And that is why we reached out to County staff, even before we closed on the property, to ascertain that that
22 was possible, that we would be able to move forward with what we had envisioned for this property. As we
23 mentioned, it was a three-year search to find the right property that met our requirements –
24

25 MRS. CORBETT: In Albemarle County.
26

27 MR. CORBETT: Yes, specifically in Albemarle County. We very specifically wanted to stay in Albemarle
28 County. We have two young children who – well, Mr. Rinehart, I think, actually saw sitting on the porch
29 whittling a piece of wood that day when you stopped by, yesterday. So, we feel very strongly about the
30 Albemarle County schools, and we wanted to stay within the County. So, we're very excited about the
31 possibility of moving forward with this, and we feel that if we're unable to have this barn built, it will
32 definitely change the trajectory of what we have envisioned for this property.
33

34 MR. ROBB: So, you're saying if you don't get the variance, you wouldn't be able to continue with the
35 ownership of the property and the goals and aspirations that you have. It's that critical.
36

37 MR. CORBETT: Yes, sir. Correct.
38

39 MR. ROBB: What's the plan for that other building? The metal building that's further down the way.
40

41 MR. CORBETT: That will be for animals. We plan to introduce other animals such as sheep, possibly cattle,
42 in the future. We were told in our first year of farming, "Don't bite off more than you can chew," so we
43 started with chickens. We hope to expand reasonably and that this red barn – this red structure, the metal
44 structure, will help support keeping those animals.
45

46 MR. ROBB: OK. Well, I don't have any further questions, Mr. Chairman.
47

1 MR. SHEPHERD: Thank you. So, Mr. Bowling, I have a question. I want to – we have two steps to finish
2 this up. One is, we should make clear, positive findings to support our decision, which means positive
3 findings on both the question of the reasonable question and the hardship question, and also the five criteria
4 that follow. I'm wondering if we can – if I could – I gather we should vote on that, and my question would be
5 can we take that as one – just one item and combine them into one, or should we go through each one
6 separately?

7
8 MR. RINEHART: Mr. Chairman, before we go there, I just have a couple of questions. Is that appropriate?

9
10 MR. SHEPHERD: Absolutely.

11
12 MR. RINEHART: Ms. Joseph, when your testimony just a minute ago – I just wanted to you to know that
13 going out there; their building is very set in concrete, literally. That was not just a retaining wall. The
14 footings for the building that's designed, unless they should have overhangs, or whatever – there isn't a
15 possibility of addition to that building is my way of thinking.

16
17 The question to the Corbetts is, was that foundation put in by a surveyor so that you know for a fact,
18 inclusive of overhangs, that you are comfortable with the requested footage away from the footage distance
19 that is being asked for?

20
21 MR. CORBETT: Yes, we are. And we have no intention of expanding it, and we agree to the terms,
22 conditions that Ms. Joseph has set forth for keeping the building within this specific site and abiding by the
23 plans that were submitted that this will be the building that will be built as proposed.

24
25 MR. RINEHART: Thank you very much. Thank you, Mr. Chairman.

26
27 MR. SHEPHERD: Thank you. I'll also say, I have drafted some – two conditions that I think might satisfy
28 everyone's concerns here. We could talk about conditions now, or – I'd like to hold that in advance and first,
29 just carry the discussion through to making findings on the criteria.

30
31 MS. JOSEPH: John, I just wanted to say that the intent of the Rural Areas in the Albemarle County
32 Ordinance is to promote agriculture. It's not, "promote subdivisions." The last time I read it may have
33 changed. But the last time I read it, it was very clear as to promote agricultural activities. Agriculture has
34 changed a lot in the past five, ten years. We used to think of smaller lots as not being something that could be
35 sustainable agriculturally, but we found that people are more concerned about where their food is coming
36 from. They want to know who it is that grew it. They want to know where it was that it was grown. So, I
37 really do feel that this helps support exactly what the intent of the Albemarle County Zoning Ordinance says
38 as it refers to Rural Areas. That's all I wanted to say. Thank you.

39
40 MR. SHEPHERD: Thank you. I would actually say I agree with that. I haven't been focusing on – it's not,
41 perhaps, within the absolute narrow scope of the review of a variance, but my sense from my visit of the site,
42 reading the report, listening to the Corbetts speak today – all that adds to an appreciation for the efforts that
43 have gone into the planning of this project and their commitment to their project. So, I say that as well.

44
45 Other comments? Or we can sort of bring this down to the nitty gritty of the approval process.

1 MR. HERRICK: Mr. MacCall, did you have a proposed motion or motions that you might be able to share
2 on the screen?

3
4 MR. MACCALL: Just a moment. There we go. That's what was originally proposed.

5
6 MR. SHEPHERD: I would like to offer a slight variation on those two conditions. I'll just read them and see
7 what you all think about this.

8
9 Condition Number One: "The proposed barn shall conform with the attached plan, rendered in a black font"
10 – anyone who Xeroxes that thing, it's going to be invisible. So, let me just start over. "A proposed barn shall
11 conform with the attached plan, rendered in a black font, revised 10-2-2020, showing four elevations,
12 basement floor plan, first floor plan, and second floor plan." That would just be confining the condition just
13 to exactly to the building, not speak of the activities within it.

14
15 My second –

16
17 MR. BOWLING: John?

18
19 MR. SHEPHERD: Yes?

20
21 MR. BOWLING: You still haven't narrowed it down because you haven't said where it is. You need to refer
22 to – I believe it's either Attachment D or Attachment A. Which one are you referring to? Maybe Marcia can
23 help you.

24
25 MS. JOSEPH: John?

26
27 MR. SHEPHERD: Yes?

28
29 MS. JOSEPH: I don't really have a problem so much with One and Two. What I was suggesting was we add
30 Three that says, "The design of the barn should reflect the elevation and footprint dimensions included in
31 Attachment B." And then, I thought Condition Four would be, "Barn to be located in general accord with the
32 location illustrated on Attachment A."

33
34 MR. MACCALL: I took the liberty earlier just to try to do something, but that's just me. At least, it's not for
35 the –

36
37 MS. JOSEPH: Yeah, I just want something there with the dimensions. I do realize what Mr. Rinehart was
38 saying, that the foundation is already there. But I just think everything should be on the four corners of the
39 page so that when somebody goes back and takes a look at this, they know exactly what's supposed to be
40 done.

41
42 So, we have reference materials that were given to us as attachments, and I'd like to reference the
43 attachments so that people know what happened during this meeting and will know what's been approved so
44 that everyone walks away and understands what we're doing here. That was my thought on this.

45
46 And I do like, "Proposed barn may not be used as a dwelling unit." Thank you so much, Francis.

1 MR. SHEPHERD: Could I add to that? I would like to add, "The proposed barn shall not be used as a
2 dwelling unit or a homestay," which I think covers all of the things having to do with B&Bs, Airbnbs, or
3 other uses. It just clarifies that.

4
5 MR. BOWLING: Andy, is that adding new words? I mean, if it's a dwelling unit, it's a homestay. Correct?

6
7 MR. HERRICK: Not necessarily. It would need to go through the process of getting a clearance for the
8 homestay. But as was pointed out earlier, the board can impose additional conditions regarding the location,
9 character, or other features of the proposed structure or use.

10
11 MR. BOWLING: OK, thank you.

12
13 MS. JOSEPH: Francis, would you – in Two, would you reference the elevation? "The design of the barn
14 should reflect the elevation and the footprint dimensions." OK? That were on those drawings.

15
16 MR. MACCALL: Say that one more time? "The design of the barn" –

17
18 MS. JOSEPH: "Of the barn should reflect the elevation and footprint dimensions." Footprint dimensions.
19 And, "The proposed barn location must be in general accord, as shown" – I'll ask the lawyers. Is "general
20 accord" an okay term for this?

21
22 MR. HERRICK: "General accord" is fine with me. I would suggest, though, that the first part of Condition
23 Two should be stronger than a "should." It probably should be either "must" or "will."

24
25 MS. JOSEPH: OK. I'm good.

26
27 MR. RINEHART: Marcia, if you're good with that, I'll make the motion, or I'll second your motion
28 whichever you would like.

29
30 MR. BOWLING: Andy, at the same time, I feel like it's important that the board make findings in this case,
31 for the record, to support its decision, to support the motion. Do you agree?

32
33 MR. HERRICK: I think that the motion that's shown on the screen is sufficient. I think that granting the
34 variance implies that the board has made the necessary findings, but it wouldn't hurt if the board wanted to
35 make a motion to move forward with the variance.

36
37 MR. BOWLING: Because I think the staff's right, particularly that staff could not definitively state that the
38 strict application of the 75-foot front setback would unreasonably restrict the utilization of the property. That
39 is that there's a residence there, and they can use it as a residence. But I think the board has the discretion, for
40 the reasons that the board members have annunciated here today, to find that strict application of the 75-foot
41 front setback would unreasonably restrict the utilization of the property for the uses which, surely, the
42 Corbetts and board members themselves have verbalized today.

43
44 MR. HERRICK: Well, the board could make a finding that the variance application met the definition of the
45 variance in the Virginia Code and met all the requirements for a variance in the Virginia Code. That might be
46 another way of the board making those findings.

1 MR. BOWLING: I agree with what you've just said.
2
3 MS. JOSEPH: OK, could you repeat that?
4
5 MR. SHEPHERD: [Inaudible] remember that and make the motion would be good.
6
7 MS. JOSEPH: Can you repeat that – what you just said, Mr. Herrick, please?
8
9 MR. HERRICK: Yes, the board could, as part of its motion, make a finding that the variance application met
10 the definition of a variance in the Virginia Code and met all the requirements for a variance in the Virginia
11 Code.
12
13 MS. JOSEPH: So, "The board finds that the variance application meets the definition in the Virginia Code
14 and met all requirements in the Virginia Code." Is that what –
15
16 MR. HERRICK: "For a variance" in both cases. And it could be phrased in such a way: "I move that the
17 board find that the variance application meets the definition of a variance in the Virginia Code and all the
18 requirements for a variance in the Virginia Code, and to grant variance application _____," and then go
19 with what's shown on the screen.
20
21 MR. BOWLING: Is it possible for somebody to write that in so the board members can read it?
22
23 MS. JOSEPH: How are you doing up there, Francis?
24
25 MR. MACCALL: If you can bear with me and my – if somebody could state it, I'll type it out.
26
27 MS. JOSEPH: "I move that the board finds that the variance meets" –
28
29 MR. MACCALL: Hold on. "Finds...that the variance..."
30
31 MS. JOSEPH: "Meets."
32
33 MR. MACCALL: "Meets."
34
35 MS. JOSEPH: "The definition."
36
37 MR. MACCALL: Bear with my spelling. I'm not a great typer. I'll fix that in just a second. "Meets the
38 definition..."
39
40 MS. JOSEPH: "Of a variance...in the Virginia Code...and meets all the requirements in the Virginia Code."
41 Does that sound right to you, Andy and Jim?
42
43 MR. RINEHART: I'm happy if you're happy.
44
45 MR. HERRICK: Just a quick correction. "I move that the board find that the variance application meets the
46 definition."
47

1 MS. JOSEPH: OK.
2
3 MR. HERRICK: "And that the variance meets all the requirements for a variance in the Virginia Code."
4
5 MS. JOSEPH: "For a variance." You talk faster than I write.
6
7 MR. HERRICK: And then, at the end of "Virginia Code," it would be "and that the board grant variance
8 application _____," and go from there.
9
10 MS. JOSEPH: Are you okay with that, Mr. Shepherd?
11
12 MR. SHEPHERD: Yes. I have a question about – well, let's make sure we're settled at that point, and I want
13 to go to number – the conditions first, in a minute. Is everyone satisfied with that motion, as it's written
14 there? Just as it's written. I'm not asking to vote on it right now. I am.
15
16 MR. RINEHART: Can I call for the question?
17
18 MR. SHEPHERD: Well, I have another – yes, but I have a question myself on Number One, on the
19 conditions. Do we want to say that the proposed barn is limited to the activities described by the applicant
20 that support the farm? It's almost like we can – they wouldn't be able to do some other agricultural sort of
21 thing in the barn if you strictly followed that condition. I'm not sure we want to condition the activities
22 within the building. I'm thinking of this more as being limiting the building. I don't know what the Corbetts
23 might have to say about that also, but I don't see the –
24
25 MR. CORBETT: I agree with you, Mr. Chairman. I think that's a good point, and it doesn't follow the
26 purveyance of this hearing to –
27
28 MRS. CORBETT: Restricts –
29
30 MR. CORBETT: Impose those limits –
31
32 MRS. CORBETT: The activities.
33
34 MR. CORBETT: Of activities. Like if my wife wanted to put an art studio and paint the beautiful mountains
35 out the window, that she would be able to do something of that nature.
36
37 MR. SHEPHERD: I wouldn't want to try to limit those sorts of activities in there. I mean, it's – other
38 members have an idea about that, or comments?
39
40 MR. CARRINGTON: Yeah, I agree that One and Three seem redundant, and I think Three is probably the
41 one that seems more applicable and sensitive to what I would consider us trying to limit. And so, I would be
42 in favor of deleting One in its entirety.
43
44 MR. SHEPHERD: I agree with that.
45
46 MS. JOSEPH: Deleting One is okay with me.
47

1 MR. RINEHART: It is okay with me.
2
3 MR. SHEPHERD: Mr. Robb?
4
5 MR. ROBB: Same.
6
7 MR. SHEPHERD: OK. And my final question would just be to Mr. and Mrs. Corbett. Is there – do you have
8 any questions, reservations, worries, comments on the conditions as we have set them out here?
9
10 MR. CORBETT: Mr. Chairman, I agree with the conditions that are being proposed.
11
12 MR. SHEPHERD: Alright, thank you.
13
14 MR. CORBETT: Thank you.
15
16 MR. SHEPHERD: Is there a motion?
17
18 MR. RINEHART: Marcia, are you going to make the motion? Or I'll make it, either way.
19
20 MS. JOSEPH: I move that the board finds the variance application meets the definition of a variance in the
21 Virginia Code, and that the variance meets all of the requirements in the Virginia Code, and that the board
22 grant variance application VA2020-00001 Corbett Agricultural Barn to allow the proposed barn to be located
23 36 feet from the right-of-way of Dick Woods Road, a variance of 39 feet, with the following conditions: (1)
24 The design of the proposed barn must reflect the elevation and the footprint dimensions, and the proposed
25 barn location must be in general accord as shown in Attachments A and B; (2) The proposed barn may not be
26 used as a dwelling unit or a homestay.
27
28 MR. SHEPHERD: Great. Is there a second?
29
30 MR. RINEHART: Second.
31
32 MR. SHEPHERD: Ms. Alley, will you call the roll, please?
33
34 MS. ALLEY: Mr. Rinehart?
35
36 MR. RINEHART: Aye.
37
38 MS. ALLEY: Ms. Joseph?
39
40 MS. JOSEPH: Aye.
41
42 MS. ALLEY: Mr. Robb? Mr. Robb, you're muted.
43
44 MR. ROBB: Aye.
45
46 MS. ALLEY: Mr. Carrington?
47

1 MR. CARRINGTON: Aye.
2
3 MS. ALLEY: And Mr. Shepherd?
4
5 MR. SHEPHERD: Aye. Good luck, Mr. and Mrs. Corbett.
6
7 MR. CORBETT: Thank you so much. You just made our year.
8
9 MR. SHEPHERD: Best wishes. Thank you for what you're doing, and good luck with it. And – OK, thank
10 you.
11
12 MRS. CORBETT: Thank you.
13
14 MS. JOSEPH: Mr. Shepherd, could we do a five-minute break?
15
16 MR. SHEPHERD: No, we have to keep working. I'm sorry. I think that would be a good idea to take a break.
17 What time is it now? We can set a definite time to come back.
18
19 MS. ALLEY: It's 3:20 right now.
20
21 MR. SHEPHERD: OK. So, 3:25? Is that good for everybody?
22
23 MS. ALLEY: Yes.
24
25 MR. SHEPHERD: OK. Thank you. So, we'll see you back in five minutes?
26
27 [There was a recess.]
28
29 **B. AP2020-00003 North Pointe PDMC Development**
30 MS. ALLEY: Mr. Chairman, if I may, it's 3:25. If I could go ahead and see – would it be alright with you if I
31 ask about other folks who want to sign up for the public hearing?
32
33 MR. SHEPHERD: Yes, I would appreciate that.
34
35 MS. ALLEY: So, hello, everyone. We'll be reconvening in just a moment, and we will be going into our next
36 public hearing, which will be the appeal 2020-003 North Pointe and Stewart Wright. At this time, if you have
37 not already signed up to speak for this public hearing and would like to do so, please signify by raising your
38 hand in Zoom. If you're calling in by phone, you can do that with *9 and signify, and I can add you to the
39 list.
40
41 It appears that we have everyone we need or everyone who's interested at this point. We'll offer another
42 opportunity later on.
43
44 MR. SHEPHERD: OK. So, are we all here? Let's see, is Mr. Bowling back? And Mr. Herrick is here. I think
45 everyone is here. I think we can – Mr. Bowling, Mr. Pohl, are you here?
46
47 MS. ALLEY: Frank Pohl is present.

1
2 MR. SHEPHERD: OK, thank you. I think everyone's here but Mr. Bowling.

3
4 MR. BOWLING: I'm here. I'm just eating lunch.

5
6 MR. SHEPHERD: Oh, OK. Have at it. So, with that, let's come back to order, and I want to introduce
7 Project Number Appeal 2020-00003 North Pointe Planned Development Mixed Commercial Development.
8 The appellant is Stewart Wright. Bart Svoboda is the staff for this. And I'm ready to – Bart, if you're ready
9 with your staff report, you have 15 minutes total. You can share your time with Mr. Herrick, who can be
10 followed by Mr. Wright's presentation. Same ground rules.

11
12 MR. SVOBODA: Yes, sir.

13
14 MS. JOSEPH: Mr. Shepherd, before –

15
16 MR. SHEPHERD: Yes?

17
18 MS. JOSEPH: Before Mr. Svoboda begins, I just wanted to make everyone aware that many years ago, I
19 worked with Great Eastern Management as a consultant on one project for them. And I just wanted to make
20 sure that I noted that this will not affect my comments or any decision that I make on this appeal, AP2020-
21 00003. Thank you.

22
23 MR. SHEPHERD: Thank you.

24
25 MR. SVOBODA: Alright, we're going to try and share our screen. Are we sharing?

26
27 MS. ALLEY: Yes

28
29 MR. SVOBODA: OK.

30
31 MS. ALLEY: Your time will begin now.

32
33 MR. SVOBODA: As stated, we're here for Appeal 2020-3. This is for the North Pointe property. This
34 hearing is in regard to construction entrances along Pritchett Lane, specifically Condition #9 of Special Use
35 Permit of 2002-72.

36
37 This is a layout of the property. You can see what's in purple is the property that is the subject of this
38 particular appeal. This is regarding the construction entrances, again which is customarily and incidentally
39 use to and usual use to all development and all building.

40
41 Special Use Permit Condition 9 is now on your screen, talks about extensions and specifically 9A,
42 "Extensions to Pritchett Lane." These are the minimums of what the developer must provide. There is no
43 prohibition listed in there for the construction entrances. Again, construction in and of itself within the
44 Zoning Ordinance is not a listed use. It's subordinate to the construction of a house, a bank, any other
45 development.

1 This is an example. In your staff report it is Example Number 3 that talks about Construction Traffic
2 Management Plan. This is a rezoning that took place in 2013. It's 2013-012, and it specifically addresses
3 what to do with construction traffic. We do have a few of these. This particular one is out near Glenmore.
4 But when the Board (Board of Supervisors) accepts a proffer regarding construction traffic and management,
5 it is clear within the language about what that means. This is that example within Number 3, included in your
6 staff report. The other examples within your staff report talk about when the Board prohibits uses, it's very
7 specific.

8
9 MS. JOSEPH: Bart, this is a condition of that rezoning in – where is this, Glenmore?

10
11 MR. SVOBODA: Yes, in 2013. Yeah. So, this is, again, it's not a condition. This is a proffer, offered by the
12 developer, and the Board accepted this condition. The special use permit, the Board can place conditions on.
13 So, they're a little bit different. The example would be in the language, that it's clear when they want to
14 prohibit something. It's clear on how they want to handle that.

15
16 MS. JOSEPH: OK.

17
18 MR. SVOBODA: And so, in summary, on September 21 of 2020, I, the Zoning Administrator, issued an
19 official determination of no violation found. We inspected the property. We looked at the proffers and
20 conditions. There was no prohibition to prohibit construction access on Pritchett Lane, and so, that
21 determination was made. Because the determination was and is correct, the Zoning Administrator asks that
22 the board does uphold and affirm the determination. I am now going to relinquish the remainder of my time
23 to Mr. Herrick.

24
25 MR. HERRICK: Thank you, Mr. Svoboda. Again, I'm Andy Herrick with the County Attorney's Office,
26 here on behalf of the Zoning Administrator. And I'd like to share with the board today five reasons why I
27 think that the Zoning Administrator's determination is correct and should be affirmed.

28
29 As Mr. Svoboda mentioned, the special use permit conditions are a floor, not a ceiling. They require
30 minimum improvements to be made by the applicant, by the developer. I've asked that Mr. Svoboda, at least
31 for a time, leave the conditions up there. You'll see that Condition 9 – this is also, by the way, on page 32 of
32 your materials, and it's on page 4 of Exhibit B -- requires the owner to construct certain minimum
33 improvements. The conditions do not limit the developer's ability to go above and beyond the minimum
34 that's required.

35
36 As we discussed last month, it's important to look at the actual wording, the words on the page of these
37 conditions. And I note that there are no "nots" and no "onlys" on these conditions. If this were a limit on the
38 ability of the developer to make additional improvements, you'd expect to find somewhere in these
39 conditions a "not" saying, "This may not be used for construction," or, "It shall only be used for emergency
40 access."

41
42 As a matter of fact, if you look at these requirements carefully, you'll see that this has the potential to allow
43 for a future expansion to a full public right-of-way. You'll note that it's required that they be reserved within
44 50-foot rights-of-way, and specifically, Condition 9A.1 talks about how it shall be designed and graded to
45 accommodate a minimum Virginia Department of Transportation standard for a public street. So, what this
46 does is requires the developer to design these entrances initially for emergency purposes, but it leaves open
47 the possibility of a future expansion. So, far from limiting this to emergency access only, it requires a

1 construction of these as access points for now, but allows them to be eventually developed into a fuller
2 access.

3
4 The second reason why I think the Zoning Administrator's determination is correct is that the construction of
5 permitted structures is a permitted accessory use. I think that the appellant, in his argument, mistakenly
6 argues that construction of permitted structures is a use unto itself and then makes the argument that since
7 construction isn't specifically listed as a permitted use, it must not be a use permitted.

8
9 But construction of permitted structures is necessarily implied. For example, if someone had a building
10 permit to construct a single-family dwelling in a residential area, the argument that construction is a use unto
11 itself would prohibit that single-family dwelling from being built in a residential area. The argument would
12 be construction is not a permitted use in a residential district; therefore, you can't construct a single-family
13 dwelling. That doesn't make much sense.

14
15 The applicant, in this case, put in a lot of time and effort to have a development approved with all the uses
16 that were spelled out in this application. To then say that it can't construct the structures that were approved
17 in its development doesn't make much sense.

18
19 I'd point out that the special use permit conditions don't explicitly permit a construction access onto Route
20 29, either. So, again, following the appellant's argument, if the special use permit doesn't allow access onto
21 Pritchett Lane, and it doesn't explicitly allow access onto Route 29, either, you effectively block the
22 applicant from constructing a project that was duly approved by the Board of Supervisors.

23
24 The third point I'd make is that one of the appellant's submissions was a letter dated 2006 from Great
25 Eastern Management. And for better or for worse, that's not something that could be used as the basis to
26 prosecute a zoning violation. What the appellants are essentially asking the County to do is to find that there
27 was a violation of the Zoning Ordinance and to prosecute the owner for a violation of the Zoning Ordinance.
28 But when our office goes into court, we need to do so on the basis of a violation of an ordinance rather than a
29 letter that was written by a developer, again, that's 14 years old.

30
31 I think the fourth reason to support the Zoning Administrator's finding in this case is that Pritchett Lane is a
32 VDOT-maintained public road, and unless and until travel on that road is restricted by VDOT – not by the
33 County, but by VDOT – Pritchett Lane is open to the motoring public. VDOT is the one that controls access
34 to and use of the road. Again, the motoring public has the right to use that road in the absence of restrictions
35 by VDOT.

36
37 And the fifth and final point I'd bring up is that the Water Protection Ordinance, in this case, really doesn't
38 dictate the outcome. I noticed that there were a number of questions regarding the applicability of the Water
39 Protection Ordinance, both in this case and in our prior case. But as the Chair noted in the prior case, Water
40 Protection Ordinance enforcement and appeals are really outside of the BZA's scope and jurisdiction. The
41 BZA is here to hear appeals of zoning determinations rather than any sort of Water Protection Ordinance
42 issues.

43
44 So, again, I appreciate the appellant's frustration. I'm sure that the residents of Pritchett Lane don't
45 appreciate the additional construction traffic, and I certainly sympathize with that. But I would say that the
46 unmet expectations there are the result of a fundamental misunderstanding of the special use permit

1 conditions. Again, those are a floor that require the developer to make certain improvements, but not
2 necessarily a restriction or limitation on what those entrances can be used for.

3
4 So, that concludes that remarks. I'm happy to turn it back over to Mr. Svoboda, or to see if any of the board
5 members have any questions for us.

6
7 MR. SHEPHERD: OK, thank you. I think at this point, we open the public hearing. Marsha –

8
9 MR. SVOBODA: You need to hear from the applicant.

10
11 MR. SHEPHERD: Oh.

12
13 MS. ALLEY: We have Mr. Wright available, and I'm also going to be –

14
15 MR. SHEPHERD: I'm totally sorry, Mr. Wright. I'm sorry for that. I get ahead of myself sometimes.

16
17 MS. ALLEY: I'm also going to move Mr. Mitchell into the panelist gallery as a representative for the North
18 Pointe project. So, if you will both give me just a moment to do that.

19
20 MR. SHEPHERD: Alright, thank you.

21
22 MS. ALLEY: Mr. Mitchell should be arriving momentarily. And Mr. Wright, as soon as I can find you on
23 my page, we'll have you unmute your mic.

24
25 It appears that everyone is in attendance in the gallery, Mr. Chairman.

26
27 MR. SHEPHERD: Thank you.

28
29 So, Mr. Wright, when you are ready.

30
31 MR. WRIGHT: Alright, I am ready. Good afternoon, members of the Board of Zoning Appeals. My name is
32 Stewart Wright. I live on Pritchett Lane. I'm here today to appeal the Zoning Administrator's determination
33 that construction access points on Pritchett Lane are compliant with the Zoning Ordinance and Condition 9,
34 specifically 9A, of the Special Use Permit 2002-72.

35
36 Since my first complaints in February, I have been told by staff they couldn't find anything written that
37 specifically prohibits construction access points on Pritchett Lane. When I worked in Zoning for almost 14
38 years, I was taught by the previous Zoning Administrator and the County Attorney that you must always find
39 where proposed use is allowed, not prohibited, because the Zoning Ordinance is an inclusive ordinance. So, I
40 tried to find where it says construction access points on Pritchett Lane are allowed. What do the words on the
41 page say?

42
43 While I completely agree with Zoning that the Condition 9, specifically 9A, does not prohibit a construction
44 access point as worded, it also does not allow it. Condition 9A only addresses the connections to Pritchett
45 Lane that were approved by a ZMA2000 Number 9. Two emergency access easements were the only
46 connections shown on the ZMA application plan. They were reviewed by staff for compliance with the
47 district regulations and later approved by the Planning Commission and Board of Supervisors as part of that

rezoning. The emergency access easements were the only type of connections that could comply with the district regulations spelled out in Section 25A.4.1 regarding vehicular access and, therefore, were the only types of connections approved.

Construction access points along Pritchett Lane were never proposed by the developer. They were not shown as an element of the approved application plan and, therefore, were never reviewed or considered by staff, the Commission, or the Board of Supervisors; no doubt because a construction entrance would not be able to comply with the Section 25A.4.1. Therefore, since Condition 9A only applies to approved connections, a construction entrance does not comply with the conditions of the special use permit.

Before I move onto the second part of my argument, I want to remind the BZA that North Pointe is a planned development. It is not a conventional development. Planned developments go through a much more rigorous review process. Part of that review process is a transportation plan that shows projected automobile and truck traffic that will be generated and provides estimates of traffic to and from the site. The review process also involves community meetings and citizen input. Another large part of the review process is the application plan, which shows proposed lot layouts, streets, commercial centers, and other important elements that must be reviewed.

Points of access and types of access are important elements that must be shown on the application plan when the proposed rezoning is going through the review process so that staff, the Commission, and the Board can make sure everything works without creating harmful impacts to the surrounding areas, such as traffic hazards, noise, traffic congestions, and other dangerous situations.

This also applies to any special use permit required for use in the planned development. The Board of Supervisors must, among other things, consider whether the proposed special use will be of substantial detriment to adjacent parcels; public safety, health, and welfare; and preventing traffic congestions and other hazardous conditions as stated in Section 33.40 of the ordinance. The Board may also impose conditions to limit impacts of the same nature to ensure public safety, health, and welfare.

Now, to the second part. The Zoning Administrator made the written determination that the construction access points are compliant with the Zoning Ordinance. That is not correct. The construction access point he has allowed on Pritchett Lane has actually created a violation of the district regulations – specifically, Section 25A.4.1, “Vehicular Access,” which states, “Pavement widths and strengths of both internal and external roads shall be adequate to accommodate projected traffic generated by the district.”

Construction traffic is part of that projected traffic generated. The only way it couldn’t be is that this regulation stated, “External roads shall be adequate to accommodate projected traffic generated by the district after construction is complete, or post-construction.” If that is really the intent of this section, then the County should consider a zoning text amendment to address that. The Zoning Administrator failed to look at this section of the Zoning Ordinance.

When the Planning Commission and the Board of Supervisors approved the ZMA and the special use permit, the only connections to Pritchett Lane they approved were the two emergency access easements. They did not approve a construction access point. They approved that because the emergency access easements will generate practically zero traffic onto Pritchett Lane. The projected traffic generated by an emergency access easement complies with 25A.4.1 all day long. Staff, the Commission, and the Board never reviewed or even

1 considered approving a construction entrance because it was never proposed during the rezoning by the
2 developer or staff.

3
4 It was not shown on the application plan. If the developer absolutely had to have construction access from
5 Pritchett Lane, shouldn't that have been addressed during the rezoning and shown on the application plan?
6 You even have a letter from the developer encouraging the residents of Pritchett Lane to attend the last
7 public hearing before a vote on the proposed rezoning to support him in advocating for no other connections
8 other than emergency access from North Pointe to Pritchett Lane; the same developer that then came back to
9 Zoning 13 years later to ask if they could use the emergency access for construction entrances. Please
10 remember that.

11
12 So, what is the projected traffic generated by the two emergency access easements shown on the application
13 plan? No more than five vehicle roundtrips per year. More than likely, zero trips per year, since there are four
14 approved commercial entrances to this development. These four entrances were supposed to be where
15 construction traffic enters the property. Two of these entrances have been constructed. The stream crossing
16 has been completed, so now, the developer has full and unfettered access to the property. When the Zoning
17 Administrator decided to allow the construction entrances, he changed the projected traffic generated by the
18 development that was reviewed during the rezoning process.

19
20 So now, the question is, "What is the projected traffic generated by a construction access point to a new
21 planned development?" I don't know what that projected number is, but from what I've observed in my front
22 yard while timing truck trips with my watch, is over 320 roundtrips per day, at its peak. This went on for
23 months and months at that rate, so we are looking at over 1,500 trips per week – over 6,000 per month. And
24 these are not small vehicles, these are dump trucks weighing over 50,000 pounds each, loaded. The oversized
25 tractor trailers hauling in large, heavy equipment weigh even more than that, and they are over 10 feet wide.

26
27 This is what happened when the Zoning Administrator approved construction access points that weren't even
28 discussed during the rezoning. We went from no traffic impact to more huge trucks rolling down our road
29 than we could have ever imagined; thousands of truck trips and counting.

30
31 Please remember that Pritchett Lane is an old minor public road. It does not even meet the minimum width
32 requirement of 20 feet required by the County for a private road. Certain places are only 16 feet wide at the
33 beginning of the road and now, we have vehicles over 10 feet wide and 60 feet long rolling down our road. I
34 have had to pull off the road or back way up to let them pass – not a safe situation at all.

35
36 How did the Zoning Administrator determine that Pritchett Lane was wide enough or strong enough to
37 support this new type of traffic on Pritchett Lane – the biggest and heaviest traffic you can put on the road
38 with absolutely no time limits or duration? This can go on for years and years. I have no idea how he did
39 that. I do know that the Zoning Administrator is not qualified to do that.

40
41 According to my contacts at VDOT, the only way to do this would have been to hire a testing agency or
42 engineering firm to go up there, survey the road, measure pavement width, and do core samples through the
43 road to see what's underneath it to determine the road strength. Pritchett Lane is a very old road, so there are
44 no construction records to support.

45
46 The Zoning Administrator should be able to show some form of documentation that this was done prior to
47 his decision to allow Pritchett Lane to be used for unlimited construction access. Remember that his actions

1 have now completely changed the projected traffic generated by the development. It has changed
2 dramatically. He can't provide any documentation of this because it was never done.

3
4 We know that Pritchett Lane is not strong enough to handle this type of traffic. Pritchett Lane is falling apart
5 because of all the heavy construction traffic it has to endure now. I've sent you photographs of the damage
6 that's occurred, especially right at the construction entrance, where the developer has already had to repair
7 the road.

8
9 I think I have now very clearly shown that the construction entrance is not in compliance with the Zoning
10 Ordinance. The Zoning Administrator actually created a zoning violation by his actions, no doubt about it. I
11 must admit that I was wrong when I said Zoning staff had administratively amended the conditions of the
12 special use permit. They didn't. They allowed a construction access point that was never proposed during the
13 rezoning process and was never shown on the approved application plan, and therefore, was never reviewed
14 or approved by Planning staff, the Commission, or the Board. So, basically, Zoning staff amended the
15 approved application plan of the rezoning without a full staff review or a legislative action by the
16 Commission or the Board.

17
18 The Zoning Administrator also stated in his staff report that there is nothing prohibiting specific accessory
19 uses from being added. Section 21.2 of the ordinance states, "Uses and structures which are customarily
20 accessory and clearly incidental shall be permitted, provided the establishment of the same the accessory use
21 shall not be permitted until construction has commenced on the principal building or the principal use has
22 been established." Well, there appears to be a conflict there because no principal building has been
23 constructed, and the principal use of the property – mixed commercial and residential uses – has not been
24 established on the property yet. It's nothing but dirt out there. I do know that the Zoning Administrator
25 cannot approve an accessory use that creates a violation of district regulations, which is exactly what he has
26 done.

27
28 So, I'll now summarize my argument. The Special Use Permit Condition 9A only addresses the two
29 emergency access easements that were approved by the rezoning and were shown on the approved
30 application plan. No other types of connection to Pritchett Lane were approved by the rezoning, so the
31 construction entrance there is not allowed. Therefore, it cannot possibly be in compliance with the conditions
32 of the special use permit.

33
34 The addition of the unapproved construction entrance approved by the Zoning Administrator changed the
35 projected traffic generated by the district. Again, the only connections to Pritchett Lane that were approved
36 by the legislative approval of the ZMA were the two emergency access easements. Section 25A.4.1 requires
37 that pavement widths and strengths of external streets being used as access to the district shall be adequate to
38 accommodate projected traffic generated by the district.

39
40 The Zoning Administrator's action drastically changed the projected traffic generated by the district. He did
41 not make any attempt to verify that Pritchett Lane is wide enough or strong enough to adequately
42 accommodate the massive amount of heavy equipment traffic he has now permitted. He did not verify
43 compliance with Section 25A.4.1. As a result, Pritchett Lane – the external road used as access to North
44 Pointe now – is failing and deteriorating as a result of the thousands of vehicle trips by heavy equipment. If
45 the construction entrance was not approved by the rezoning and now has resulted in noncompliance with
46 Section 25A.4.1, then it is not in compliance with the Zoning Ordinance.

1 And I now want to close with a question that the BZA and County staff should all ask themselves now: why
2 do we have all these rules, regulations, processes, and procedures in place to prevent this sort of thing from
3 happening, and then turn around and let it happen anyway? What's the point? Ask yourself that. Why bother,
4 if it's so easy to get around the rules and regulations? Why bother trying to protect our neighborhood and our
5 road, and then turn around and hammer them? I base my entire argument on what the words on the page say,
6 not what they don't say, as the Zoning Administrator has done.

7
8 I hereby ask the Board of Appeals to overturn the Zoning Administrator's determination that the construction
9 access points on Pritchett Lane are compliant with the Zoning Ordinance, the Special Use Permit Condition
10 9, specifically 9A. Thank you. I'll be happy to answer any questions the BZA may have for me at this point.

11
12 MR. SHEPHERD: Thank you, Mr. Wright. That's a good presentation. Now, it is time to turn to public
13 hearing. I ask you all to bear with Marsha for a moment to set forth the meeting guidelines for the public
14 hearing. Marsha, are you prepared to do that?

15
16 MS. ALLEY: I am, thank you.

17
18 MR. SHEPHERD: Thank you.

19
20 MS. ALLEY: As a reminder, this meeting is being recorded. If you wish to comment during this public
21 hearing and have not already notified the clerk prior to the meeting, you may do so at this time. If you are
22 participating via the web, use the "Raise Your Hand" icon to notify me that you would like to comment on
23 this particular public hearing item. If you are participating via telephone, please press *9 to notify me that
24 you would like to comment on this particular public hearing item.

25
26 The clerk will introduce each speaker for comment. Timekeeping is conducted through a timer. The timer
27 will commence when you begin speaking. You will be notified when three minutes has ended, and you are
28 requested to bring your comments to a close, as your microphone will be muted after a few seconds.

29
30 In order to give all speakers equal treatment and courtesy, the BZA requests that speakers adhere to the
31 following guidelines. When called to address the BZA, please state your name. For uncommon spellings,
32 please spell your name for the record. Address comments directly to the BZA as a whole. Open public debate
33 is prohibited. You may email written statements and other relevant material to be included in the record at
34 boardofzoningappeals@albemarle.org. If you represent a group or organization, you may identify the group
35 to be recognized. If you exceed your allotted time, you will be asked to end your comments, and the
36 microphone will be muted. If a speaker does not use all allocated time, the unused time may not be shared
37 with another speaker. Speakers are permitted one opportunity to comment during each of the public comment
38 periods per meeting.

39
40 Mr. Chairman, at this time, I don't show any raised hands after that announcement. I'm going to do one more
41 quick look. But I don't see any indication of added speakers.

42
43 So, at this time, our first speaker is Tom Briedisruiz. And Mr. Briedisruiz, if you will unmute your mic, you
44 may begin speaking. When you begin speaking, I will begin timing. You have three minutes.

1 MR. BRIEDISRUIZ: Good afternoon. I have been asked by my wife to submit this statement to the Board of
2 Zoning Appeals. She's a nurse who couldn't attend this Zoom meeting because she's needed as a frontline
3 healthcare person.
4

5 Years ago, when the council approved North Pointe, along with many neighbors, I attended a planning
6 meeting with developers and designers. We broke into groups to discuss what we residents would want in
7 this adjoining new neighborhood. Though I opposed the development due to its high density and proximity to
8 my neighborhood, I was encouraged that they wanted to work with us. Each group – I think there were
9 approximately five groups with about 10 local citizens – unanimously agreed we did not want North Pointe
10 to have any road access onto Pritchett Lane. We were hounded that the developer needed emergency access.
11 We relented, saying, "OK, emergency access only." After the meeting, several of us met outside. We shared
12 our suspicions that we had been duped and eventually, this promise would be broken. We were correct.
13

14 We now have a busy construction entrance, which some weekdays sees a minimum of 50 trucks in an eight-
15 hour period. Our country lane is not a paved road. We are a tar-and-gravel road that, after several decades,
16 resembles a paved road but doesn't have the underlying structure our road needs to support the frequency of
17 large truck traffic that we have seen since the beginning of North Pointe constructions. We have sinking,
18 cracking, and increased frequency of potholes. The width of our road is designed for no more than two large
19 cars to pass. There's no shoulder, and in places, a small strip of grass separates the front – separates the road
20 from the culvert.
21

22 For the 27 years I've lived on Pritchett Lane, it's been known as a scenic and safe road for walkers, bikers,
23 and joggers. This foot traffic has only increased in the past five years, since more young families have moved
24 into our neighborhood. As huge logging trucks and oversized vehicles carrying gigantic cement structures
25 flow up and down our road, we were told this was necessary to join the eastern and western portions of the
26 development. Now, the ravine separating these areas has been bridged. There's a new paved entrance onto
27 the development from Route 29 North. 29 North is a highway built for this type of vehicle and traffic, but
28 still, our lane continues to see heavy truck traffic.
29

30 Our lane was approved for emergency entrance, nothing else. I don't believe it is fair, safe, or legal using it
31 for construction traffic just because no one wrote it couldn't be used for a construction entrance. As a long-
32 time homeowner on Pritchett Lane, taxpayer, and voting citizen of Albemarle County, I feel taken advantage
33 of by the developers of North Pointe. Just as we suspected at the planning meeting many years ago, we were
34 duped. Trust has been broken. The quiet nature of our road is destroyed, and the safety of our pedestrians and
35 neighborhoods is jeopardized.
36

37 It is past time to do the just and sensible thing and move construction traffic to the Route 29 North entrance.
38 Ladies and gentlemen, thank you very much.
39

40 MR. SHEPHERD: Thank you. Marsha, who is the next speaker?
41

42 MS. ALLEY: So, Mr. Chairman, our next speaker is George Dellaganna. I want to ask, while Mr.
43 Dellaganna is getting prepared, can you hear the timer bell?
44

45 MR. BRIEDISRUIZ: I was unable to hear it.
46

47 MS. ALLEY: Could any of our board members hear that?

1
2 MR. SHEPHERD: No.

3
4 MS. ALLEY: Oh, you did not? OK. So, I just want to be clear. Mr. Briedisruiz, you did go over just a couple
5 seconds. I knew you were winding down, so I went ahead and let you finish.

6
7 MR. BRIEDISRUIZ: Thank you.

8
9 MS. ALLEY: I just want to give everybody a reminder of three minutes is the time. What I will do is I'll let
10 you know when three minutes is up and, just as we just did, we'll give you just a couple seconds to go ahead
11 and close your final statement. I hate to interrupt you to indicate that your three minutes is up, but if you
12 can't hear the bell, then I'm going to have to, and I apologize for that interruption on the front end.

13
14 So, Mr. Dellaganna, the timer will begin when you begin speaking.

15
16 MR. DELLAGANNA: I want to thank the board for listening to our concerns here, and I want to particularly
17 thank Mr. Wright for his expertise on the particular issue. My name is George Dellaganna, spelled D-E-L-L-
18 A-G-A-N-N-A. I live on Pritchett Lane, and my wife called in February, when the North Pointe construction
19 company began to work on their access road because it was quite apparent it was going to be a violation of
20 what they had agreed to back when we went to the homeowner's meetings, back 10 or 12 years ago. At that
21 homeowner's meeting, it was more of a sales pitch by North Pointe to try to convince us that they weren't
22 going to impact our neighborhood and that they were going to keep Pritchett Lane as a rural road without a
23 heavy amount of traffic where people walk and ride their bicycles and that sort of thing.

24
25 Obviously, the heavy construction vehicles on the road appear to be a violation of that assurance from the
26 North Pointe. It's just another example of a big company with lots of money and lawyers and those sorts of
27 things, and 10 years ago when they made promises, breaking those promises and then trying to run over the
28 local neighborhoods. We've got no authority and, quite frankly, we wouldn't be having this meeting if it
29 wasn't for Mr. Wright because although we complained about it, we have no idea as to how the process
30 works to be able to get ourselves before the board to hear what our concerns were. So, I want to particularly
31 thank him for having worked us through that process.

32
33 I read through the documents that were prepared by Mr. Svoboda and particularly, his permit conditions,
34 which says that, "Not allow for temporary construction easements as a type of extension to Pritchett Lane.
35 Although the proffers, conditions do speak to various road standards, they do not prohibit the use of
36 construction entrances." OK, so – and he calls the construction entrance an "accessory." OK?

37
38 So, first of all, he talks about it being temporary and then, it's an accessory. Now, I'm not a lawyer and that
39 sort of thing, but I do have a dictionary, and I do have the internet and that sort of thing, so I kind of looked
40 up what those kinds of things mean. "Temporary," to me, I mean, there are lots of things that are temporary –
41 pretty much everything. But how long that temporary is going to go on for here when you're building a huge
42 neighborhood such as North Pointe is hard to see.

43
44 As far as zoning ordinance go, I understand that an accessory is subordinate to a principal use for something.
45 So, the principal use for those access points along Pritchett Lane was to be an emergency access, not a
46 construction area that was being used all the time. So, we're talking about a principal use versus an accessory

1 use, and I think that what we've got now is a principal use being the construction road, not an accessory use
2 for that particular issue.

3

4 Now, I know I don't have a whole lot of time here, but one thing I would like to say, the horse has kind of
5 left the barn. We have a construction, whether we like it or not, going down Pritchett Lane.

6

7 And I hear the buzzer. I will wrap up.

8

9 MR. SHEPHERD: Thank you.

10

11 MR. DELLAGANNA: So, even if the board approves or doesn't stop this, I would like to ask that you
12 specifically deny a second construction road between L6 and L17, north of the church. Thank you very
13 much.

14

15 MR. SHEPHERD: Thank you. Next speaker?

16

17 MS. ALLEY: Mr. Chairman, our next speaker is Dwayne Smith. Mr. Smith, you may unmute your mic, and
18 your timer will begin when you begin to speak.

19

20 MR. SMITH: Yes, my name is Dwayne Smith. I live on Pritchett Lane. I've been here since 1969. When I
21 came here, the road over here was a dirt, gravel road. So, like Mr. Wright says, the road is not feasible for all
22 the heavy trucks and traffic that's coming in for the construction for North Pointe. And it's not wide enough.
23 And you have school buses right now that are coming in, and people are traveling back and forth, and with
24 the heavy equipment and with dump trucks and what have you, people can't get by. You have to stop. And
25 some of the trucks are running very fast. And people that are walking or kids that are out playing are – it's
26 too dangerous to have that kind of construction work on Pritchett Lane.

27

28 And when we went back to the meetings back in the days when they was bringing this up, just like the other
29 parties have said, they told us that only going to be for emergency exit only. Fire trucks, emergency vehicles
30 only. Now, you've got construction coming in, and I don't think it's feasible for this type of road right now.
31 And I just – another thing: who's going to pay for the road if the road starts deteriorating on down the road –
32 next year, or whatever? Cold weather comes in. Is the construction company going to do it from there all the
33 way through Pritchett to Proffit Road? Probably not. Just probably end up fronting [inaudible].

34

35 And another thing – then, I thought it was supposed to be a buffer on Pritchett Lane from North Pointe. And
36 as you go down Pritchett Lane, all the trees are cut off, cut down there. I thought there was supposed to be
37 some kind of buffer between Pritchett Lane and North Pointe, but it's wide open.

38

39 So, my point is, I hope you all vote on – and counsel are – have them use the main road coming off 29, or
40 down Leake's Road coming off Proffit Road, because it's unsafe for the whole neighborhood. And I
41 appreciate you taking concern of this, and Mr. Wright, thank you very much for all your help of putting this
42 in. And thank you all, board members. Thank you.

43

44 MR. SHEPHERD: Thank you, Mr. Smith.

45

46 MS. ALLEY: Mr. Chairman, our next speaker is Gladys Bryant.

47

1 MR. SHEPHERD: Thank you.

2

3 MS. ALLEY: Ms. Bryant, your time will begin when you begin speaking.

4

5 MS. BRYANT: Thank you. Yes, my name's Gladys Bryant, and I have been a Pritchett Lane resident for
6 over 50 years now, 53 years actually. And so, I've seen our neighborhood change some over the years, but
7 even so, it still remains a dead-end road, and it's rather quite a quiet neighborhood, still.

8

9 So, several years ago, when plans were beginning, people started talking about the North Pointe
10 development. We, the whole community here, we were concerned about the possibility of them having
11 access from the development area onto Pritchett Lane. And so, we raised our concerns at that time. I know I
12 especially talked to our County Supervisor at that time and raised concerns about it. But anyway, he said that
13 there were no plans for any access to be made from that development onto Pritchett Lane. And then, my
14 husband went to some planning meetings along the way and whereby, we were told that there would only be
15 emergency access onto Pritchett from that development.

16

17 So, needless to say, we've been very disappointed with all this construction traffic that's now on Pritchett.
18 So, not only has there been a lot of large tractor trailers and dump trucks and that sort of thing on the road,
19 but the noise level is a constant thing because sometimes, the traffic is bumper-to-bumper all day long. And
20 so, you put up not only with the vehicles going up and down the road, but there's the noise factor also. And
21 then, people who walk or bike on the road – they have to be extremely careful because the road is not that
22 wide, and it doesn't have any shoulders, and it doesn't have any sidewalks or anyplace to get out of the road.
23 And so, on occasion, people have to actually get into the ditch in order to get out of the way of those big
24 trucks.

25

26 And so, it's my understanding that the developer's use permit to build the division – the North Pointe – that
27 his permit didn't include permission to use the emergency access for construction traffic. But, of course, we
28 know that that's what's happening. And so, since he didn't get his permit amended or approved through the
29 Board of Supervisors, which I understand is the normal mechanism, I'm really concerned that the same sort
30 of go-around will happen when the development is finished, and general traffic will be permitted on
31 [inaudible due to buzzer].

32

33 I'm requesting that construction traffic end, that when we can get some assurance that long-term [inaudible
34 due to buzzer] from North Pointe onto Pritchett will not be permitted. Thank you so much for your time.

35

36 MR. SHEPHERD: Thank you. I ask that the folks respect the buzzer, respect the time limit. It's a courtesy to
37 all the speakers, everyone here. I would appreciate that. Marsha, who is next?

38

39 MS. ALLEY: Mr. Chairman, our next speaker is Richard Cale. Mr. Cale, your time will begin when you
40 begin speaking.

41

42 One moment, Mr. Chairman.

43

44 MR. SHEPHERD: Yes?

45

46 MS. ALLEY: Let me double-check. It looks like Mr. Cale may have left the meeting. No, he's still here.
47 Hold on. Mr. Cale, are you available?

1
2 MR. CALE: Hello. My name is Richard Cale, and I am a resident on Pritchett Lane. I wanted to start off by
3 thanking Mr. Wright. I understand when we're looking at issues like this, I thought of it as the residents as a
4 small little French fry. We have a multimillion dollar company and lawyers. I just hope that the County
5 moves forward with ensuring that they're being legally defended or represented by someone who's looking
6 at our community and not for our larger companies.

7
8 So, right now, we're looking at a commercial volume traffic in our residential area, and I'm concerned about
9 two main areas which will inherently cause some consequences after that. My two areas of concern are
10 traffic and safety.

11
12 So, my wife and I moved here over a year ago, and we are avid walkers, avid lovers of wildlife, and we've
13 unfortunately had to stop our evening walks due to the traffic. When you have two 10-foot-wide trucks
14 passing each other at the same time, and that I have a culvert next to me, I don't really have a whole lot of
15 place to go when I'm taking my evening walk. I'm not saying we should take all this down based on my
16 evening walk, but this is a huge safety issue.

17
18 In addition to this, these size trucks are extremely detrimental to our road conditions. I believe that the
19 construction company is responsible for these, but they really like to put band-aids rather than really do the
20 job correctly, so that is exactly what they have done to our road is put a band-aid.

21
22 And also, the lack of, the disregard for, traffic laws. These large trucks move faster than most sportscars
23 down our area, and we have many children and adults and elderly who like to walk down our lane.

24
25 So, traffic and safety are two concerns of mine, and these inherently have caused other consequences that I
26 have noticed. These are pollution, not only noise, air, but also litter. I have seen an extreme amount increase
27 of litter, especially around our construction area, which I cannot prove this, but if we're going to look at – if
28 we're going to use legal jargon and try to be not as explicit as possible, then I believe that would hold up in
29 this area.

30
31 Additionally, my last point I would like to say is about the special use permit. It says that it wasn't explicit
32 for 29 or Pritchett, or maybe we should make that explicit. And I also do not think that should be contingent
33 on VDOT to use a residential road rather than a more accessible highway such as 29. If a multimillion-dollar
34 company wants to come in, they should have to go through the legal ramifications of going through VDOT to
35 – instead of using a residential road. So, I think that's kind of a cop-out, and I think it is our responsibility as
36 community members – everyone in this meeting, not just those who live on Pritchett Lane – to address these
37 issues. Thank you so much for having me.

38
39 MR. SHEPHERD: Thank you, Mr. Cale.

40
41 MS. ALLEY: Mr. Chairman, our next speaker is Nina Crawford. Ms. Crawford, are you available? Ms.
42 Crawford, you may unmute your mic, and your time will begin when you begin speaking.

43
44 MS. CRAWFORD: Thank you. My name is Nina Crawford, and I have the unfortunate displeasure of living
45 across the street from the entrance. My life has been impacted by this, and – Dave, I know you're here, and I
46 thank you for all that you've been. You've been very helpful, but this has been quite a living nightmare for
47 us.

1
2 We, too, have gone to the meetings for many years, and like all my neighbors, we were told explicitly this
3 was an emergency access. So, my question to the board is, as all these meetings we went to were discussed,
4 everyone was present, every issue was gone over, and there were public meetings, why was there no public
5 meeting to discuss the emergency access becoming a road? That's the question I'd like you to think about
6 and respond to the development and the community here that if all of the other issues we look at have to be
7 examined, why was this not examined and steamrolled through to the negation of the benefit and the welfare
8 of the people on this street?

9
10 As for the garbage, I will concur there is garbage rolling into my driveway constantly. My dogs are getting
11 sick from garbage and bones and food coming into the yard. We also have people not obeying the speed
12 limit. The safety is an issue. The roads are an issue. I mean, I could go on for much longer than three
13 minutes, but I just feel like this was such a huge oversight.

14
15 My husband's family has lived on this street for many generations, and I don't believe this is what they
16 envisioned. I think that there are ways to be more neighborly and consider the impact you're having to the
17 people on the street. As the other neighbors have expressed, there are times where I have to wait to get out of
18 my driveway because it's blocked by big vehicles, and I can't even get out to my appointments.

19
20 The traffic is also a detriment. You have to wait in line sometimes when the traffic and the trucks are coming
21 in both directions. It is just dangerous. It is uncomfortable.

22
23 As far as the buffer goes, we were told there would be a 50-foot buffer. I know they're anticipating putting
24 vegetation back, but why were these historic trees removed? Some of the effect from taking these historic
25 trees down – trees have blown down in neighbors' yards that were there for years because the wind coming
26 across the barren field across from us now is really hampering, and that's also causing the trash and the
27 garbage and things to roll into Pritchett Lane.

28
29 People walking on the street are fearing – I've seen some of the elderly people gingerly walking to the
30 precipice, sitting by the culvert, sort of covering and cowering as these trucks roll by them. This is a dead-
31 end road. This is not 29. There's absolutely no reason why they cannot use the entrances and exits on 29 as
32 originally planned. The three main routes and the spine going up through Leake Square. There's absolutely
33 no reason not to use that and use Pritchett Lane. Thank you for your time.

34
35 MR. SHEPHERD: Thank you, Ms. Crawford.

36
37 MS. ALLEY: Mr. Chairman, our next speaker, and our final speaker at this point, is Mr. Walt Morgan. Mr.
38 Morgan, you can unmute your mic, and your timer will begin when you begin speaking.

39
40 MR. MORGAN: Hello, my name is Walt Morgan. My wife, Eva Marie Ireland, and myself, just moved in
41 here recently, but she's been associated with this area for 10 years. We're at the end of Riverview Lane,
42 which is the last thing you turn on, basically, on Pritchett Road. And my background is an engineer, and I
43 cannot believe anyone would allow the construction traffic that's on that road. It's going to destroy that road.
44 It's just – you don't need an engineering degree to see that.

45
46 There are lots of people who walk on it that are not just kids, but elderly people, young people. It is
47 terrifying. Myself, when I drive on that road, what I'm going to meet head-on or not. And the speed limit

1 should probably lower down to 20 miles per hour, but I'm pretty sure it's going more like 45, 50 miles down
2 that road.

3
4 There has been a result of some wildlife killed because of vehicles hitting it, like a deer, stuff like that. And it
5 – other concern is because this has set a precedence, when the development moves down to where Riverview
6 joins with Pritchett, are they going to do the same thing there? They're going to tear that all up and turn that
7 into a construction zone of traffic coming in and out. And so, this is not a very – we don't like what they've
8 done, and we don't certainly like it as precedence.

9
10 Anyway, I appreciate your time, and I appreciate your careful consideration on this. Thank you very much.

11
12 MR. SHEPHERD: Thank you, Mr. Morgan.

13
14 MS. ALLEY: Mr. Chairman, right now, we don't have any further names on our list, but I would like to give
15 the opportunity to those in attendance, if you would like to comment on this public hearing at this time,
16 please signify by using your "Raise Your Hand" icon. If you're calling by phone, please use the *9.

17
18 Mr. Chairman, we have one raised hand. Give me just a moment.

19
20 MR. SHEPHERD: OK.

21
22 MS. ALLEY: Mr. Morgan, you have raised your hand, but you've already spoken your three minutes for this
23 public hearing.

24
25 MR. SHEPHERD: Is there another person that was wishing to speak?

26
27 MS. ALLEY: It was. Mr. Morgan had raised his hand once more, but he has already spoken. He was our last
28 speaker, I believe. So, I don't show anymore indications of raised hands at this point.

29
30 MR. SHEPHERD: OK, so, consistent with our rules that people get one opportunity to speak, I'm going to
31 now close the public hearing and circle back to five-minute summations from the staff and the appellant. And
32 we start with the staff, Mr. Svoboda. You have five minutes and, of course, you can share that time with Mr.
33 Herrick.

34
35 MR. SVOBODA: Yes, I will share some time with Mr. Herrick. To cut to the chase, the construction cannot
36 happen with that specific approval, as the appellant is stating. There are only a few instances where
37 construction access is regulated through a special use condition or proffer. Otherwise, it is considered part of
38 that development of the parcel because it's only temporary, and traffic analyses do not generally incorporate
39 the construction traffic. It is about the long-term traffic of how that development lays out. Mr. Herrick?

40
41 MR. HERRICK: So, along those lines, a lot of Mr. Wright's presentation was indicating that the Zoning
42 Administrator approved this, or the Zoning Administrator approved that. And I would simply point out that
43 this really did not require an affirmative approval by the Zoning Administrator. The Zoning Administrator
44 was not an active agent in approving this.

45
46 I'm not unsympathetic with the concerns of the neighbors, but simply, the Zoning Administrator was finding
47 – and I agree with this finding – that there's no law against what's being done there right now. The existing

1 special use permit permits the use of that road as a construction entrance, and it doesn't really require an
2 affirmative approval by the Zoning Administrator. The special use permit does not prohibit that use of
3 Pritchett Lane.

4
5 MR. SHEPHERD: OK, thank you. Bart, Mr. Herrick – more? You have a few moments left. Complete? OK,
6 thank you for that.

7
8 Mr. Wright, we come back to you. You have five minutes to summarize your presentation.

9
10 MR. WRIGHT: Alright, thank you for that, Mr. Shepherd. Yeah, I mean, the County Attorney and the
11 Zoning Administrator want to keep talking about the special use permit. That's fine, but I'm going to focus
12 on the rezoning because Mr. Svoboda said everything's compliant with the Zoning Ordinance. The rezoning
13 is a zoning act. It's got an application plan. What does the application plan show? Two emergency access
14 easements.

15
16 The attorney's statement that my logic doesn't allow any construction on the property is just totally bogus.
17 They have four approved commercial entrances: three on Route 29, one at the end of Leake Lane. Why
18 couldn't they use those? That's what was shown to everybody at the rezoning. That's what was approved by
19 everybody at the rezoning.

20
21 I understand why my neighbors are so hopping mad because everything said, "Oh, it's just an emergency
22 access easement." I was even told that by senior planning staff, after it was approved, "Oh, they can't do that.
23 It's just emergency access." So, again, it's what was reviewed at the rezoning. It's what was approved at the
24 rezoning. And now, it doesn't mean a thing, and it's just insane.

25
26 But I'm sorry – how do you get around violating Section 25A.4.1? It is a zoning violation. Until the
27 construction entrance was approved – or allowed, I guess I should say – by the Zoning Administrator, we
28 didn't have a violation out here. OK? Everything was compliant with the rezoning. Once he changes that and
29 we start sending thousands and thousands of dump trucks down here, the road's falling apart. OK? I don't
30 see how the Zoning Administrator gets around 25A.4.1. I don't. He approved a change to a rezoning. He
31 approved something to happen that created a zoning violation. Therefore, it cannot be in compliance with the
32 Zoning Ordinance.

33
34 I was in construction for years. I understand how things work. You've got to have a way to get in there and
35 build something, and they did. They had four approved entrances off of public roads, not through residential
36 areas. OK? If they were going to absolutely have to have access to Pritchett Lane to accomplish a stream
37 crossing, why was that not brought up at the rezoning? It makes no sense, but again, something has been
38 approved that has created a zoning violation. Therefore, it's not compliant with the Zoning Ordinance. I have
39 no idea how the County Attorney or the Zoning Administrator can spin that another way. I mean, it just – it
40 makes no sense. I don't see how they do it.

41
42 Again, everybody's forgotten about the rezoning. Everybody's forgotten about the application plan and what
43 it showed. OK? It did not show construction entrances, temporary construction easements. There was no
44 provision made at those two entrance points for anything other than emergency access, which is what was
45 approved by a legislative act. And by allowing something other than what was approved has created a zoning
46 violation. I'm sorry. The Zoning Administrator does not have that kind of authority. You can't overrule a
47 ZMA, and you certainly cannot approve something that creates a zoning violation. It doesn't work that way.

1
2 So, anybody has any other questions, I'm all ears. I'm here and available.
3

4 MR. SHEPHERD: Thank you. I'm going to ask everyone's indulgence and want to take a two-minute break.
5 And we will, as I say, be back here in just a couple of minutes. I don't want to take much time off, but we'll
6 take a quick break, if that's alright. I will be back in a moment.
7

8 [There was a short recess.]
9

10 MR. SHEPHERD: Thank you. Looks like everyone took me up on the offer.
11

12 MR. MITCHELL: Mr. Shepherd, I was wondering if – this is David Mitchell. I didn't get called in the public
13 hearing. I got moved forward. Is there a reason? Hi Stewart, I see you. We see you.
14

15 MR. SHEPHERD: Mr. Mitchell, I will give you the – I have a couple of questions for you that I will ask in
16 the course of the discussion.
17

18 MR. MITCHELL: Alright, that's fine. I just want to make sure. Thank you.
19

20 MR. SHEPHERD: Yup.
21

22 MS. ALLEY: Mr. Mitchell, just for your reference, I have you on my radar. When we reconvene, I was
23 going to remind them that you are available for any comment or to answer any questions that they had. You
24 had not been forgotten. I just wanted to give you some peace of mind on that.
25

26 MR. MITCHELL: Alright, thanks.
27

28 MR. SHEPHERD: Likewise. Is everyone back? I think we are. Let's come back to order, and we will now
29 turn this over to discussion on the board's side. I remind folks that both Mr. Mitchell is here, and also Mr.
30 Pohl is here, and both of those folks may be able to offer understanding on background, and also answer any
31 other questions – particular questions folks have.
32

33 And I also just hope we can provide some clarity. And I also wanted to say I appreciate the comments people
34 made. I appreciate the efforts Stewart has made on this, and hopefully, bring some clarity and make a good
35 decision.
36

37 So, with that, the public hearing is closed, and I turn it to – put this to board members, starting with Mr.
38 Rinehart. Questions, comments? Or, board, do we want to ask Mr. Mitchell to speak, or do we want to
39 simply ask him questions? I want to just – procedurally, I want to handle that in the right way. Yes, Marcia?
40

41 MS. JOSEPH: I would like to ask Mr. Mitchell some questions. Mr. Rinehart, Mr. Robb?
42

43 MR. RINEHART: I will yield to you, yes.
44

45 MS. JOSEPH: Well, I didn't – matter – what would – I just wanted to ask him things before – if he wants to
46 add anything on there. I'd also like to talk to Mr. Pohl about the whole process of development.
47

1 So, can I start with my little story? My little story is I live across the street from a construction site, and there
2 have been all kinds of Faulconer trucks in and out. And one of the things about the site plan itself – the
3 approved site plan does not show an entrance onto my little road. It shows an entrance onto Berkmar.
4 However, they're using a construction entrance that was approved with the erosion and sediment control plan
5 that has the entrance onto my little Woodburn Road. OK? That's a construction entrance.

6
7 And I talked to Mr. Pohl about my construction project across the road, and he sent me a nice response. And
8 by the way, Mr. Pohl, speedy delivery. Thank you so much. The response from you was very quick, so I
9 appreciate that. And what he told me is that in many cases, it's a usual thing for – not Bart Svoboda to
10 approve the construction entrance. Not Andy Herrick to add into any kind of input on construction entrances.
11 But VDOT does. VDOT makes a determination with the erosion and sediment control plan of where the
12 construction entrance has to go.

13
14 Now, one of the things that happens when you get an approved rezoning, in my experience, is that you have
15 to submit a site plan. To get a site plan approved, you have to submit an erosion and sediment control plan.
16 The erosion and sediment control plan always has a construction entrance. The erosion and sediment control
17 plan also has sediment basins, and it has a lot of riprap, and it has diversion dykes, and it has – and I drew
18 these up in my youth, so I know what these things are. And I also know they're temporary – that when the
19 Board of Supervisors approves a rezoning, they're not looking at an erosion and sediment control plan. So,
20 this is something that is done for engineering purposes, and now, it's become heavy duty. And we have a
21 Water Protection Ordinance. We have state regulations that have to be complied with.

22
23 So, please. The implication that Mr. Svoboda and Mr. Herrick had anything to do with approving these
24 construction entrances – it's just not there. I mean, these things are required by law, by state law, to have an
25 erosion and sediment control plan that is approved by the County Engineer.

26
27 So, there's one question I would really – and I know that there's a bond done on the erosion and sediment
28 control plan, and it is temporary. And that bond gets released when – I'm assuming, and tell me if I'm wrong
29 – when all of the erosion and sediment control measures are removed. Some may remain permanent as part
30 of the plan, but most of them – construction entrances – will be removed.

31
32 Now, the question I have for Mr. Mitchell is, what's your schedule on the erosion and sediment control plan?
33 And the other thing I want to ask Mr. Pohl and Mr. Mitchell is, once they begin construction on buildings,
34 will they be using this construction entrance to haul lumber, or concrete, or block, or whatever onto this site?

35
36 So, I just wanted to make sure that everybody knows that a lot of times, this isn't something that is done by
37 Engineering, or even the applicant, or certainly not Zoning to determine where the construction entrance
38 goes. VDOT is looking at whether or not they want to have these big trucks moving out slowly on Route 29,
39 where – I don't know, I think the speed limit is around 60 miles per hour at this point, at North Pointe, or
40 whether or not they want them onto a smaller road.

41
42 I understand what you're talking about because I'm dealing with the same sort of thing with big trucks
43 moving in and out on a smaller lane. I do understand, but I also understand that there are other safety
44 concerns that VDOT has looked at in terms of the larger segment of the population than those that are living
45 on Pritchett.

1 So, I'm sorry I've gone so long, but if you guys could answer me on how long you think that this dirt moving
2 is going on, how much longer you're going to be moving these trucks in there. And in terms of the bond,
3 which I saw was over \$1 million, which really surprised me, is when does this bond – when do you remove
4 the bonding and assume that this whole erosion and sediment control plan is complete and construction can
5 begin?

6
7 MR. MITCHELL: So, Marcia, yeah, the bond is large because it encompasses essentially all the dirt moving
8 and all the temporary stormwater protection measures, and then some. I think the County usually adds a little
9 extra for oopsies. And that bond will stay in place, in some amount. It can be reduced as we get grass to
10 grow, as we install asphalt, as we install curb and gutter, as we install all the things that convey water
11 wherever water's supposed to go.

12
13 So, that bond, for this Phase 1, could easily be in place for two or three years because sometimes, on a
14 project this large, it may take that long to establish the conditions that you're no longer causing potential
15 erosion. So, that – I think that's the first question.

16
17 We have a stormwater management plan, a WPO plan, that that bond is a part of. You can amend it onsite
18 with the permission of Johnny Otto, who is our inspector. If we see something in the conditions that are
19 different, it's – as long as everybody, including the County and our engineers and the contractor, agree that
20 it's the right thing to do.

21
22 But generally speaking, we follow the plan. The plan is like a battle plan – first contact, and you change it.
23 But we try to stick to it as close as possible, and we have.

24
25 And then, let's see – the entrance is only for the construction of the dirt moving in Phase 1, and Phase 1, in
26 our parlance, is everything to the east of Flat Branch, which is the main stream that runs through the middle
27 of this project. Part of the reason that this is not – this may not have been thought about 20 years ago when
28 this plan was originally put forward was, at the time, the Corps of Engineers was going to allow us to pipe all
29 of the streams on that property, including Flat Branch, and build a big pond. So, it'd be a regional stormwater
30 facility.

31
32 In the intervening 20 years, that is no longer an option. The Corps of Engineers does not allow the wholesale
33 piping of streams anymore, or the impoundment of streams, to create that lake that was part of the southern
34 commercial entrance and therefore, we lost access to cross the creek in a substantial way. We still have the
35 single box culvert entrance that's been talked about that comes from 29 into the middle entrance. There's a –
36 two 8-foot by 10-foot box culverts and about 40 foot of fill to get across that ravine. But the problem we
37 have there is, the dirt to fill that ravine comes from the Phase 1 side of the stream, which is on the Pritchett
38 side of the project.

39
40 So, we did get a – the contractor, Faulconer Construction, which is a great contractor and does a wonderful
41 job – they're not the least expensive, but they're the best. They got a land use permit from VDOT. They have
42 permission from VDOT to enter at that point and presumably, VDOT has assessed that that's an acceptable
43 location. I'm sure this is true. I'm sure that VDOT will – when that permit, when that entrance is closed,
44 VDOT will assess it and have Faulconer repair any damages that they deem necessary to be repaired. That's
45 usually how land use permits work – the ones that we've dealt with. This permit happens to be in the name of
46 Faulconer Construction, not the developer. That's just the process we went through. It doesn't really affect
47 the function of anything – it's just a sidebar to it.

1
2 We – the houses, and the trusses, and all that stuff are not going to come through there. We are within weeks
3 of closing in on completing the gravel and a portion of the asphalt so we can actually drive across those box
4 culverts I talked about. It has taken longer than I wanted it to, but as soon as we gain access across those box
5 culverts, we do not need that construction access any longer. It was simply because it was the only point of
6 access that we reasonably had.

7
8 You know, I've heard a lot – I understand how these things go, but I've got to push back a little bit. I know
9 people get angry and upset. You know, we're not a big – we're a family-owned development company that's
10 been here for 40 years. And we do the best we can to work within this community because we've got to live
11 here, too. I know people hear that all the time, and it sounds like something people just throw out, but it's
12 true.

13
14 Now, the letter that was spoken about – I'm sorry, Mr. Stewart decided to walk out of the room. The letter
15 that we talked about, that he's talked about, was specific to a permanent access not being on Pritchett. That
16 has always been the case. And if it was misunderstood, I'm sorry that that was misunderstood by people, but
17 that's the way that letter was presented. That's the way I read that letter, and I think that that's the right way
18 to interpret it.

19
20 You know, another sidebar – Nina Crawford and a guy named Alex, who wouldn't give me his last name,
21 were the only two neighbors that contacted me directly. And there have been a lot of complaints, and Ms.
22 Ragsdale – I always told her, I said, "Give them my name and number, and I'll be happy to meet with them
23 and talk."

24
25 Nina's been great. I understand she's upset, and she's clearly the most impacted person because she's
26 directly across the street from this access point. And I understand she's not happy, but I would hope that she
27 believes me and can attest to the fact that I have returned her calls and gone to see her multiple times to try to
28 fix whatever mistakes that are happening. I mean, you've got truck drivers that – all truck drivers drive too
29 fast, occasionally. They are large pieces of equipment. These things are going to happen. I mean, when
30 humans are involved, nothing is perfect, but I have tried every time she has called me to address it and fix it,
31 and I think that I have.

32
33 And the one guy, Mr. Alex – again, I don't know his last name – he – I did the same thing. I mean, I read the
34 riot act to the superintendent and the truck drivers about driving slow and being respectful to people who live
35 in this neighborhood, and we have tried to correct every issue that's been brought forward.

36
37 But literally, the only two people that have contacted me directly were Alex and Nina, and I think we could
38 have gotten along – we maybe could have avoided this if I had been contacted directly. I had offered that. I
39 know my information was given to everybody, and nobody called.

40
41 And regarding the buffer, the trees that were taken down were because they – that was an area that needed to
42 be graded in order to build the lots. It's a 30-foot buffer. It is being designed. It will be installed in the spring
43 of next year, 2021, and it has been reviewed and is pending approval from the Planning staff. And there are
44 specific requirements for that buffer, and it will be installed and maintained per the proffers.

45
46 MS. JOSEPH: OK, so what I heard from you about scheduling is you're expecting that this entrance will be
47 closed within the next few weeks. Is that what I heard?

1
2 MR. MITCHELL: Yes.

3
4 MS. JOSEPH: OK. So –

5
6 MR. MITCHELL: We will put boulders and trees across the entrance.

7
8 MS. JOSEPH: OK. And so, the other thing I heard is that you're using this entrance because you had to put a
9 box culvert in on – and you needed the dirt to fill in that area. Is that –

10
11 MR. MITCHELL: Yeah. That's the way the site lays out. All of the fill dirt for this project is on the east side
12 of Flat Branch, and therefore, you need to get access to that side to start filling across that area. That's where
13 the equipment is that's moving all the dirt. I mean, you know, and – on an average day, you're talking 15 to
14 20 guys driving to work. There are days when we deliver gravel or dirt to the site, or large pipes and
15 structures, and I – clearly, that is a lot of traffic in a short period of time. But I think it is incorrect to say that
16 it is that traffic consistently every day, eight hours a day. That's just not the case. But there is heavy traffic in
17 short periods of time, absolutely.

18
19 MS. JOSEPH: Mr. Pohl, do you have anything you'd like to add from anything that your inspectors have
20 seen out there?

21
22 MR. POHL: With regards to the entrance, no. I don't have anything to say about that. We do approve plans,
23 but rely on VDOT for determining and issuing permits for those entrances. So, we do have entrances that
24 move. They're shown on the plan, but when they get into the construction phase and they ask for an entrance
25 permit, VDOT does, sometimes – rarely, but they may decide that a different location is more suitable, and
26 they may make that determination work with the contractor to put those in a suitable location.

27
28 With regards to the bond, this – I can see the bond being, as Mr. Mitchell said, two or three years out. There
29 are stormwater components that also have to be constructed that typically aren't completed until after the site
30 is stabilized, so that can take a little bit longer. And part of the release, though, is to close up those
31 construction entrances, remove them, and all E&S measures.

32
33 MS. JOSEPH: Thank you. I'm done.

34
35 MR. SHEPHERD: OK. Thank you, Marcia. Thank you, Mr. Mitchell. Thank you, Mr. Pohl, for – that was a
36 good discussion, and I appreciate it.

37
38 Mr. Robb, any further comments, questions, ideas?

39
40 MR. ROBB: Well, I'm grateful for the time and energy that Mr. Mitchell has provided. I think it's important
41 to have people from both sides of the conflict, disagreement, or whatever – I'm sorry that the community
42 hasn't been able to get that sort of treatment, I guess. And I think it's a human frailty where the squeaky
43 wheels get the grease, and I'm really glad to hear that the temporary entrances will be closed up in a short
44 period of time. That's real reassuring.

45
46 And I quite – I can't understand it, and I really think there is a problem with this picture. Why they even used
47 the term "emergency entrance?" Why not just say, "access?" Why call it – and I don't know. Maybe

1 somebody could answer that. "Emergency," to me, is a whole lot different from "access." And then, VDOT
2 had to have issued a permit, I presume. Maybe I'm wrong. I've never known of any times when VDOT
3 didn't inspect and issue entrance permits. Is there an entrance permit? Maybe Mr. Mitchell can answer that
4 one.

5
6 MR. MITCHELL: We have a land use permit from VDOT with Faulconer Construction for that location.

7
8 MR. ROBB: Would that be an entrance permit?

9
10 MR. MITCHELL: Yeah, VDOT calls it a "land use permit." Yes.

11
12 MR. ROBB: Because I know from my experience in being around construction business, somewhat, in order
13 to put a driveway into somebody's property, you had to get an entrance permit.

14
15 MR. MITCHELL: Right. That's for a permanent access point, but when you're doing a temporary access or
16 construction, or if you're going to leave an improvement like a tree in the VDOT right-of-way, in an island
17 or something like that, VDOT just says, "This is our land. This is our right-of-way." You have to get a land
18 use permit –

19
20 MR. ROBB: Right. Thanks for that understanding. But the idea, too, that I think was provided that we could
21 try to compare Route 29 and Pritchett Lane is ridiculous, and that comparison was made today. There's no
22 comparison as far as traffic control on Route 29. That can be accomplished by using the control systems that
23 we have, including police. So, I don't know, but I do understand where Mr. Mitchell's coming from and the
24 fact that they needed to get equipment in there to move the dirt. But once – and my question is, once that
25 equipment is in there, how come there's that many trips up and down that road? But did they have to haul the
26 dirt all the way around? Is that it, or what happened there? That doesn't make any sense.

27
28 MR. MITCHELL: Do you want me to answer that?

29
30 MR. ROBB: Yes.

31
32 MR. MITCHELL: So, during the construction of the main fill area and the box culverts, there are also a
33 bunch of underground piping structures that are part of the E&S plan and the stormwater management plan
34 that all have to be installed at the same time you are excavating the dirt because you've got to control,
35 permanently and temporarily, the runoff of the excavation area as you're moving that dirt down into the
36 creek, over top of the box culverts.

37
38 So, that equipment that's being – and that's not just moving dirt. You're bringing in gravel. You're bringing
39 in select fill. Sometimes, we can't find the right type of dirt – specifically, clays that are required in the dams.
40 So, sometimes, you need to bring in materials that are not available onsite, and that's – all of those structures
41 and facilities that need to be built in order to facilitate you to do the land clearing and the dirt moving without
42 dumping all of the sediment into the streams require other materials that have to be brought on.

43
44 That's what that equipment – that's what that traffic is that you see that's not just the guys driving to work in
45 the morning, parking, and then getting on their equipment and driving around all day. There are times when
46 you have to bring in materials, and parts, and pieces, and structures to facilitate the excavation of that dirt to
47 fill that creek – or not the creek, but over top of the box culverts.

1
2 MR. ROBB: Mr. Mitchell, do you – were you available at the time when this project was being – going
3 through approval process some many years ago? Were you involved?
4

5 MR. MITCHELL: No, I was living in Richmond and single.
6

7 MR. ROBB: So, you don't know what Mr. Wright and the others were told by the people –
8

9 MR. MITCHELL: I saw the letter. That's the only thing from the rezoning that I would know. And
10 obviously, I have the documents from the rezoning – the proffers and the SUP that's currently specified. But
11 my involvement with this project started probably four years ago, when we started to actually do the design
12 of the subdivision and the structures – not the rezoning, but the actual construction plans for the project.
13

14 MR. ROBB: My position is that I think – somebody used the word “neighborly.” It just seems to me – and
15 I'm one of those people who like to be a peacemaker if I can be. Maybe that's from being a politician. I don't
16 know if that's good or bad. But it seems to me like the neighbors could have been somehow appeased and
17 brought into the whole picture much sooner than what – and I know you say you've tried to do that with a
18 couple people, but I'm sorry that it's gotten to this point, and I don't know what we can do about it at this
19 point, at this time, but try to bring it together because –
20

21 MR. MITCHELL: The best thing I can do is get off the road and get out of there, which is what we're trying
22 to do as fast as possible.
23

24 MR. ROBB: Well, I appreciate that, and I think – I don't know how everybody else feels about it, but I really
25 sympathize with the neighbors out there. But I realize the position that Mr. Svoboda is in, too, and everybody
26 – all of us – are sympathetic, I think. So, let's try to do the best we can, and – I'll stop my preaching, and
27 thank you very much.
28

29 MR. SHEPHERD: Thanks, Mr. Robb. Good points. Mr. Rinehart?
30

31 MR. RINEHART: Mr. Chairman, I have no further comments. I'm in a position to make a motion, and
32 maybe that's not appropriate because I need to hear from my other board members.
33

34 MR. SHEPHERD: Well, I'd like to offer some – couple of thoughts. I think the issues have been set forth
35 very well. I will tell you, my first reaction to this was being mindful of both the importance of just reading
36 the words on the page of the final – the action letter for the rezoning and the special use permit. I know that
37 that was the starting point, and I did go from there to wondering about the points that Stewart, Mr. Wright, is
38 making about the words on the page, “emergency access easement,” as opposed to a construction entrance.
39 And I was wondering about that, and I realize that there have been many, many public hearings and
40 discussions about this.
41

42 I did read the minutes from the final Board meeting, and you could just tell from what the Board of
43 Supervisors were saying that they were very aware of all of the issues and had thought about it enough to
44 where they were – the minutes from the final meeting reflected a sort of a – summations from the Board
45 members. Many of these things were not discussed at that point but clearly, they had been in the past. And I
46 – so my point was – so, I was looking for that in the – looking for more guidance on how the terms
47 “emergency access easement” was used versus the “construction entrance.”

1
2 And I've come to the – I'm making an assumption that the Board had – knew that there were great concerns
3 from the people on Pritchett Lane, but were viewing their approval as what was required for the final project,
4 the final buildout project, and were not focused on the construction entrance. And, in fact that – so, with that,
5 I haven't seen anything to dissuade me from that, and I've come to learn that the approval of construction
6 entrances is more in the bailiwick of VDOT rather than – that comes after the approval of the project, rather
7 than the Board of Supervisors – or to make final decisions about construction entrances, unless there was
8 some particular thing that would explicitly be put forth as a condition.

9
10 So, those are the things I'm thinking. Those are all going into my decision. I'm also – want to just appreciate
11 what Mr. Robb was saying and others have also said. I hope that the project – just as time goes by, I hope
12 that the folks on Pritchett Lane and the developers here can work together as best they can so that impacts to
13 the Pritchett Lane are minimized and there's a good communication there. I know that in the short term, it's a
14 very difficult and negative thing that's happening out there. What I'm thinking.

15
16 Mr. Carrington, do you have a take on this?

17
18 MR. CARRINGTON: I do, Mr. Chairman. I'll be quick. I think I'll echo some of the comments that have
19 been made, but in general, I guess I agree with some of the sentiments that while it might be unfortunate, and
20 nobody likes litter, and noise, and big trucks near their house, that this is not the appropriate venue to seek
21 relief from that, and that it feels like something that fell through the cracks in the rezoning process, and also
22 that it's more in the purview of VDOT than the Board of Zoning Appeals.

23
24 MR. SHEPHERD: OK, thank you. Other comments from anyone on the board?

25
26 MR. RINEHART: Mr. Chairman, I will go ahead and pipe in. First, I am extremely, extremely sensitive and
27 sympathetic to the neighbors on Pritchett Lane, without question. I can't imagine what they have endured to
28 this point.

29
30 Based on the facts of the testimony that's been – that I heard today, I would like to make the following
31 motion. I would move that the Board of Zoning Appeals affirm the Zoning Administrator's determination of
32 the violation found on Attachment C. So, bottom line is, I'd like to affirm the Zoning Administrator's
33 determination.

34
35 MR. ROBB: I'll second it.

36
37 MR. SHEPHERD: OK. Further discussion? Ms. Alley, will you call the roll, please?

38
39 MS. ALLEY: Mr. Rinehart?

40
41 MR. RINEHART: Aye.

42
43 MS. ALLEY: Ms. Joseph?

44
45 MS. JOSEPH: Aye. I thought one of the things we were going to do is repeat the motion before we voted on
46 it. Can we do that?

1 MR. SHEPHERD: Yes, thank you.
2
3 MS. JOSEPH: And I think one of the things, Mr. Rinehart, that was missed in there was, “affirm the Zoning
4 Administrator’s determine of no violation found on Attachment C.” So, I [inaudible] –
5
6 MR. RINEHART: I –
7
8 MS. JOSEPH: To add the “no.” OK?
9
10 MR. RINEHART: Were you an English teacher? I just realized that I did miss a key word. I apologize to my
11 fellow board members. I will repeat the motion. Sorry.
12
13 I move that the Board of Zoning Appeals affirm the Zoning Administrator’s determination of no violation
14 found. Thank you for that correction.
15
16 MR. SHEPHERD: Thank you. Is there a second?
17
18 MR. ROBB: I second it.
19
20 MR. SHEPHERD: Thank you, Mr. Robb. Alright. Further discussion? Ms. Alley, will you please call the
21 roll?
22
23 MS. ALLEY: Mr. Rinehart?
24
25 MR. RINEHART: Aye.
26
27 MS. ALLEY: Ms. Joseph?
28
29 MS. JOSEPH: Aye.
30
31 MS. ALLEY: Mr. Robb?
32
33 MR. ROBB: Aye.
34
35 MS. ALLEY: Mr. Carrington?
36
37 MR. CARRINGTON: Aye.
38
39 MS. ALLEY: Mr. Shepherd?
40
41 MR. SHEPHERD: Aye. That’s final. I look forward to the quick completion of this phase of the project. Mr.
42 Bowling, you’re on mute, but I think you’re saying something?
43
44 MR. BOWLING: I apologize. I’m telling my paralegal goodnight.
45

1 MR. SHEPHERD: Oh, OK. Well, OK, so with that, as I say, I look forward to a quick conclusion to this
2 phase of the project to get the big trucks off of Pritchett Lane. I regret – well, I just hope that this settles
3 things for the moment, and appreciate everybody’s diligence with this hearing.
4

5 Thank you – particularly, the staff for the work they did on this. Mr. Pohl, for spending the best part of your
6 day here. There are not many minutes on the job, but it was helpful, and I appreciate your helping us out
7 here.
8

9 And with that – OK, so that item is concluded.
10

11 **4. Approval of Minutes**

12 **A. November 10, 2020**

13 **MOTION:** Ms. Joseph moved to approve the minutes of November 10, 2020. Mr. Rinehart seconded the
14 motion, which passed unanimously (5-0).
15

16 **5. Old Business**

17 Mr. Svoboda said he did not have any old business to discuss. He said he did have an update, as the board
18 had asked for the last time, on Mr. Maus, and that his home occupation has been approved and the letter has
19 been sent out.
20

21 Mr. Shepherd asked if this meant the appeals had been withdrawn, or if they were going to move forward.
22

23 Mr. Herrick replied that the appeals were not moving forward. He said he had not yet filed the paperwork,
24 but he has started preparing the paperwork to file what is called a “voluntary nonsuit,” which would be the
25 voluntary withdrawal of the County’s appeals.
26

27 Mr. Shepherd said this was the long way to a good conclusion, and he was glad to hear it. He asked if there
28 were any items from other members.
29

30 Mr. Rinehart told Mr. Herrick that he believed he had sent him an email and if not, he would apologize. He
31 said he wanted to echo what some of his fellow board members said about the two months of Mr. Herrick’s
32 sincere education and that he learned a lot. He said he realized the few times he had withdrawn from hearing
33 a case, he could have actually heard it and not had a conflict and so, he got an education from that
34 perspective.
35

36 Mr. Rinehart said he would like to move back to a question. He addressed Ms. Joseph to say he did not mean
37 for it to come out a certain way. He said referring to the variance earlier, the BZA is more concerned about
38 the face of the building and its setback than its design or what it looks like. He asked if he was missing
39 something, as Ms. Joseph had talked more about the design. He said this is not the BZA’s job.
40

41 Ms. Joseph said that according to what she was reading, the BZA can do that. She said as part of the variance
42 approval, according to what she was sent, this is something the BZA can consider in a variance, which is
43 why she thought about this. She said it is going to be so close to the road, and it should be something the
44 BZA looks at as far as the design itself. She asked if she was wrong about that.
45

46 Mr. Rinehart said that in his limited time on the board, he has never talked about architectural review of a
47 structure, and it was simply about the face of the building. He said he would be quiet.

1
2 Ms. Joseph said she was not insulted, but she simply thought this is what she had read. She said since no one
3 jumped on it, she thought it was fine and that she could do this.
4

5 Mr. Herrick said a similar question arose in his mind when there was a proposal to impose conditions. He
6 said what triggers the need for a variance is, or was, the setbacks. He said that specifically, Virginia Code
7 Section 15.2-2309 provides that in granting a variance, the board may impose such conditions regarding the
8 location, character, and other features of the proposed structure or use as it may deem necessary in the public
9 interest. He said conditions are allowable, but what triggers the need for it in the first place is the setback.
10

11 Mr. Bowling explained that what this really means is that with this kind of broad-sweeping language, there
12 may be a temptation to go overboard, and so one should be circumspect.
13

14 Mr. Svoboda added that staff trusts the BZA won't go overboard.
15

16 Mr. Rinehart thanked the attorneys for this clarification. He said the concern, now, turning to the applicant, is
17 the reason why he asked that question, which was whether they actually had the foundation spotted by a
18 surveyor and are thinking about any projections that may cause them to go inside of that which the BZA
19 granted. He said apparently, they have already thought of that, but he always wants to caution that, when
20 looking at a variance (and especially that much of a variance), this is so noted. He said it is not the BZA's
21 job, and he just wanted to think outside of the box for them.
22

23 Mr. Svoboda said when the house construction began (which is subject to a different section of the
24 ordinance, so it did not need a variance), there was a physical survey that was done on the property that
25 identified some of the locations and pinpointed improvements more accurately than what is shown on a tax
26 map with an overlay.
27

28 Mr. Rinehart said Mr. Robb had gone down that road. He said the addition the appellant was putting on the
29 back of the house is substantial and amazing, but this was not what the BZA was hearing. He noted that this
30 was just a comment.
31

32 Ms. Joseph said she agreed as it was shown within the 100-foot buffer, but it was apparently okay.
33

34 Mr. Bowling recalled that he had heard some of the board members mention the James River Association.
35

36 Ms. Joseph said this had been her mention.
37

38 Mr. Bowling said this organization did yeoman's work in getting the James River (from the beginning down
39 to the bay) declared a scenic river, which was a major victory and important designation. He said they do
40 major work on the James River. He said the Chesapeake Bay Foundation's website shows that the
41 organization has done a tour from a kayak going down the James, and there is an interesting tour from the
42 bridge at Scottsville down to where the Hardware River comes in.
43

44 Ms. Joseph thanked Mr. Bowling for the information.
45

46 Mr. Rinehart said he has floated that area, and it is a beautiful part of the James River. He asked Mr. Svoboda
47 if the board would have a January meeting.

1
2 Mr. Svoboda replied that typically, January is the organizational meeting, but he believed that it may not be
3 the first Monday.
4

5 Ms. Alley said it would be January 5.
6

7 Mr. Svoboda said it was, in fact, the first Monday.
8

9 Ms. Alley corrected him that it was the first Tuesday, January 5.
10

11 Mr. Rinehart said he would take a moment to wish everyone a wonderful holiday season. He gave kudos to
12 Ms. Alley for taking care of the board the way she had over the past year. He said they were not allowed to
13 give gifts but that the board is indebted to Ms. Alley for keeping them straight.
14

15 Mr. Rinehart also expressed his appreciation to Mr. Herrick, Mr. MacCall, and Mr. Svoboda for their
16 support. He said the Corbetts (from the variance hearing) had complimented them when they said how
17 professional the County is.
18

19 Mr. Rinehart said he spoke for everyone in saying they all looked forward to 2021, which would hopefully
20 be better.
21

22 Mr. Shepherd agreed.
23

24 Ms. Alley thanked the board and wished everyone happy holidays.
25

26 Mr. Shepherd said he appreciated working with everyone and looked forward to more in the future. He said
27 things get better and better as they go along.
28

29 Mr. Svoboda said he also appreciated everyone and that this was not always easy work. He said he
30 appreciated the board's dedication and volunteering.
31

32 **6. New Business**

33 There was no new business.
34

35 **7. Adjournment**

36 **MOTION:** At 5:14 p.m., Mr. Rinehart moved to adjourn the meeting. Mr. Robb seconded the motion, which
37 passed unanimously (5-0).
38

39 (Recorded by Marsha Alley and transcribed by Beth Golden)
40

41 Respectfully Submitted,
42
43
44
45

46 _____
Marcia Joseph, Secretary Board of Zoning Appeals