County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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ALBEMARLE COUNTY BOARD OF ZONING APPEALS
ELECTRONIC MEETING VIA ZOOM
AGENDA
TUESDAY, FEBRUARY 1, 2022 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 2022 Meeting Schedule

4. Public Hearings:
   A. AP2021-003 Appeal of LOD2021-013 Homestays Ownership Eligibility
      Property Owner: Howe Whitman/Howe D. Whitman Jr. Family Trust
      Appellant: 5600 Turkey Sag Road, LLC/Bradford Manning
      Staff: Lea Brumfield/Bart Svoboda

5. Approval of Minutes
   A. July 6, 2021

6. Old Business
   A. BZA Annual Report for 2021 – Submitted to BOS in September 2021 for review at the October 6, 2021 BOS meeting

7. New Business
   A. Convene to Closed Session under *Virginia Code* § 2.2-3711(A)(1) – to discuss, consider, or interview prospective candidates for employment – BZA Legal Services Contract renewal for FY2022-23

   B. Reconvene to Open Session – Certify Closed Meeting

   C. Take Action on business discussed during Closed Session, if applicable

8. Adjournment

This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(16), 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.

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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.

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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.

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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

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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

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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.

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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, 01-05-2021, 02-01-2022)

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2022 Submission and Review Schedule - DRAFT			
Board of Zoning Appeals			
Deadline for Filing (3 P.M.)	**First Advertisement**	**Second Advertisement**	**Board of Zoning Appeals Meeting COB Auditorium (2 P.M.)**
Monday	**Monday**	**Monday**	**No sooner than Tuesday**
Nov 01 2021	Dec 20 2021	Dec 27 2021	Jan 04
Dec 06 2021	Jan 17	Jan 24	Feb 01
Jan 03	Feb 14	Feb 21	Mar 01
Jan 31	Mar 21	Mar 28	Apr 05
Feb 28	Apr 18	Apr 25	May 03
Apr 04	May 23	May 30	Jun 07
May 02	Jun 20	Jun 27	Jul 05
Jun 06	Jul 18	Jul 25	Aug 02
Jul 05	Aug 22	Aug 29	Sep 06
Aug 01	Sep 19	Sep 26	Oct 04
Sep 06	Oct 17	Oct 24	Nov 01
Oct 03	Nov 21	Nov 28	Dec 06
Oct 31	Dec 19	Dec 26	Jan 03 2023
Dec 05	Jan 23 2023	Jan 30 2023	Feb 07 2023
Jan 03 2023	Feb 20 2023	Feb 27 2023	Mar 07 2023
Feb 06 2023	Mar 20 2023	Mar 27 2023	Apr 04 2023

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 2022.

2023 dates are tentative.

COUNTY OF ALBEMARLE

MEMORANDUM

TO: Albemarle County Board of Zoning Appeals

FROM: Andrew H. Herrick, Deputy County Attorney

DATE: January 25, 2022

RE: 5600 Turkey Sag Road LLC; Appeal No. AP 2021-00003

On behalf of the County, the County Attorney's Office submits the following summary of legal issues raised in the appeal of 5600 Turkey Sag Road LLC (the "Appellant") (No. AP 2021-00003). The Appellant is appealing an official determination regarding a proposed homestay at 1202 Simmons Gap Road (the "Property").

1. Summary of Facts

On or about July 22, 2021, the Appellant applied for a zoning clearance for a proposed homestay (HS202100037) on its property at 5600 Turkey Sag Road. On or about September 20, 2021, the Appellant's application was denied. The Appellant neither requested an official determination on 5600 Turkey Sag Road nor appealed the denial of its application.

Separately, on or about August 9, 2021, River Rock, LLC requested an official determination (LOD202100013 application) regarding the ownership qualifications for a proposed homestay on its separate Property at 1202 Simmons Gap Road. On or about October 27, 2021, the Zoning Administrator's designee responded with an official determination (LOD202100013 determination) that "in order to meet the requirements for a Homestay Zoning Clearance, the Property must be held by a natural person residing on the Property, or a family trust whose beneficiary resides on the Property." The Appellant appealed this determination on or about November 24, 2021. (AP202100003)

The Appellant's property at 5600 Turkey Sag Road is a 21.2-mile drive (by the shortest route) from the subject Property at 1202 Simmons Gap Road. To the County's knowledge, the Appellant owns no interest in the subject Property, and is not affiliated with the subject Property's owner in any way.

2. Applicable Standards

A. Standard of Review: Presumption of Correctness / Appellant's Burden of Proof

Virginia Code § 15.2-2309(1) enables the Board of Zoning Appeals (BZA) to "hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of [the zoning ordinance]. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct." *See Board of Zoning Appeals of James City County v. University Square Associates*, 246 Va. 290 (1993).

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

B. Applicable Law

This appeal potentially involves two separate areas of the law: one procedural and the other substantive.

a. Standing to Appeal

Before even considering the substance of an appeal, the BZA must first determine whether an appellant has standing. *Virginia Code* § 15.2-2311(A) provides in part: "An appeal to the [BZA] may be taken by any person aggrieved . . . by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286."

The Supreme Court has clearly articulated the meaning of "aggrieved" in zoning appeals:

> "The term 'aggrieved' has a settled meaning in Virginia when it becomes necessary to determine who is a proper party to seek court relief from an adverse decision. In order for a petitioner to be 'aggrieved,' it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. *Nicholas v. Lawrence*, 161 Va. 589, 592, 171 S.E. 673, 674 (1933). The petitioner 'must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest.' *Id.* at 593, 171 S.E. at 674. Thus, it is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated. The word 'aggrieved' in a statute contemplates a substantial grievance and means a denial of some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally. *Insurance Ass'n v. Commonwealth*, 201 Va. 249, 253, 110 S.E.2d 223, 226 (1959)."

Virginia Beach Beautification Comm'n v. Board of Zoning Appeals, 231 Va. 415, 419-420 (1986)

The Supreme Court went on to emphasize the importance of having a property interest to be "aggrieved":

> "In the present case, the Commission, for example, neither owns nor occupies real property within or in close proximity to the property that is the subject of the variance

application. Indeed, the Commission owns no property at all. And it has not otherwise demonstrated a direct, immediate, pecuniary, and substantial interest in the decision to grant the variance to the height and setback requirements applicable to freestanding signs in the City. The organization is merely a nonstock corporation with no specific property interests to be damaged."

Virginia Beach Beautification Comm'n v. Board of Zoning Appeals, 231 Va. 415, 420 (1986)

The Circuit Court of Albemarle County applied the above precedents in the case of *In Re: May 3, 2011 Decision of the Board of Zoning Appeals of Albemarle County* (Case No. CL11000406-00), which involved the Restore N' Station project near Crozet. One of the appellants in that case was a concerned citizen who lived and owned property over 21 miles from the subject of that appeal. Following the above precedents, the Albemarle Circuit Court agreed that in order to have standing to appeal a decision of a Board of Zoning Appeals, a petitioner must have a direct and immediate pecuniary interest in the Petition. The Court ruled that the concerned citizen's interests in that Petition did not comply, as required by the law.

b. Homestay Zoning Ordinance

County Code § 18-5.1.48(j)(2) outlines the standards by which homestays located on a parcel of five acres or more in the Rural Areas (RA) zoning district (such as the subject Property) may be conducted. Most notably for the present case, *County Code* § 18-5.1.48(j)(2)(vi) provides: "The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals." (emphasis added)

3. Application/Analysis

a. Standing to Appeal

Like the Petitioners in the *Virginia Beach Beautification Comm'n* and *May 3, 2011 Albemarle BZA* appeals, 5600 Turkey Sag Road LLC has no direct immediate, pecuniary, or substantial interest in the 1202 Simmons Gap Road Property, and therefore cannot be "aggrieved" by the zoning determination. Like the Petition in the *Virginia Beach Beautification Comm'n* case, the present appeal should be dismissed.

b. Homestay Residency Requirement

Beyond the appellant's lack of standing, the determination under appeal was in fact correct. As noted above, *County Code* § 18-5.1.48(j)(2)(vi) requires that the owner of a parcel conducting a homestay use reside on and be present at the subject property during the homestay use except during approved whole house rentals. In this case, the appellant LLC is a business entity, and therefore cannot "reside" at 5600 Turkey Sag Road, as required. Please see the Zoning Administrator's memo for additional analysis of this issue.

5. Conclusion

For the reasons stated above, this appeal should be dismissed, and the official zoning determination affirmed.

Cc: Bart Svoboda, Zoning Administrator

STAFF: Bart Svoboda, Zoning Administrator
Lea Brumfield, Senior Planner II

PUBLIC HEARING: February 1, 2022

STAFF REPORT: AP2021-00003

APPLICANT/APPELLANT: Bradford Manning
5600 Turkey Sag Road, Keswick, VA

Subject Property:
1202 Simmons Gap Road, Dyke, VA - Tax Map 9, Parcel 24D (the "Property")

Location:
The subject Property is located at 1202 Simmons Gap Road in northern Albemarle County near the northeast corner of Plunkett Rd (SR603) and Simmons Gap Road (SR663), as shown on the attached map (Attachment A).

Considering an Appeal:
The BZA's decision on appeal is limited to the purpose of determining whether the decision of the Zoning Administrator was correct and the terms and provisions of the zoning ordinance were applied correctly. This appeal does not consider whether the proposed use is appropriate, whether it is in the public interest, or whether a zoning regulation is invalid or needs to be amended. The purpose this hearing is only to determine if the ordinance was applied correctly.

Homestay Ordinance Background:
On August 7, 2019, the Albemarle County Board of Supervisors adopted an ordinance regulating the use of homestays. These regulations replaced the regulations for the two uses formerly known as "Accessory Tourist Lodging" and "Bed and Breakfast" under the single use of "Homestay." This use is defined as:

> *"Homestay*. "Homestay" means an accessory residential use providing transient lodging and rooms for dining and meetings for use by homestay guests provided that the dining and meeting rooms are subordinate to the homestay use. A homestay use may offer no more than five guest rooms for lodging."
>
> (*County Code* § 18-3.1)

County Code § 18-5.1.48(j) differentiates between (1) homestays located on either (a) parcels of less than five acres in the Rural Areas Zoning District or (b) parcels of any size that allow residential use in the Residential Zoning Districts or Planned Development Zoning Districts, and (2) homestays located on parcels of five acres or more in the Rural Areas Zoning District.

The Property at 1202 Simmons Gap Road is a 24.91-acre parcel located in the Rural Areas Zoning District. The regulations governing a homestay use at the Property include the requirement of owner occupancy:

(vi.) *Owner occupancy.* The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals.

(*County Code* § 18-5.1.48 (j)(2)(vi), emphasis added)

Homestay special exceptions are currently limited to the following waivers or modifications:

(i.) More than two guest rooms and/or the use of an accessory structure in association with a homestay on parcels in the Residential or Planned Development districts, or Rural Areas district parcels of less than five acres.
(ii.) Reduction in minimum applicable yards for a structure or parking used in whole or in part for a homestay.
(iii.) The use of an accessory structure built after August 7, 2019.
(iv.) Resident Manager occupancy instead of owner occupancy as required by 5.1.48(j)(1)(iv).

(*County Code* § 18-5.1.48 (i)(1), emphasis added)

Note that eligibility for the Resident Manager special exception is limited to parcels regulated by section 5.1.48(j)(1)(iv), which applies to owner occupancy on: "(a) a parcel of less than five acres in the Rural Areas Zoning District or (b) a parcel of any size that allows residential use in the Residential Zoning Districts or Planned Development Zoning Districts."

Therefore, parcels of five acres or more in the Rural Areas Zoning District (such as the subject Property) are not eligible for this special exception.

The homestay regulations were originally adopted by the Board of Supervisors on August 7, 2019. At a Work Session on June 2, 2020, the Board discussed a possible ordinance amendment to allow large Rural Areas parcels to apply for the resident manager special exception. The Board expressly declined to pursue such an amendment, citing concerns about business entities operating homestays across multiple parcels.

Application History:
On May 3, 2021, Mr. Howe Whitman III applied for a Homestay Zoning Clearance HS202100020 (Attachment B) at 1202 Simmons Gap Road. Though the application listed Mr. Whitman as the Property Owner/Operator, the Property was listed under an LLC on County real estate records.

On May 13, 2021, Mr. Whitman was informed by e-mail (Attachment C) that staff was unable to approve the Homestay Zoning Clearance application because the Property was then owned by River Rock LLC.

On August 9, 2021, Mr. Whitman requested a Zoning Determination (LOD2021-013) regarding the denial of HS202100020.

On October 27, 2021, a Zoning Determination (LOD2021-013) was issued confirming the eligibility requirements for HS202100020.

On November 23, 2021, River Rock LLC transferred ownership to Howe Whitman, Trustee of the Howe Whitman Jr. Family Trust.

On November 24, 2021, the Appellant, 5600 Turkey Sag Road LLC (Bradford Manning), filed an appeal (AP2021-003) regarding LOD2021-013 for the subject Property located at 1202 Simmons Gap Road.

On January 6, 2022, Homestay Zoning Clearance HS202100020 was issued after Mr. Whitman transferred ownership of the subject Property as indicated in LOD2021-013.

Grounds for Zoning Administrator's Determination:
Under *County Code* § 18-5.1.48(j)(2)(vi), the owners of parcels conducting a homestay use must reside on the subject property. Because business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use.

As the property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel over five acres in size, it is not subject to *County Code* § 18-5.1.48(j)(1)(iv), and therefore is not eligible for a special exception to permit a resident manager under that section.

Staff's Response to Appeal:
This appeal raises three basic points. In response to the first, Official Determination LOD2021-013 issued to Howe Whitman, III on October 27, 2021 is for 1202 Simmons Gap Road. Though Mr. Manning may have a similar ownership structure, the determination was not issued for his parcel or application. The owner of the subject Property did not appeal the determination. In fact, after Mr. Whitman changed the ownership of the subject Property as indicated in LOD2021-013, he was issued a Homestay Zoning Clearance on January 6, 2022. A mere similarity to the subject Property alone is insufficient to establish standing that harm exists.

As the determination was not issued for 5600 Turkey Sag Road, the appeal should be dismissed on the grounds that Mr. Manning lacks standing and is therefore not an aggrieved party.

Second, there is no dispute with the appellant's statement that his LLC is the owner of the separate property at 5600 Turkey Sag Road. The law recognizes an LLC as a separate legal entity in its own right. This entity acts as a shield for an individual member or members, to distinctly separate the owner from the members. An LLC does not lose its legal ownership of a property just because a member or manager resides on that property. If an LLC is a property's owner, then its member(s) are not.

Again, the appellant has stated he is "the sole manager of the LLC." Regardless of what the appellant thinks the ordinance should allow, the resident manager option is not available for Rural Areas parcels larger than five acres.

Lastly, the applicant states there is no reference in the County Code that suggests that to reside is an action that can be fulfilled by a natural person. The example cited from the Cambridge dictionary

states: “to live, have your home”. An LLC is an entity, it is not a person. The zoning ordinance lists a variety of regulations regarding the use and occupancy of a structure. The ordinance speaks to the number of unrelated persons in a dwelling; it also differentiates between an owner, its agent, a resident manager, tenant, an employee, occupant, developer, subdivider, or family member. Although an entity or a person can own property or structures, only a person can occupy or reside in structures or on a property.

Because an entity, such as an LLC, is not a person, it cannot occupy or reside in a structure or on a property; the entity can only own it. A property owned by an LLC does not meet the requirements of Section 5.1.48(j)(2)(vi) of the zoning ordinance and cannot be approved for a homestay use.

Summary:

Because the determination under appeal was not issued for 5600 Turkey Sag Road, the appeal should be dismissed on the grounds that Mr. Manning lacks standing and is therefore not an aggrieved party.

If appeal is heard:

On October 27, 2021, an Official Zoning Determination (LOD2021-013) was issued confirming the eligibility requirements for HS202100020; the evidence supports the determination that the application did not meet the requirements of Section 5.1.48(j)(2)(vi) of the zoning ordinance and could not be approved.

Because the Zoning Administrator’s determination was and is correct, staff asks that the Board of Zoning Appeals affirm this determination.

Proposed Motions:

For Dismissal:

I move that the Board of Zoning Appeals dismiss this appeal AP202100003.

If the appeal is heard:

I move that the Board of Zoning Appeals affirm the Zoning Administrator’s determination in LOD202100013.

Attachments:

Attachment A: Map

Attachment B: Homestay Zoning Clearance HS202100020

Attachment C: LOD202100013 Whitman Application and Correspondence

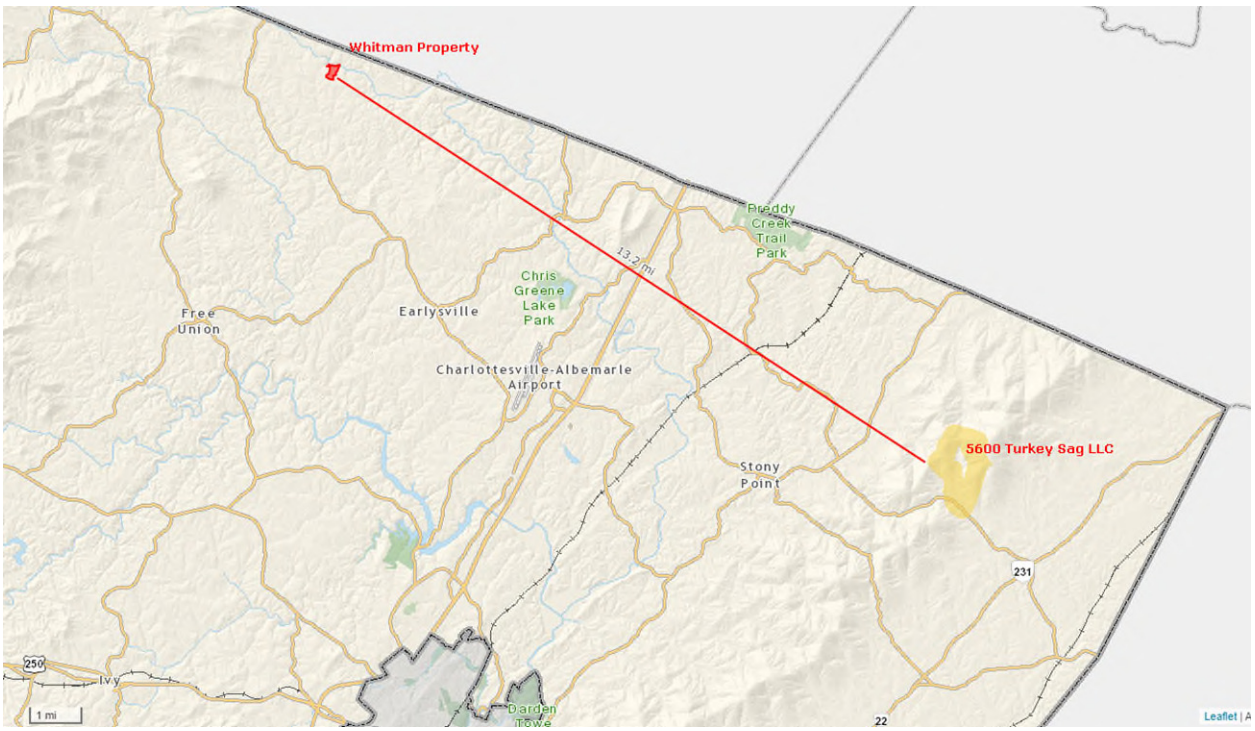
Attachment D: LOD202100013 Whitman Property Determination Letter

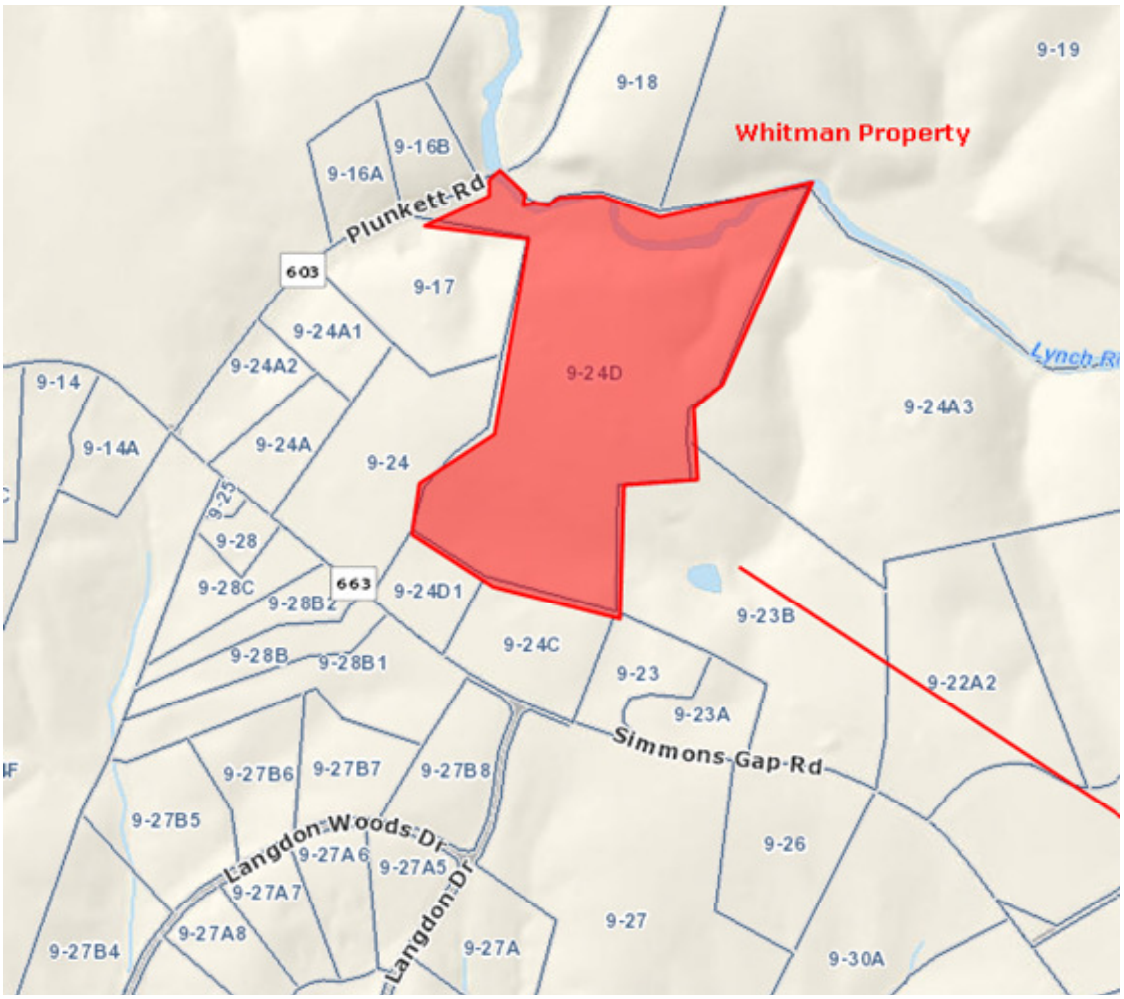
Attachment E: HS2021-037 5600 Turkey Sag Road LLC

Attachment F: Zoning Ordinance § 5.1.48 (Homestay)

Attachment G: AP201300003 Application - Justification Manning

Location Map: **Attachment A**





Attachment B

Homestay
Zoning Clearance Application

APPROVED
by the Albemarle County
Community Development Department
Date _____
File _____

Albemarle County
Community Development
401 McIntire Rd., North Wing
Charlottesville, VA 22902
Phone 434.296.5832 | Fax 434.972.4126

Submit this completed application with the following online or to the address above:

Application fee: $158

1. Floor plan/property sketch with labeled structures used for the homestay, guest bedrooms, owner's bedroom, outdoor lighting and signage for the homestay, labeled setbacks, and parking (minimum 2 + 1 spot/guest bedroom).
2. Copies of two forms of verification of residency (one government issued with photo ID + one listing the address - acceptable forms include driver's license, voter registration card, U.S. passport, others as approved by the Zoning Administrator)

1. Homestay Information

Residentially zoned and rural area parcels of less than 5 acres may have 2 guest bedrooms by-right. Use of accessory structures (if built before August 7, 2019) is only permitted by-right on rural area parcels of 5+ acres. Whole house rental is only permitted on rural area parcels of 5+ acres.

ADDRESS:	1202 Simmons Gap Road				
CITY, STATE, ZIP:	St. George, Virginia, 22935				
TAX MAP PARCEL (IF KNOWN):	9000000024D			ZONING (IF KNOWN):	RA 1
ADVERTISED NAME OF HOMESTAY (IF APPLICABLE):	River Meadows Farm			ACREAGE OF PARCEL:	24.91
NO. OF GUEST BEDROOMS:	4	USING ACCESSORY STRUCTURES?	☒ YES ☒ NO	WHOLE HOUSE RENTAL?	☒ YES ☒ NO

2. Property Owner/Operator Information

NAME:	Howe Whitman III		
HOME ADDRESS:	1202 Simmons Gap Road		
CITY, STATE, ZIP:	St. George, VA 22935		
PHONE NUMBER:	609-468-2596	EMAIL:	howewhitman@gmail.com

3. Responsible Agent Information

The responsible agent must be available within 30 miles of the homestay at all times during a homestay use, and must respond and attempt in good faith to resolve any complaints within 60 minutes of being contacted.

NAME:	Travis Wilburn		
HOME ADDRESS:	100 Second St NW		
CITY, STATE, ZIP:	Charlottesville, VA 22902		
PHONE NUMBER:	434-242-0380	EMAIL:	travis@staycharlottesville.com

4. Signature

I hereby apply for approval to conduct the homestay identified above, and certify that this address is my legal residence, and that I own the property or that I have recieved a special exception to operate the homestay as a resident manager. I also certify that I have read the restrictions on homestays, that I understand them, and that I will abide by them.

SIGNATURE:	[signature]	DATE:	5/3/2021

FOR OFFICE USE ONLY

Fee Amt: $158 Date Paid: 5/5/21
Receipt #: 1CS17327AP2313446
Ck#: C.C.
Received by: JS.
HS#: 2021-20

Safety inspection date: _____ ☒ Pass ☒ Fail
VDH Food Service (if necessary): _____
Notes: drivers license, voting card

2nd inspection date: 1/4/22 ☒ Pass ☒ Fail
☒ Floorplan ☒ Parking ☒ ID
Reviewd By: KB
Date: 5-10-21
☒ Approved ☒ Denied

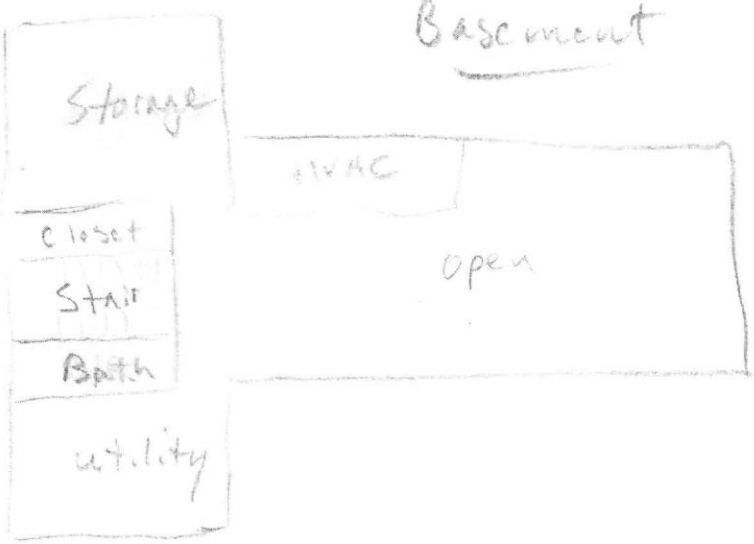
Fees - emailed 5/10

14107

1202 Simmons Gap Rd

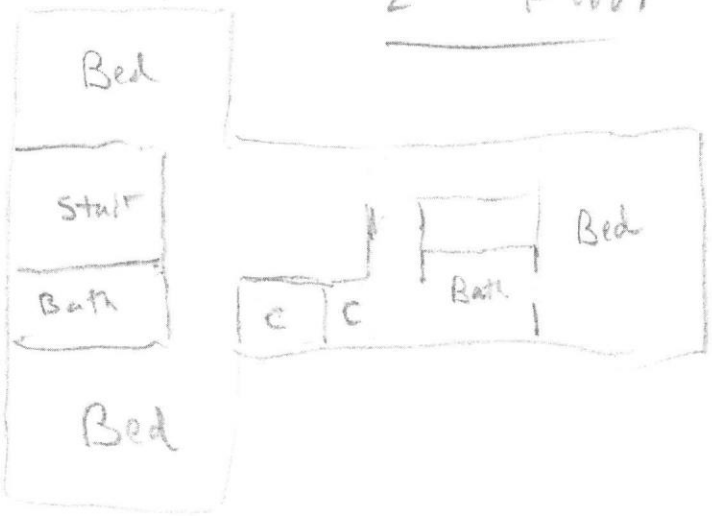
Floor Plans

Basement

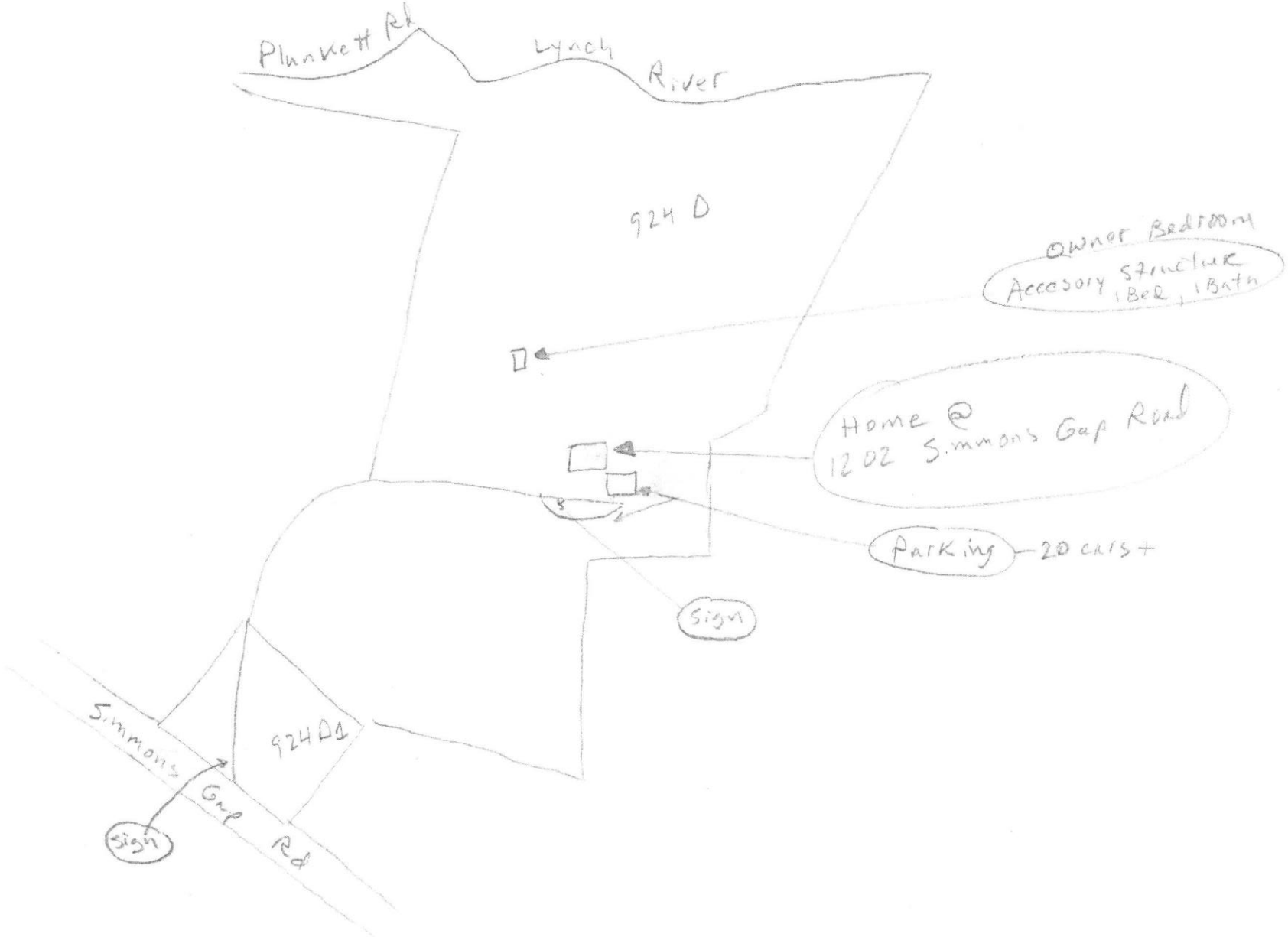


1st Floor

2nd Floor



1202 Simmons Gap Rd.
Property Sketch



FOR OFFICE USE ONLY LOD # 2021-13

Fee Amount $123.76 Date Paid 8/9/21 By who? River Rock LLC Receipt # 123723 Ck# 5018 By: JS

Application for Official Letter of Determination

☑ **Official Letter of Determination of Parcel of Record and/or Development Rights = $123.76**
Official Letter $119 + Technology Surcharge $4.76

A separate fee is required for each parcel shown on the tax map.
(1 parcel is $119 + $4.76 = **$123.76**, 2 parcels are $238 + $9.52 = **$247.52**, etc.)

☐ **All other Official Letters of Determinations (including but not limited to Use, Zoning, Nonconformity, Parking, Floodplain, Vested Rights, Area & Bulk Regulations, De minimis) = $123.76**
Official Letter $119 + Technology Surcharge $4.76

☐ Certification that notice of this application has been provided to the property owner if the owner is different from applicant.

Project Name: Homestay application

Tax map and parcel(s): 9000000024D **Zoning:** RA1

Contact Person (Who should we call/write concerning this project?): Howe Whitman Jr.

Address 1202 Simmons Gap Road City St. George State 22935 Zip

Daytime Phone (609) 468-2596 Fax # (____) E-mail howewhitman@gmail.com

Owner of Record River Rock LLC

Address 1202 Simmons Gap Road City St. George State VA Zip

Daytime Phone (609) 468-2596 Fax # (____) E-mail howewhitman@gmail.com

Applicant (Who is the Contact person representing?): Howe Whitman III

Address 1202 Simmons Gap Road City St. George State VA Zip

Daytime Phone (609) 468-2596 Fax # (____) E-mail howewhitman@gmail.com

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

Submittal Requirements

Parcel of Record and/or Development Rights

- ☐ Tax Map Page
- ☐ Provide evidence showing when the parcel/parcels was/were created. This will include the following;
  - ☐ The last instrument of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia on or prior to December 10, 1980.
  - ☐ Include deeds that provide a plat or metes and bounds description of the property. (Highlight or underline references to the subject property).
- ☐ All plats and deeds of record after December 10, 1980, UP UNTIL THE PRESENT DATE. (Highlight or underline references to the subject property).
- ☐ Cover letter stating the assumed number of parcels and development rights, with explanation of same.
- ☐ Any other pertinent information.
- ☐ A fee is required for each separate parcel shown on the tax map.

All other Determinations

- ☑ Cover letter stating what is being requested. Provide all necessary information for the consideration of this decision including
- ☑ Tax Map Page if request is regarding a specific property.
- ☐ **If the request is regarding a nonconforming use, structure, or lot then you must provide enough probative material evidence to prove the nonconformity.**
- ☑ Provide justification for the request and any other pertinent information.
- ☑ Fee as noted above.

Please refer to the Albemarle County Land Use Law Handbook for more information regarding zoning determinations and nonconformities. http://www.albemarle.org/LandUseLaw

Determination may take up to ninety (90) days from submittal

Signature of Owner

7/30/2021
Date

Howe Whitman, Jr., Manager, River Rock LLC
Print Name

609-468-2596
Daytime phone number of Signatory

Howe Whitman Jr.
1202 Simmons Gap Road
St. George, VA 22035

August 1, 2021

County of Albemarle
Department of Community Development
301 McIntire Road
Charlottesville, VA 22902

Re: Request for Letter of Determination
Homestay Application
1202 Simmons Gap Road
St. George, VA 22935

Dear Sir or Madam,

We submitted a Homestay Application for the referenced parcel this spring. The application was dismissed because the parcel is held in an LLC. I have enclosed correspondence with Lea Brumfield in the Zoning Office.

The LLC is merely a means of limiting our liability. The LLC is owned 100% by a family trust. In fact, the LLC and the family trust have the same tax identification number; the LLC is a "disregarded entity" according to the IRS, meaning the IRS considered the LLC and the family trust to be one and the same for tax purposes. The ownership is transparent and easy to verify - the LLC is registered with the Commonwealth of Virginia.

The zoning office said that if we switched the parcel to direct ownership by the family trust, then our application would be acceptable.

Therefore, I request a letter of determination on this issue. On what basis of law is our application being dismissed?

Thank you for your attention to this matter.

Sincerely,

Howe Whitman, Jr.
Trustee of the Howe D Whitman Jr Family Trust
Manager of River Rock, LLC, a wholly owned LLC of the Trust

Gmail

Howe Whitman, Jr. <howe.whitman@gmail.com>

Re: 1202 Simmons Gap Homestay Ownership Issue

1 message

Lea Brumfield <lbrumfield@albemarle.org> Wed, Jul 28, 2021 at 12:04 PM
To: "Howe Whitman, Jr." <howe.whitman@gmail.com>
Cc: Travis Wilburn <travis@staycharlottesville.com>

Hi Howe,

Unfortunately, the ownership question isn't up to staff to interpret. We have been given firm direction on this from the County Attorney's Office, and we're not able to allow LLC's as a form of ownership without a "resident manager" on the property, which is not permitted on large rural parcels.

I do understand it's frustrating, but it's unfortunately one of the situations where the regulations intended to restrict purely commercial hotel-like situations ends up catching family farms under the same regulations.

Please let me know if you have any additional questions.

Best regards,

Lea Brumfield, AICP Candidate (she, her)
Senior Planner II, Zoning Division
Albemarle County

lbrumfield@albemarle.org
434-296-5832 x3023
401 McIntire Road, Charlottesville, VA 22902

> On Jul 28, 2021, at 11:40, Howe Whitman, Jr. <howe.whitman@gmail.com> wrote:

> CAUTION: **This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.**
>
> Hello Lea,
> Thanks for your reply below. I could dissolve the LLC that holds the property for the family trust. What is strange is that the LLC is owned 100% by the family trust. The LLC even has the same tax id number as the trust; thus, they are one and the same entity to the IRS. The only thing that changes if I dissolve the LLC is that I lose the protection of the LLC which limits our liability. That's a big deal when you are trying to run a farm - with all the heavy equipment, cows, chainsaws, and homestay visitors, there is a lot of potential liability. I understand that Albemarle County wants to make sure the Homestay properties are owner occupied and not operated by businesses. In this case, it is very easy to verify that the LLC and the trust are one and the same - the LLC ownership is registered with the Commonwealth of Virginia. Isn't there another way to verify owner occupancy without taking away our liability protection?
>
> Thanks for your consideration.
>
> Howe
>
> On Fri, Jul 9, 2021 at 3:50 PM Lea Brumfield <lbrumfield@albemarle.org> wrote:
>
> > Hi Howe,

Yes, that is correct. If the property is held in a family trust and a beneficiary of the trust is the full-time resident of the property, that is an acceptable form of ownership.

Best regards,

Lea Brumfield (she, her)

Senior Planner II, Zoning Division

Albemarle County

lbrumfield@albemarle.org

434-296-5832 x3023

401 McIntire Road, Charlottesville, VA 22902

From: Howe Whitman, Jr. <howe.whitman@gmail.com>
Sent: Friday, July 9, 2021 2:58 PM
To: Lea Brumfield <lbrumfield@albemarle.org>; Travis Wilburn <travis@staycharlottesville.com>
Subject: Re: 1202 Simmons Gap Homestay Ownership Issue

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

Ms. Brumfeld, I have a follow up question about our application. If the property were held in a family trust, is that deemed an acceptable form of ownership for homestay purposes?

Thank you.

Howe

On Fri, May 28, 2021 at 10:00 AM Howe Whitman, Jr. <howe.whitman@gmail.com> wrote:

> Hello Ms. Brumfield,
>
> Thanks for your email. It's my understanding that the county supervisors are having a hearing about the Homestay code which would potentially change the rules in favor of our application. Thus, I request that you keep our application active, pending their decision.
>
> Thank you.
>
> Howe

On Thu, May 27, 2021 at 5:24 PM Lea Brumfield <lbrumfield@albemarle.org> wrote:

Mr. Whitman,

I just wanted to confirm before I take action – I'll be marking your application as withdrawn due to the ownership issue tomorrow. Since we cannot legally approve the application at this time, the only possible actions are to deny the application or withdraw it.

Lea Brumfield (she, her)

Senior Planner II, Zoning Division

Albemarle County

lbrumfield@albemarle.org

434-296-5832 x3023

401 McIntire Road, Charlottesville, VA 22902

From: Lea Brumfield
Sent: Thursday, May 13, 2021 5:34 PM
To: howewhitman@gmail.com
Subject: 1202 Simmons Gap Homestay Ownership Issue

Mr. Whitman,

I'm reviewing your recently submitted Homestay Zoning Clearance Application for a homestay at 1202 Simmons Gap Road, but there is unfortunately an issue with the application. As it's currently held under an LLC, "River Rock LLC," the property is not eligible to be used as a homestay. Our County Attorney has determined that as an LLC is not a natural person, an LLC cannot "occupy" a parcel, and therefore an LLC-owned parcel cannot be owner occupied.

The regulations chart found in the application packet is below; please note that under Required Occupancy for Rural Areas parcels over 5+ acres, there is no permitted Special Exception for owner occupancy. If you wanted to switch the ownership of the parcel to your own name, with we would be able to proceed with the application review. If not, we will refund your application fee. Let me know how you'd like to proceed, or if you have any additional questions.

<image002.png>

Best regards,

Lea Brumfield (she, her)

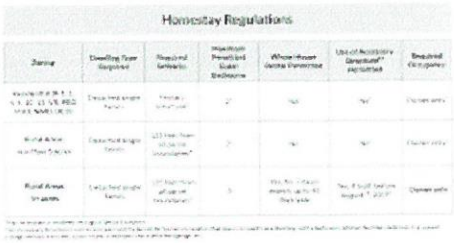
Senior Planner II, Zoning Division

Albemarle County

lbrumfield@albemarle.org

434-296-5832 x3023

401 McIntire Road, Charlottesville, VA 22902



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RECEIVED
AUG 0 9 2021
COMMUNITY DEVELOPMENT

County of Albemarle
COMMUNITY DEVELOPMENT

LEA BRUMFIELD
Senior Planner II, Zoning
lbrumfield@albemarle.org
tel: 434-296-5832 ext. 3023

October 27, 2021

Howe Whitman Jr.
1202 Simmons Gap Road
St. George, VA 22935
howewhitman@gmail.com

RE: OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY – 1202 Simmons Gap Road at TMP 00900-00-00-024D0 ("the Property")

Mr. Whitman:

In response to your request for a determination regarding the ownership qualifications of the Property for a Homestay Zoning Clearance, I have consulted with the Zoning Administrator and the County Attorney. It is my official determination that in order to meet the requirements for a Homestay Zoning Clearance, the Property must be held by a natural person residing on the Property, or a family trust whose beneficiary resides on the Property.

Background

On August 7, 2019, the Albemarle County Board of Supervisors adopted an ordinance regulating the use of homestays. These regulations replaced the regulations for the two uses formerly known as "Accessory Tourist Lodging" and "Bed and Breakfast" under the single use of "homestays." This use is defined as:

> *"Homestay*. "Homestay" means an accessory residential use providing transient lodging and rooms for dining and meetings for use by homestay guests provided that the dining and meeting rooms are subordinate to the homestay use. A homestay use may offer no more than five guest rooms for lodging."
>
> (*County Code* § 18-3.1)

County Code § 18-5.1.48(j) differentiates between (1) homestays located on either (a) parcels of less than five acres in the Rural Areas Zoning District or (b) parcels of any size that allow residential use in the Residential Zoning Districts or Planned Development Zoning Districts, and (2) homestays located on parcels of five acres or more in the Rural Areas district.

The Property at 1202 Simmons Gap Road is located in the Rural Areas district on a 24.91-acre parcel. The regulations governing a homestay use at the Property include the requirement of owner occupancy:

> (vi.) *Owner occupancy*. The owner of a parcel conducting a homestay use <u>must reside on</u> and be present at the subject property during the homestay use except during approved whole house rentals.
>
> (*County Code* § 18-5.1.48 (j)(2)(vi), emphasis added)

Homestay special exceptions are currently limited to the following waivers or modifications:

> (i.) More than two guest rooms and/or the use of an accessory structure in association with a homestay on parcels in the Residential or Planned Development districts, or Rural Areas district parcels of less than five acres;
> (ii.) Reduction in minimum applicable yards for a structure or parking used in whole or in part for a homestay.
> (iii.) The use of an accessory structure built after August 7, 2019.
> (iv.) Resident Manager occupancy instead of owner occupancy <u>as required by 5.1.48(j)(1)(iv)</u>.
>
> (*County Code* § 18-5.1.48 (i)(1), emphasis added)

Note that eligibility for the Resident Manager special exception is limited to parcels regulated by section 5.1.48(j)(1)(iv), which applies to owner occupancy on: "(a) a parcel of less than five acres in the Rural Areas Zoning District or (b) a parcel of any size that allows residential use in the Residential Zoning Districts or Planned Development Zoning Districts."

Therefore, parcels of five acres or more in the Rural Areas Zoning District are not eligible for this special exception.

The homestay regulations were originally adopted by the Board of Supervisors on August 7, 2019. At a Work Session on June 2, 2020, the Board discussed a possible ordinance amendment to allow large Rural Areas parcels to apply for the resident manager special exception. The Board expressly declined to pursue such an amendment, citing concerns about business entities running homestays across multiple parcels.

Analysis

Under *County Code* § 18-5.1.48(j)(2)(vi), the owners of parcels conducting a homestay use must reside on the subject property. Because business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use.

As your property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel over five acres in size, it is not subject to *County Code* § 18-5.1.48(j)(1)(iv), and therefore is not eligible for a special exception to permit a resident manager under *County Code* § 18-5.1.48(i)(1)(iv).

A trust whose beneficiary is a natural person(s) may hold a property with a homestay use on it, as the trust is directly tied to the natural person(s). The natural person(s) named as beneficiary of the trust must reside on the property, and it must be their full-time residence.

Conclusion

The Homestay Zoning Clearance application submitted for the Property is Pending on the basis of conversations between the applicant and Zoning Staff, regarding the applicant's intention to move the Property from the limited liability company River Rock LLC to the family trust currently holding the limited liability company. The application was deemed complete on May 10, 2021. The application has not been dismissed. Homestay Zoning Clearance applications are generally regarded as "void" following three months of inactivity on the part of the applicant in response to staff review requests or additional application requirements. The application of this Letter of Determination regarding the ownership eligibility for a Homestay Zoning Clearance serves as activity to further the validity of the application.

Because the Property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel of over five acres, it is not eligible for a special exception to permit a resident manager. It may, however, be held by a trust whose beneficiary resides on the property.

You may have a right to appeal this determination within thirty (30) days of this notice, in accordance with Virginia Code § 15.2-2311. This determination will be final and unappealable if not appealed within 30 days.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with § 18-34.3 of the Zoning Ordinance, along with a fee of $295.36 plus the actual cost of advertising the appeal for public hearing.

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

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance. They may be reviewed online at https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals.

If you have any questions, please contact me.

Sincerely,

Lea H. Brumfield
Senior Planner II, Designee of the Zoning Administrator

Albemarle County
401 McIntire Road, Charlottesville, VA 22902
lbrumfield@albemarle.org

Copy: Bart Svoboda, Zoning Administrator; Andy Herrick, Deputy County Attorney

Attachment E

Homestay
Zoning Clearance Application

Albemarle County
Community Development
401 McIntire Rd., North Wing
Charlottesville, VA 22902
Phone 434.296.5832 | Fax 434.972.4126

Submit this completed application with the following online or to the address above: Application fee: $158

1. Floor plan/property sketch with labeled structures used for the homestay, guest bedrooms, owner's bedroom, outdoor lighting and signage for the homestay, labeled setbacks, and parking (minimum 2 + 1 spot/guest bedroom).
2. Copies of two forms of verification of residency (one government issued with photo ID + one listing the address - acceptable forms include driver's license, voter registration card, U.S. passport, others as approved by the Zoning Administrator)

1. Homestay Information

Residentially zoned and rural area parcels of less than 5 acres may have 2 guest bedrooms by-right. Use of accessory structures (if built before August 7, 2019) is only permitted by-right on rural area parcels of 5+ acres. Whole house rental is only permitted on rural area parcels of 5+ acres.

ADDRESS:	5600 Turkey Sag Road		
CITY, STATE, ZIP:	Keswick, Virginia, 22947		
TAX MAP PARCEL (IF KNOWN):	04900-00-00-024A0	ZONING (IF KNOWN):	RA
ADVERTISED NAME OF HOMESTAY (IF APPLICABLE):		ACREAGE OF PARCEL:	370.40
NO. OF GUEST BEDROOMS:	5	USING ACCESSORY STRUCTURES?	YES (NO)
WHOLE HOUSE RENTAL?	(YES) NO		

2. Property Owner/Operator Information

NAME:	5600 Turkey Sag Road LLC		
HOME ADDRESS:	200 Garrett Street, Suite O		
CITY, STATE, ZIP:	Charlottesville, VA, 22902		
PHONE NUMBER:	(434) 249-4580	EMAIL:	bradford@twoblindbrothers.com

3. Responsible Agent Information

The responsible agent must be available within 30 miles of the homestay at all times during a homestay use, and must respond and attempt in good faith to resolve any complaints within 60 minutes of being contacted.

NAME:	Bradford Manning		
HOME ADDRESS:	5600 Turkey Sag Road		
CITY, STATE, ZIP:	Keswick, VA 22974		
PHONE NUMBER:	434 249 4580	EMAIL:	bradford@twoblindbrothers.com

4. Signature

I hereby apply for approval to conduct the homestay identified above, and certify that this address is my legal residence, and that I own the property or that I have recieved a special exception to operate the homestay as a resident manager. I also certify that I have read the restrictions on homestays, that I understand them, and that I will abide by them.

SIGNATURE:	B M	DATE:	07/19/2021

FOR OFFICE USE ONLY

Fee Amt: $158 Date Paid: 7/22/21
Receipt #: 9FT52339TW15361Y $158
Ck#: C.C.
Received by:
HS# 2021-37

Safety inspection date: _____ Pass Fail
VDH Food Service (if necessary): _____
Notes: Owned By LLC - cannot Approve. Refund

2nd inspection date: _____ Pass Fail
Floorplan Parking ID
Reviewd By: Lea Bemfield
Date: 9/20/21
Approved (Denied)

$17.76 3PP48413J35118705

Homestay
Zoning Clearance Application

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Community Development
401 McIntire Rd., North Wing
Charlottesville, VA 22902
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1. Floor plan/property sketch with labeled structures used for the homestay, guest bedrooms, owner's bedroom, outdoor lighting and signage for the homestay, labeled setbacks, and parking (minimum 2 + 1 spot/guest bedroom).
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NO. OF GUEST BEDROOMS:	5	USING ACCESSORY STRUCTURES? YES (NO)	WHOLE HOUSE RENTAL? (✓ YES) NO

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HOME ADDRESS:	200 Garrett Street, Suite O		
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PHONE NUMBER:	(434) 249-4580	EMAIL:	bradford@twoblindbrothers.com

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NAME:	Bradford Manning		
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PHONE NUMBER:	434 249 4580	EMAIL:	bradford@twoblindbrothers.com

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SIGNATURE: B M DATE: 07/19/2021

FOR OFFICE USE ONLY

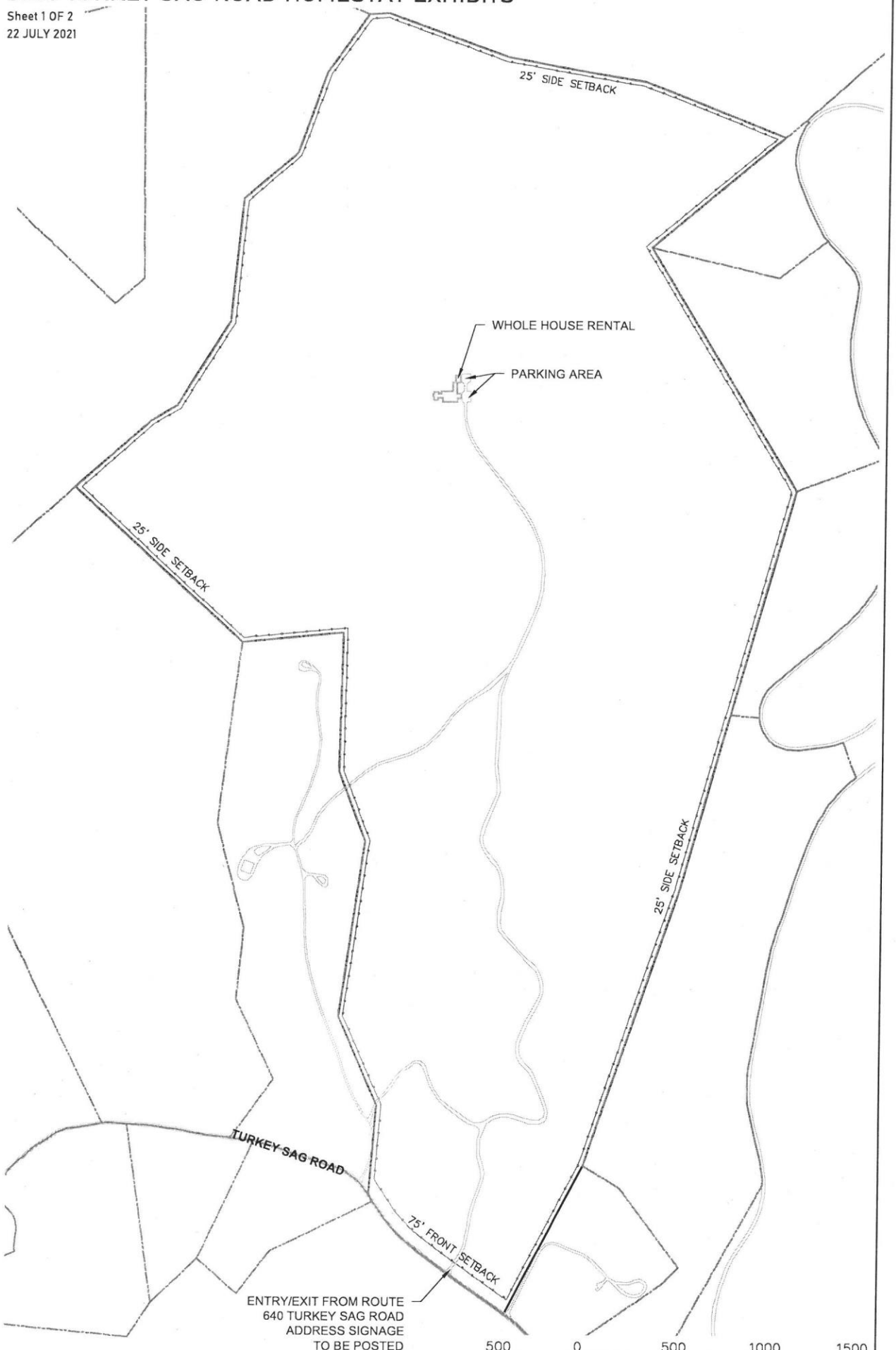
Fee Amt: $158 Date Paid: 8/10/21
Receipt #: 9FT52339TW153951
Ck#:
Received by:
HS# 2021-00037

Safety inspection date: Pass Fail
VDH Food Service (if necessary):
Notes: Owned By LLC - Cannot Approve. Refund

2nd inspection date: Pass Fail
Floorplan Parking ID
Reviewd By: La Brumfield
Date: 9/20/21
Approved Denied

5600 TURKEY SAG ROAD HOMESTAY EXHIBITS

Sheet 1 OF 2
22 JULY 2021



LAND PLANNING • PROJECT MANAGEMENT
912 E HIGH STREET, CHARLOTTESVILLE VA 22902 • 434.227.5140 • JUSTIN@SHIMP-ENGINEERING.COM
SHIMP ENGINEERING, P.C.

5600 TURKEY SAG ROAD HOMESTAY EXHIBITS

Sheet 2 OF 2

22 July 2021

50 0 50 100 150

Graphic Scale: 1"=50'

SHIMP ENGINEERING, P.C.

LAND PLANNING • PROJECT MANAGEMENT

972 E HIGH STREET, CHARLOTTESVILLE, VA 22902 • 434-227-5140 • JUSTIN@SHIMP-ENGINEERING.COM

Sec. 5.1.48 - Homestays.

Each homestay is subject to the following regulations:

a. *Residency.* The owner of the parcel on which a homestay is located, must reside on the subject parcel for a minimum of 180 days in a calendar year.

b. *Notice.* The owner of a parcel conducting a homestay use must provide the name, telephone number, and emergency contact information of the owner and other designated responsible agent to abutting parcel owners on an annual basis. The owner must retain and provide a copy of the notice to the Zoning Administrator within five business days upon request.

c. *Parking.* In addition to the parking required for a single-family dwelling, the number of off-street parking spaces required by County Code § 18-4.12.6 must be provided on-site and no alternatives to parking in § 18-4.12.8 may be authorized.

d. *Information and sketch plan to be submitted with request for zoning clearance.* The following documents must be submitted to the zoning administrator with each request for a zoning clearance under County Code § 18-31.5:

   1. *Information.* Information pertaining to the following: (i) the proposed use; (ii) the maximum number of guest rooms; (iii) the provision of authorized on-site parking; (iv) the location, height and lumens of outdoor lighting; and (v) two forms of verification of the permanent residency of an owner. Acceptable proof of permanent residence includes: driver's license, voter registration card, U.S. passport, or other document(s) that the zoning administrator determines provide equivalent proof of permanent residence at the subject parcel.

   2. *Sketch plan.* A schematic drawing of the premises with notes in a form and of a scale approved by the zoning administrator depicting: (i) all structures that would be used for the homestay; (ii) the locations of all guest rooms; and (iii) how access, on-site parking, outdoor lighting, signage and minimum yards will be provided in compliance with this chapter.

   3. *Signatures.* The responsible agent and the owner of the parcel must sign the application.

e. *Building code, fire and health approvals.* Before the zoning administrator approves a zoning clearance under County Code § 18-31.5, the owner of the parcel must obtain approval of the use from the building official, the fire official, and the Virginia Department of Health.

f. *Uses prohibited.* The following uses are not permitted as uses accessory to a homestay use: (i) restaurants; and (ii) special events serving attendees other than homestay guests.

g. *Responsible agent.* Each applicant for a homestay must designate a responsible agent to promptly address complaints regarding the homestay use. The responsible agent must be available within 30 miles of the homestay at all times during a homestay use. The responsible agent must respond and attempt in good faith to resolve any complaint(s) within 60 minutes of being contacted. The responsible agent may initially respond to a complaint by requesting homestay guest(s) to take such action as is required to resolve the complaint. The responsible agent also may be required to visit the homestay if necessary to resolve the complaint.

h. *Lawfully pre-existing uses.* Any bed and breakfast or tourist lodging use approved prior to August 7, 2019 may continue, subject to conditions of the prior approval(s).

i. *Special exception.*

   (1) Waiver or modification of this section is prohibited except to permit:

      (i) More than two guest rooms and/or the use of an accessory structure in association with a homestay on parcels in the Residential or Planned Development districts, or Rural Areas district parcels of less than five acres;

      (ii) Reduction in minimum applicable yards for a structure or parking used in whole or in part for a homestay.

      (iii) The use of an accessory structure built after August 7, 2019.

      (iv) Resident Manager occupancy instead of owner occupancy as required by 5.1.48(j)(1)(iv).

   (2) Special exceptions may be granted after notice to abutting property owners upon consideration of the following:

      (i) There is no detriment to any abutting lot; and

      (ii) There is no harm to the public health, safety, or welfare.

j. *Parcel-based regulations.*

(1) Each homestay located on (a) a parcel of less than five acres in the Rural Areas Zoning District or (b) a parcel of any size that allows residential use in the Residential Zoning Districts or Planned Development Zoning Districts is subject to the following regulations:

(i) *Number of homestay uses.* Any parcel may have only one homestay use. An accessory apartment may not qualify as a dwelling unit for a homestay use.

(ii) *Dwelling types.* Homestay uses may only be conducted in a detached single-family dwelling.

(iii) *Number of guest rooms.* A maximum of two guest rooms may be permitted with each homestay use.

(iv) *Owner occupancy.* The owner of a parcel with a homestay use must reside on and be present at the subject parcel during the homestay use.

(v) *Minimum yards.* 1) In the Residential or Planned Development districts, the minimum applicable front, side, and rear yard requirements for primary structures apply to all structures used for homestays; 2) In the Rural Areas district, the minimum front, side, and rear yard shall be 125 feet from any abutting lot not under the same ownership as the homestay, for parking and for structures used in whole or in part to serve a homestay.

(2) Each homestay located on a parcel of five acres or more in the Rural Areas district is subject to the following regulations:

(i) *Number of homestay uses.* Any parcel may have up to two homestay uses, provided all other applicable requirements are met.

(ii) *Accessory structures.* Homestay uses may be conducted in accessory structures built on or before August 7, 2019.

(iii) *Number of guest rooms.* A maximum of five guest rooms may be permitted with each homestay use.

(iv) *Required development rights, density and limitation.* Each single-family dwelling to which a homestay use is accessory must comply with the following regulations:

(a) on any parcel less than 21 acres in size, the single family dwelling shall be authorized by a development right as provided in County Code § 18-10.3;

(b) on any parcel, regardless of size, the single family dwelling shall comply with the permitted density; and

(c) no single family dwelling may have more than one accessory homestay use.

(v) *Minimum yards.* The minimum front, side, and rear yard for parking and for structures used in whole or in part to serve a homestay shall be 125 feet from any abutting lot not under the same ownership as the homestay use.

(vi) *Owner occupancy.* The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals.

(vii) *Owner occupancy during whole house rental.* The owner of a parcel conducting a homestay use that is approved for whole house rental may be absent during the rental period for up to seven days in any calendar month and up to 45 days in any calendar year. The owner shall maintain a log of all homestay uses including the date of each rental for which the owner is absent. This log shall be provided within five business days to the Zoning Administrator upon request.

(Ord. 12-18(3), 6-6-12; Ord. 19-18(6), 8-7-19)

Albemarle County

Community Development Department
401 McIntire Road Charlottesville, VA22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

Planning Application

PARCEL / OWNER INFORMATION

TMP: 00900-00-00-024D0

Owner(s): WHITMAN, HOWE D, TRUSTEE OF THE HOWE D WHITMAN JR F.

Application #: AP202100003

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: White Hall

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

Current AFD: Not in A/F District

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 5600 TURKEY SAG RD KESWICK, 22947

Entered By: Jennifer Smith 11/29/2021

Application Type: Appeal of Zoning Administrator's Determination

Project: APPEAL OF LOD2021-13 - HOMESTAY OWNERSHIP ELIGIBILITY - DIGITAL

Received Date: 11/24/21

Received Date Final:

Submittal Date: 12/07/21

Total Fees: 743.36

Closing File Date:

Submittal Date Final:

Total Paid: 743.36

Revision Number:

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	5600 TURKEY SAG ROAD LLC	200 GARRETT ST SUITE O	CHARLOTTESVILL	22902	9177226284	
Primary Contact	KELSEY SCHLEIN	912 E HIGH ST.	CHARLOTTESVILL	22902	4342275140	

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2021-) SIGN #

ZONING ORDINANCE SECTION:

Fee Amount $743.36 Date Paid 11/24/21 By who? Shimp Engineering Receipt # (64) 748097 Ck# 2830534 By: JS

Application for Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $295.36**
Application $284 + Technology surcharge $11.36

☑ **Initial notice fee to be provided in conjunction with an application, for preparing and mailing notices and published notice = $448**

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

➢ Preparing and mailing or delivering each notice after fifty (50)	$237
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.19 for each additional notice + actual cost of first-class postage
➢ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between $150 and $250)

Contact Person (Who should we call/write concerning this project?): Kelsey Schlein

Address 912 E High St. City Charlottesville State VA Zip 22902

Daytime Phone (434) 227-5140 Fax # (____) ____ E-mail kelsey@shimp-engineering.com

Owner of Record 5600 Turkey Sag Road LLC

Address 5600 Turkey Sag Road LLC City Keswick State VA Zip 22947

Daytime Phone (917) 722-6284 Fax # (____) ____ E-mail bradford@twoblindbrothers.com

Applicant (Who is the Contact person representing?): same as owner

Address ____ City ____ State ____ Zip ____

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

Project Name: Appeal of LOD 2021-13 - Homestay Ownership Eligibility

Tax map and parcel: 04900-00-00-024A0 **Zoning:** Rural Areas

Physical Street Address (if assigned):
5600 Turkey Sag Road

Location of property (landmarks, intersections, or other):

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

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

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

Owner/Applicant Must Read and Sign

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

Signature of Owner or Contract Purchaser, Agent

11/23/2021
Date

5600 Turkey Sag Road by Bradford Manning its Manager
Print Name

917-722-6284
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

Albemarle County Community Development
401 McIntire Rd
Charlottesville, VA 22902

November 24, 2021

RE: APPEAL OF OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY (LOD2021-13)

I, Bradford Manning, am an aggrieved person by the Official Determination made regarding homestay ownership eligibility; this is an appeal to the Official Determination identified as LOD2021-13 that was issued to Howe Whitman Jr. on October 27, 2021. Mr. Whitman and I have similar ownership structures on our properties that are in the Rural Areas zoning district of Albemarle County and are greater than five acres. We both applied to Albemarle County Community Development to operate homestays on our respective properties.

Background:

In July 2021, I applied with Albemarle County Community Development to conduct a homestay (HS202100037) in my private single-family residence located on Albemarle County tax parcel 04900-00-00-024A0 (the "Property"); the Property has a physical address of 5600 Turkey Sag Road. In September 2021, I received a phone call from the Albemarle County Zoning Department notifying me of the denial of my application due to the ownership of the Property being a limited liability company.

The Property is owned by 5600 Turkey Sag Road, LLC (the "LLC") which is wholly-owned by the 2012 PBM GRAT fbo Bradford James Manning, a grantor retained annuity trust for the benefit of me, Bradford Manning. I am the sole manager of the LLC. The LLC's address is the Property address.

Sec. 5.1.48 of the Albemarle County Zoning Ordinance regulates homestays in the County. My property is located within the Rural Areas Zoning District and is greater than five acres, and therefore my property is subject to the parcel specific regulations enumerated in Sec. 5.1.48(j)(2), which includes the owner occupancy requirement.

> Sec. 5.1.48(j)(2)(vi) *Owner occupancy*. The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals.

As aforementioned, the LLC's address registered with the Virginia State Corporation Commission is the Property address; the LLC resides at the Property.

Sec. 3.1 of the Albemarle County Zoning Ordinance defines owner:

> *Owner. "Owner" means the owner or owners of the fee simple interest of real property.*

The LLC is the owner of the fee simple interest of real property.

Appeal:

LOD2021-13 makes the official determination that "in order to meet the requirements for a Homestay Zoning Clearance, the [p]roperty must be held by a natural person residing on the [p]roperty, or a family trust whose beneficiary resides on the [p]roperty." Albemarle County's definition of "Owner" is not exclusive to natural persons and there's nothing in the County Code that suggests that a beneficial owner of such fee simple interest is not an Owner for County Code purposes. The County's position discourages the use of limited liability companies to hold real estate, which provide privacy protection and liability protection. Owning property through a limited liability company for these reasons is completely legitimate and the County's homestay ordinance should not favor landowners who do not seek privacy and liability protection over those who do. Ultimately, I take all actions for the Property and the trust for which I am the beneficiary and I am residing on the Property—it should count for this purpose.

The Analysis section of LOD2021-13 further states that, "[b]ecause business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use." The County Code

does not define "reside," and there is no reference in the County Code that suggests that to "reside" is an action that can only be fulfilled by a natural person. The Cambridge Dictionary defines reside as "to live, have your home, or stay in a place[1]" and some of Cambridge's examples of reside include:

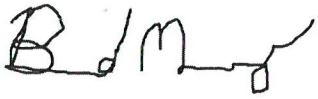
- *The answer resides in the calmness of your mind*
- *Ideas can come from anywhere, and talent resides everywhere*
- *The more accurate way to tell where language functions reside is to do a brain scan*

These examples demonstrate that reside is an action that can be performed by things other than a natural person.

Given the definition of Owner in the County Code, and that "reside" is not defined as an action that is exclusive to a natural person in the County Code, the owner occupancy requirement can be met by an owner other than a natural person.

In the case of my homestay application HS202100037, the LLC, of which I am the sole manager, is the owner of the Property and the LLC's principal office address, the physical location of the principal executive offices, is the Property address. Therefore the ownership structure of my property is permitted under the Albemarle County homestay regulations; I request the Board of Zoning Appeals reconsider the Official Determination of Homestay Ownership Eligibility (LOD2021-13).

Sincerely,



Bradford Manning
Manager, 5600 Turkey Sag Road LLC

[1] Reside. https://dictionary.cambridge.org/us/dictionary/english/reside. Retrieved November 2021

APPELLANT SUBMITTAL

Albemarle County

Planning Application

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

PARCEL / OWNER INFORMATION

TMP: 04900-00-00-024A0

Owner(s): 5600 TURKEY SAG ROAD LLC

Application #: AP202100003

PROPERTY INFORMATION

Legal Description: ACREAGE PARCEL A

Magisterial Dist.: Rivanna

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

Current AFD: Blue Run

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 5600 TURKEY SAG RD KESWICK, 22947

Entered By: Jennifer Smith
11/29/2021

Application Type: Appeal of Zoning Administrator's Determination

Project: APPEAL OF LOD2021-13 - HOMESTAY OWNERSHIP ELIGIBILITY - DIGITAL

Received Date: 11/24/21

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Revision Number:

Comments:

Legal Ad:

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Primary Contact	KELSEY SCHLEIN	912 E HIGH ST.	CHARLOTTESVILL	22902	4342275140	

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2021-[illegible] SIGN # [illegible]

ZONING ORDINANCE SECTION: _____

Fee Amount $743.36 Date Paid 11/24/21 By who? Shimp Engineering Receipt # (64) 748097 Ck# 283053 By: JS

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Address 912 E High St. City Charlottesville State VA Zip 22902

Daytime Phone (434) 227-5140 Fax # (____) _____ E-mail kelsey@shimp-engineering.com

Owner of Record 5600 Turkey Sag Road LLC

Address 5600 Turkey Sag Road LLC City Keswick State VA Zip 22947

Daytime Phone (917) 722-6284 Fax # (____) _____ E-mail bradford@twoblindbrothers.com

Applicant (Who is the Contact person representing?): same as owner

Address _____ City _____ State _____ Zip _____

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

23045

Project Name: Appeal of LOD 2021-13 - Homestay Ownership Eligibility

Tax map and parcel: 04900-00-00-024A0 **Zoning:** Rural Areas

Physical Street Address (if assigned):
5600 Turkey Sag Road

Location of property (landmarks, intersections, or other):

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2) Justification for applicant's position, including error in Zoning Administrators determination. You may use the space below to provide this information or submit an attached sheet.
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4) If applicable, the appropriate drawings showing all existing and proposed improvements on the property and any special conditions for the situation that may justify the appeal.
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6) Appropriate fee made payable to the County of Albemarle.

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

Owner/Applicant Must Read and Sign

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

Signature of Owner or Contract Purchaser, Agent

11/23/2021
Date

5600 Turkey Sag Road by Bradford Manning its Manager
Print Name

917-722-6284
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

COMMUNITY DEVELOPMENT

County of Albemarle
COMMUNITY DEVELOPMENT

LEA BRUMFIELD
Senior Planner II, Zoning
lbrumfield@albemarle.org
tel: 434-296-5832 ext. 3023

October 27, 2021

Howe Whitman Jr.
1202 Simmons Gap Road
St. George, VA 22935
howewhitman@gmail.com

RE: OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY – 1202 Simmons Gap Road at TMP 00900-00-00-024D0 ("the Property")

Mr. Whitman:

In response to your request for a determination regarding the ownership qualifications of the Property for a Homestay Zoning Clearance, I have consulted with the Zoning Administrator and the County Attorney. It is my official determination that in order to meet the requirements for a Homestay Zoning Clearance, the Property must be held by a natural person residing on the Property, or a family trust whose beneficiary resides on the Property.

Background

On August 7, 2019, the Albemarle County Board of Supervisors adopted an ordinance regulating the use of homestays. These regulations replaced the regulations for the two uses formerly known as "Accessory Tourist Lodging" and "Bed and Breakfast" under the single use of "homestays." This use is defined as:

> *"Homestay*. "Homestay" means an accessory residential use providing transient lodging and rooms for dining and meetings for use by homestay guests provided that the dining and meeting rooms are subordinate to the homestay use. A homestay use may offer no more than five guest rooms for lodging."
>
> (*County Code* § 18-3.1)

County Code § 18-5.1.48(j) differentiates between (1) homestays located on either (a) parcels of less than five acres in the Rural Areas Zoning District or (b) parcels of any size that allow residential use in the Residential Zoning Districts or Planned Development Zoning Districts, and (2) homestays located on parcels of five acres or more in the Rural Areas district.

The Property at 1202 Simmons Gap Road is located in the Rural Areas district on a 24.91-acre parcel. The regulations governing a homestay use at the Property include the requirement of owner occupancy:

> (vi.) *Owner occupancy*. The owner of a parcel conducting a homestay use <u>must reside on</u> and be present at the subject property during the homestay use except during approved whole house rentals.
>
> (*County Code* § 18-5.1.48 (j)(2)(vi), emphasis added)

Homestay special exceptions are currently limited to the following waivers or modifications:

> (i.) More than two guest rooms and/or the use of an accessory structure in association with a homestay on parcels in the Residential or Planned Development districts, or Rural Areas district parcels of less than five acres;
> (ii.) Reduction in minimum applicable yards for a structure or parking used in whole or in part for a homestay.
> (iii.) The use of an accessory structure built after August 7, 2019.
> (iv.) Resident Manager occupancy instead of owner occupancy <u>as required by 5.1.48(j)(1)(iv)</u>.
>
> (*County Code* § 18-5.1.48 (i)(1), emphasis added)

Note that eligibility for the Resident Manager special exception is limited to parcels regulated by section 5.1.48(j)(1)(iv), which applies to owner occupancy on: "(a) a parcel of less than five acres in the Rural Areas Zoning District or (b) a parcel of any size that allows residential use in the Residential Zoning Districts or Planned Development Zoning Districts."

Therefore, parcels of five acres or more in the Rural Areas Zoning District are not eligible for this special exception.

The homestay regulations were originally adopted by the Board of Supervisors on August 7, 2019. At a Work Session on June 2, 2020, the Board discussed a possible ordinance amendment to allow large Rural Areas parcels to apply for the resident manager special exception. The Board expressly declined to pursue such an amendment, citing concerns about business entities running homestays across multiple parcels.

Analysis

Under *County Code* § 18-5.1.48(j)(2)(vi), the owners of parcels conducting a homestay use must reside on the subject property. Because business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use.

As your property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel over five acres in size, it is not subject to *County Code* § 18-5.1.48(j)(1)(iv), and therefore is not eligible for a special exception to permit a resident manager under *County Code* § 18-5.1.48(i)(1)(iv).

A trust whose beneficiary is a natural person(s) may hold a property with a homestay use on it, as the trust is directly tied to the natural person(s). The natural person(s) named as beneficiary of the trust must reside on the property, and it must be their full-time residence.

Conclusion

The Homestay Zoning Clearance application submitted for the Property is Pending on the basis of conversations between the applicant and Zoning Staff, regarding the applicant's intention to move the Property from the limited liability company River Rock LLC to the family trust currently holding the limited liability company. The application was deemed complete on May 10, 2021. The application has not been dismissed. Homestay Zoning Clearance applications are generally regarded as "void" following three months of inactivity on the part of the applicant in response to staff review requests or additional application requirements. The application of this Letter of Determination regarding the ownership eligibility for a Homestay Zoning Clearance serves as activity to further the validity of the application.

Because the Property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel of over five acres, it is not eligible for a special exception to permit a resident manager. It may, however, be held by a trust whose beneficiary resides on the property.

You may have a right to appeal this determination within thirty (30) days of this notice, in accordance with Virginia Code § 15.2-2311. This determination will be final and unappealable if not appealed within 30 days.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with § 18-34.3 of the Zoning Ordinance, along with a fee of $295.36 plus the actual cost of advertising the appeal for public hearing.

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

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance. They may be reviewed online at https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals.

If you have any questions, please contact me.

Sincerely,

Lea H. Brumfield
Senior Planner II, Designee of the Zoning Administrator

Albemarle County
401 McIntire Road, Charlottesville, VA 22902
lbrumfield@albemarle.org

Copy: Bart Svoboda, Zoning Administrator; Andy Herrick, Deputy County Attorney

Albemarle County Community Development
401 McIntire Rd
Charlottesville, VA 22902

November 24, 2021

RE: APPEAL OF OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY (LOD2021-13)

I, Bradford Manning, am an aggrieved person by the Official Determination made regarding homestay ownership eligibility; this is an appeal to the Official Determination identified as LOD2021-13 that was issued to Howe Whitman Jr. on October 27, 2021. Mr. Whitman and I have similar ownership structures on our properties that are in the Rural Areas zoning district of Albemarle County and are greater than five acres. We both applied to Albemarle County Community Development to operate homestays on our respective properties.

Background:

In July 2021, I applied with Albemarle County Community Development to conduct a homestay (HS202100037) in my private single-family residence located on Albemarle County tax parcel 04900-00-00-024A0 (the "Property"); the Property has a physical address of 5600 Turkey Sag Road. In September 2021, I received a phone call from the Albemarle County Zoning Department notifying me of the denial of my application due to the ownership of the Property being a limited liability company.

The Property is owned by 5600 Turkey Sag Road, LLC (the "LLC") which is wholly-owned by the 2012 PBM GRAT fbo Bradford James Manning, a grantor retained annuity trust for the benefit of me, Bradford Manning. I am the sole manager of the LLC. The LLC's address is the Property address.

Sec. 5.1.48 of the Albemarle County Zoning Ordinance regulates homestays in the County. My property is located within the Rural Areas Zoning District and is greater than five acres, and therefore my property is subject to the parcel specific regulations enumerated in Sec. 5.1.48(j)(2), which includes the owner occupancy requirement.

> Sec. 5.1.48(j)(2)(vi) *Owner occupancy*. The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals.

As aforementioned, the LLC's address registered with the Virginia State Corporation Commission is the Property address; the LLC resides at the Property.

Sec. 3.1 of the Albemarle County Zoning Ordinance defines owner:

> *Owner."Owner" means the owner or owners of the fee simple interest of real property.*

The LLC is the owner of the fee simple interest of real property.

Appeal:

LOD2021-13 makes the official determination that "in order to meet the requirements for a Homestay Zoning Clearance, the [p]roperty must be held by a natural person residing on the [p]roperty, or a family trust whose beneficiary resides on the [p]roperty." Albemarle County's definition of "Owner" is not exclusive to natural persons and there's nothing in the County Code that suggests that a beneficial owner of such fee simple interest is not an Owner for County Code purposes. The County's position discourages the use of limited liability companies to hold real estate, which provide privacy protection and liability protection. Owning property through a limited liability company for these reasons is completely legitimate and the County's homestay ordinance should not favor landowners who do not seek privacy and liability protection over those who do. Ultimately, I take all actions for the Property and the trust for which I am the beneficiary and I am residing on the Property—it should count for this purpose.

The Analysis section of LOD2021-13 further states that, "[b]ecause business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use." The County Code

does not define "reside," and there is no reference in the County Code that suggests that to "reside" is an action that can only be fulfilled by a natural person. The Cambridge Dictionary defines reside as "to live, have your home, or stay in a place[1]" and some of Cambridge's examples of reside include:

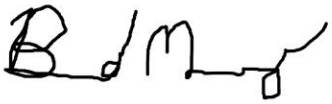
- *The answer resides in the calmness of your mind*
- *Ideas can come from anywhere, and talent resides everywhere*
- *The more accurate way to tell where language functions reside is to do a brain scan*

These examples demonstrate that reside is an action that can be performed by things other than a natural person.

Given the definition of Owner in the County Code, and that "reside" is not defined as an action that is exclusive to a natural person in the County Code, the owner occupancy requirement can be met by an owner other than a natural person.

In the case of my homestay application HS202100037, the LLC, of which I am the sole manager, is the owner of the Property and the LLC's principal office address, the physical location of the principal executive offices, is the Property address. Therefore the ownership structure of my property is permitted under the Albemarle County homestay regulations; I request the Board of Zoning Appeals reconsider the Official Determination of Homestay Ownership Eligibility (LOD2021-13).

Sincerely,



Bradford Manning
Manager, 5600 Turkey Sag Road LLC

[1] Reside. https://dictionary.cambridge.org/us/dictionary/english/reside. Retrieved November 2021

Albemarle County

Planning Application

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

PARCEL / OWNER INFORMATION

TMP: 00900-00-00-024D0

Owner(s): WHITMAN, HOWE D, TRUSTEE OF THE HOWE D WHITMAN JR F.

Application #: AP202100003

PROPERTY INFORMATION

Legal Description: ACREAGE

Magisterial Dist.: White Hall

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

Current AFD: Not in A/F District

Current Zoning Primary: Rural Areas

APPLICATION INFORMATION

Street Address: 5600 TURKEY SAG RD KESWICK, 22947

Entered By: Jennifer Smith 11/29/2021

Application Type: Appeal of Zoning Administrator's Determination

Project: APPEAL OF LOD2021-13 - HOMESTAY OWNERSHIP ELIGIBILITY - DIGITAL

Received Date: 11/24/21

Received Date Final:

Submittal Date: 12/07/21

Total Fees: 743.36

Closing File Date:

Submittal Date Final:

Total Paid: 743.36

Revision Number:

Comments:

Legal Ad:

SUB APPLICATION(s)

Type	Sub Applicatio	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	5600 TURKEY SAG ROAD LLC	200 GARRETT ST SUITE O	CHARLOTTESVILL	22902	9177226284	
Primary Contact	KELSEY SCHLEIN	912 E HIGH ST.	CHARLOTTESVILL	22902	4342275140	

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2021-[illegible] SIGN # [illegible]

ZONING ORDINANCE SECTION: _____

Fee Amount $743.36 Date Paid 11/24/21 By who? Shimp Engineering Receipt # (64) 748097 Ck# 283053 By: JS

Application for Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $295.36**
Application $284 + Technology surcharge $11.36

☑ **Initial notice fee to be provided in conjunction with an application, for preparing and mailing notices and published notice = $448**

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

➢ Preparing and mailing or delivering each notice after fifty (50)	$237
➢ Preparing and mailing or delivering each notice after fifty (50)	$1.19 for each additional notice + actual cost of first-class postage
➢ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between $150 and $250)

Contact Person (Who should we call/write concerning this project?): Kelsey Schlein

Address 912 E High St. City Charlottesville State VA Zip 22902

Daytime Phone (434) 227-5140 Fax # (____) _____ E-mail kelsey@shimp-engineering.com

Owner of Record 5600 Turkey Sag Road LLC

Address 5600 Turkey Sag Road LLC City Keswick State VA Zip 22947

Daytime Phone (917) 722-6284 Fax # (____) _____ E-mail bradford@twoblindbrothers.com

Applicant (Who is the Contact person representing?): same as owner

Address _____ City _____ State _____ Zip _____

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

23045

Project Name: Appeal of LOD 2021-13 - Homestay Ownership Eligibility

Tax map and parcel: 04900-00-00-024A0 **Zoning:** Rural Areas

Physical Street Address (if assigned):
5600 Turkey Sag Road

Location of property (landmarks, intersections, or other):

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

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

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

Owner/Applicant Must Read and Sign

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

Signature of Owner or Contract Purchaser, Agent

11/23/2021
Date

5600 Turkey Sag Road by Bradford Manning its Manager
Print Name

917-722-6284
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

COMMUNITY DEVELOPMENT

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
VIRTUAL MEETING
TUESDAY, JULY 6, 2021 – 2:00 P.M.

Board Members:	John Shepherd Marcia Joseph Ed Robb Edward (Bo) Carrington Kurt Burkhart
Staff Members:	Bart Svoboda, Zoning Administrator Marsha Alley, BZA Clerk and Recorder Nicole Jones, A/V Specialist
County Attorney:	Andy Herrick, Deputy County Attorney
BZA Attorney:	James Bowling, IV (absent)

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

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 July 6, 2021 to order. This is an electronic meeting. This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(16), 'An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.'"

Mr. Shepherd identified those members electronically present. All Board members were present.

Mr. Shepherd stated, "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 homepage, 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."

2. Establish a Quorum
Mr. Shepherd established a quorum, with all of the Board members present.

3. Public Hearings
There were no public hearings scheduled.

4. Welcome Mr. Burkhart
Mr. Shepherd introduced Mr. Kurt Burkhart and said the group welcomes him and looks forward to working with him.

4. Approval of Minutes
A. May 4, 2021

Mr. Robb said he would be abstaining from the vote because he was absent from the meeting.

DRAFT

Mr. Shepherd would like the names of those present added to the minutes to meet minimum requirements for regulatory purposes.

Mr. Burkhart said he would also like to abstain from voting, as he was not appointed to the Board at the time of the May 4, 2021 meeting.

Mr. Svoboda stated that the names of all in attendance and absent from the last meeting are included at the top of the minutes. He said he is verifying that this is sufficient.

Mr. Shepherd said this is sufficient.

MOTION: Ms. Joseph moved to approve the minutes of May 4, 2021. Mr. Carrington seconded the motion, which carried unanimously (3:0). Mr. Robb and Mr. Burkhart abstained from the vote.

5. Old Business
A. Update on Formatting of Meeting Minutes

Mr. Shepherd said that during the last meeting, they discussed reducing the minutes from near verbatim to something more limited that captures the minimum requirements for minutes and records decisions, votes, etc. He said the Board had asked staff to work with Beth Golden to follow the format that the Architectural Review Board uses, which is felt to be succinct but clear.

Mr. Shepherd said he thought Ms. Golden did a good job of capturing the meeting. He said that in the future, he would try to clarify the discussions at the end so that the decisions and actions, along with their bases, are made as clear as possible. He noted that the Board has the opportunity to review and seek changes to every set of minutes.

Mr. Shepherd expressed his appreciation to Ms. Joseph for making the minutes process a topic to the Board and staff. He said there was much discussion between Ms. Golden and staff in working out details, and oversight by Mr. Herrick to ensure that even if the volume of minutes were reduced, the requirements are still included. He commented that he appreciates everyone's efforts.

Ms. Joseph said it was incredibly effective to have Mr. MacCall typing on the screen and designate why it was or was not approved, particularly any conditions. She said this provided words that everyone could look at and agree to simultaneously, instead of being written down later or just in the minutes. She said she hoped the Board would continue with that process and asked Mr. Svoboda for that confirmation.

Mr. Svoboda said that staff would do their best to adjust the motions in real time, which requires reconfiguring of the PowerPoint if there's not an agreement on a decision to pinpoint the rationale. He said if everything is captured at the end, it consolidates the conclusions both in reviewing the minutes upon completion and any wordsmithing needed during the meeting in real time.

Ms. Joseph thanked Mr. Svoboda for his input.

Mr. Shepherd also expressed his appreciation.

Mr. Burkhart asked what the allocation of time has been for those compiling minutes in the past.

Mr. Svoboda said that the current process is to record the meeting and send the recording to the transcriptionist, who turns them into minutes for the Board. He said there have been various versions, and this one has been used for a little over a year. He said before the minutes read like a lengthy book with no page numbers and no references on the side column.

He said that something like an appeal by an applicant or other aggrieved party could necessitate a verbatim set of minutes. He said sometimes those situations are known ahead of time, and the Board can make that request prior to the first draft of summary minutes—but moving forward, the summary minutes would be effective. Mr. Svoboda said staff review time has not been tracked in house, but it takes staff at least one whole day to review the tape. He explained that from a workload perspective, it's more efficient to send it to the transcriptionist.

Mr. Shepherd said that a 90-minute to two-hour meeting covering a hearing could result in minutes of 40-50 pages, and they were long and difficult to dig out the important points. Mr. Shepherd said that the improvement could be appreciated if some of the old versions had been reviewed—particularly items appealed in circuit court, which meant compiling minutes from several meetings and a voluminous pile of paper.

Ms. Joseph jokingly said that the example Mr. Shepherd is referring to had 592 pages.

Mr. Shepherd said it took a lot to whittle down that large volume to telling a succinct and complete story. He said there was a lot of motivation from that, which influenced what is being presented for minutes now. He said he is happy with the change and hopes others are as well.

Mr. Robb asked for confirmation that the meetings are recorded.

Mr. Shepherd confirmed they are.

Mr. Robb said if any cases went to court, the best evidence rule would apply, and he suggests that the actual recordings would be the evidence, not the transcripts, though he acknowledged that Mr. Herrick may correct that assumption.

Mr. Herrick said the parties of the case could submit whatever evidence they want for the proceedings, but his sense is that a judge would prefer a transcript as it would be quicker for the judge to read and go back to, rather than an audio or video recording.

Mr. Robb said that is correct, but the transcript could be used in place of the recording.

Mr. Herrick confirmed and said there would need to be an agreement that the written transcript is an authoritative and authentic and correct recording of the meeting itself. He said that would need to be stipulated prior to entering it into evidence.

Mr. Robb said that is correct, but an attorney from either side could say they don't agree with the transcript. He then asked if the actual recording is the evidence.

Mr. Herrick said that would be for the judge to decide to accept a written transcript or to have an audio/video recording.

DRAFT

Mr. Robb said yes, but the judge could decide that the recording is necessary and that the recording is the best evidence.

Mr. Herrick again reiterated that the judge would decide what would be accepted.

Mr. Robb said that he does not disagree, and that maybe he is too much involved in criminal cases, but the best evidence would be the recording.

Mr. Herrick said the judge would make that determination.

Mr. Robb said he does not disagree with that.

Mr. Shepherd said that the efforts to reduce the volume of the minutes is done with full recognition that the meeting is recorded and every syllable is available for study if others want to find that.

Mr. Robb said that is correct, and he is not disagreeing with that either. He said he thinks a statement was made that the minutes were significant, and they are, but the most significant evidence would be the actual recording. He asked for confirmation from Mr. Herrick.

Mr. Herrick said he hates to keep repeating himself but said that it would be for the judge to decide, but it's good to have both available.

Mr. Robb said he knows that, and that is not the question.

Mr. Shepherd said he thinks Mr. Robb's point is that the recording is the source material, and anything written after that is kind of derivative, so the recordings are very important.

Mr. Robb confirmed and said that was his point and thanked Mr. Shepherd for acknowledging.

Mr. Shepherd said they will move forward with the new format, and while the Board will continue to review and discuss, he feels it is a good process moving forward. Mr. Shepherd then expressed thanks to Ms. Golden for boiling things down. He said he knows it's harder to make choices about what's being typed than going after every word heard as it requires more judgment and effort of a different sort.

Mr. Shepherd asked if there was any further discussion and said there is no Board action required.

6. New Business

A. Brief County Cybersecurity Update

Mr. Svoboda said there have been multiple conversations with IT and it is unclear if the private BZA web page access would remain since albemarle.org email addresses are not used. He said they would still receive their email packets, and all the information is the same as what is posted online except for things like materials for executive session. He said that the Board is not subject to the Knowbe4 cybersecurity training, and the goal is to reduce unnecessary access and trainings by keeping them in a more public space.

Ms. Joseph said that this was welcome and that she is using her own computer and was concerned about completing something that could cause cross-contamination to her personal computer.

Mr. Svoboda said that he apologizes for any confusion, but with all of the cyberattacks that are happening, staff wants to ensure everything is secure, and he appreciates the Boards understanding.

Mr. Robb asked if anyone had taken the cybersecurity course.

Mr. Shepherd said he did not.

Mr. Svoboda said he did.

Mr. Robb said he thought it was pretty good. He said that it's been done for two consecutive years now and he thought it was a requirement, but it came from outside the County, which gave him pause.

Mr. Shepherd said he struggled getting into the program and was then notified by Ms. Alley that it was not required to complete at that point.

Mr. Robb was concerned that he was in the wrong by completing it.

Mr. Svoboda said it is a good course and is helpful, but from this point forward, it would not be required for the BZA to complete the course.

Mr. Robb said he is glad he took it and recommends it to everyone.

Ms. Alley said that Knowbe4 is a company contracted to provide training for Albemarle local government regarding protocols and policies. She assured Mr. Robb that his completing the course is not an issue. She said that IT has looked at the profiles of the BZA members and has now removed the albemarle.org association with those email addresses, so training will no longer be required.

Mr. Shepherd said that if there is a requirement in the future, it should be made clear as to what is needed from each Board member.

Ms. Alley confirmed this.

B. Renewal of BZA Legal Services –Closed Session

Mr. Shepherd moved to a closed session.

Mr. Shepherd asked Ms. Alley to talk about the process first to make sure the Board is clear. He said that he is going to read something into the minutes and then the Board members will close this current online meeting session and follow the link provided in the email to the closed session.

Ms. Alley said this is correct.

Mr. Shepherd said he would like to set a time to reconvene and confirmed with Board members that 10 minutes was an acceptable time frame to discuss the topic.

MOTION: At 2:35 p.m., Mr. Shepherd moved that the Albemarle Board of Zoning Appeals goes into a closed meeting pursuant to section 2.2-3711(A) of the code of Virginia under § 1 to discuss employment of legal counsel for the Board of Zoning Appeals. Ms. Joseph seconded the motion, which passed unanimously (5-0).

Mr. Shepherd said the Board is going to now leave this meeting and will reconvene at 2:45 p.m.

Ms. Alley interjected to say that Mr. Herrick and Mr. Svoboda should remain in this meeting until the Board members rejoin after the closed session.

CLOSED SESSION

Mr. Svoboda asked Mr. Herrick if there were any protocol issues if a Board member did not rejoin the meeting.

Mr. Herrick said there are none if roll call is taken again to reopen the session.

MOTION: At 2:45 p.m., Mr. Shepherd moved that the Albemarle County Board of Zoning Appeals certified by a recorded vote, that to the best of each member's knowledge, only public business matters lawfully exempted from the open meeting requirements that Virginia Freedom of Information Act and identified in the motion authorizing the closed session were heard, discussed, or considered in the closed session. Mr. Robb seconded the motion, which passed unanimously (4-0). Mr. Burkhart was absent as there were technical issues in rejoining the meeting.

Mr. Carrington stated that he was going to have to step out for another commitment in about five minutes.

MOTION: Ms. Joseph moved that the Board approve the letter written July 7, 2021 to James M. Bowling IV, and the letter will confirm the terms of his legal representation of the Albemarle County Board of Zoning Appeals for the period of July 1, 2021 through June 30, 2022. Mr. Carrington seconded the motion, which passed unanimously (4-0). Mr. Burkhart was absent.

C. Status of County Building Posture

Mr. Shepherd said the final topic is to discuss the reopening of the building, meeting protocols, etc.

Mr. Svoboda said currently that issue still under review, and emergency management staff are looking into how to make the transition into either returning fully to the office, allowing the continuation of the current model, or coming up with a hybrid process. Mr. Svoboda said his staff would keep the Board posted.

Mr. Shepherd asked if Mr. Svoboda had any sense of what has or has not been decided for open meetings.

Mr. Svoboda said that more than likely, it will be sometime after September before decisions will be made. He said that the hybrid system has been discussed, but the difficulty is with public hearings in terms of scheduling speakers and order. He said there are some technological difficulties that are being explored, but it will likely be a month or more before he knows the direction where things will land.

Mr. Robb asked if selective meetings could be held in the building when fewer people are required.

Mr. Svoboda said that was possible, and they would try to keep the protocol as similar as possible and not have special rules for special things. He said public hearings would be kept in one set of protocols versus a community meeting that would be easier access and doesn't have the same burden for recordation.

Mr. Robb asked if Mr. Svoboda was part of the decision-making process.

Mr. Svoboda responded that he is not but may be asked for input. He said that while he is not on the team making that decision, the Director of Community Development is on the team and is aware of the Board and Planning Commission situations.

7. Adjournment

MOTION: Ms. Joseph moved to adjourn the meeting. Mr. Carrington seconded the motion, which passed unanimously (4-0). Mr. Burkhart was absent.

(Recorded by Marsha Alley and transcribed by Beth Golden)

Respectfully Submitted,

_____

Edward (Bo) Carrington, Secretary Board of Zoning Appeals

DRAFT

Annual Report - 2021

Board, Commission, Agency, Authority, or Committee Name:
Board of Zoning Appeals (BZA)

Committee Members as of July 1, 2020:
John Shepherd, Chair
Ed Robb, Vice-Chair
Marcia Joseph, Secretary
Edward (Bo) Carrington (new appointment as of 7/1/2020; oath administered on 8/14/2020)
Randy Rinehart (did not seek reappointment at term expiration as of May 23, 2021)

Meeting Frequency:
The BZA meets on the first Tuesday of each month at 2 pm. Meetings are not held if there is no business pending.

In FY2020-2021, the BZA held eight (8) meetings.

Meeting Attendance:

July 7, 2020

Present:	Absent:
John Shepherd	
Marcia Joseph	
Randy Rinehart	
Ed Robb	

August 4, 2020

Present:	Absent:
John Shepherd	
Marcia Joseph	
Randy Rinehart	
Ed Robb	

September 1, 2020

Present:	Absent:
John Shepherd	
Marcia Joseph	
Edward (Bo) Carrington (first meeting serving on BZA)	
Randy Rinehart	
Ed Robb	

October 6, 2020

Present:	Absent:
John Shepherd	
Marcia Joseph	
Edward (Bo) Carrington	
Randy Rinehart	
Ed Robb	

November 10, 2020

Present:	Absent:
John Shepherd	
Marcia Joseph	
Edward (Bo) Carrington	
Randy Rinehart	
Ed Robb	

December 1, 2020

Present:	Absent:
John Shepherd	
Marcia Joseph	
Edward (Bo) Carrington	
Randy Rinehart	
Ed Robb	

January 5, 2021

Present:	Absent:
John Shepherd	
Marcia Joseph	
Edward (Bo) Carrington	
Randy Rinehart	
Ed Robb	

May 4, 2021

Present:	Absent:
John Shepherd	
Marcia Joseph	
Edward (Bo) Carrington	
Randy Rinehart (final meeting due to term expiration)	
	Ed Robb

Summary:
BZA Activities:

- Three (3) applications for appeal of the Zoning Administrator's determination were submitted. Two were withdrawn and one was affirmed by a 5:0 vote
- Two (2) special use permit requests for signs which were both approved with conditions by a 4:0 vote and a 5:0 vote
- One (1) variance request which was granted with conditions by a 5:0 vote
- Two (2) training sessions
- One (1) organizational meeting
- One (1) business meeting to recognize a retiring member

Attached you will find a detailed report for FY 2021.

Milestones:
The BZA celebrated a milestone with Randolph Rinehart who chose not to seek reappointment to the BZA at the end of his term in May 2021. He was a dedicated member for 21 years. His service was celebrated with a resolution at the BZA meeting on May 4, 2021 and again at the BOS meeting on May 5, 2021.

Accomplishments:
The BZA welcomed two (2) new members during this fiscal year which completed the membership.

Challenges:
The BZA, like many other boards, faced the challenges of holding public meetings in an electronic format. The virtual meeting platform brought about some difficulties; however, at some point in the process, things became a bit more comfortable. There are occasional technical difficulties, but the BZA has been able to conduct business successfully.

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ALBEMARLE COUNTY BOARD OF ZONING APPEALS

2021 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 from July 1, 2020 through June 30, 2021 (FY2021).

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 FY2021 were:

Member	Term Expiration
John Shepherd, Chairman	Appointed May 23, 2017 for a five-year term to expire May 22, 2022.
Edgar S. Robb, Vice Chairman	Reappointed May 16, 2019 for a five-year term to expire May 23, 2024.
Marcia Joseph, Secretary	Reappointed May 23, 2020 to complete the term to expire May 23, 2025.
Edward "Bo" Carrington	Appointed July 1, 2020 to complete the unexpired term of the late David Bowerman, which term expires May 23, 2023. He began service after being sworn in on August 14, 2020.
Randy Rinehart	Reappointed May 23, 2016 for a five-year term that expired May 23, 2021. He did not seek reappointment at the expiration of his term.

III. OPERATING PROCEDURES

Regular meetings of the BZA were scheduled for the first Tuesday of each month starting at 2:00 p.m., though meetings were not held if no business was pending. The BZA operates with Rules of Procedure adopted January 5, 2016, last revised April 2, 2019, and most recently re-adopted January 5, 2021.

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 FY2021 was consistent with prior years. BZA members were paid $45 per meeting. Compensation expenses for FY2021 totaled $1,665.00.

In June 2019, the BZA retained the legal services of James M. Bowling, IV of St. John, Bowling, Lawrence, & Quagliana, LLP. Their agreement stipulated that services would be charged at the rate of $250 per hour, not to exceed $2,000 for FY2019. In FY2020 and FY2021, the budgeted amount of $5,000 was allotted for BZA legal counsel. Under the agreement, Mr. Bowling provides legal services even if his billing exceeds the budgeted amount of $5,000. Legal counsel expenses for FY2021 totaled $3,875.00.

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

V. ACTION SUMMARY

The BZA held eight meetings in FY2021. The submittals and actions considered by the BZA are shown in the following tables:

Appeals

Three appeals were processed in FY2021. Two were forwarded to the BZA.

Application #	***Appellant or Project Name***	***Action***	***Issue***
AP2020-001	R.A. Yancey Lumber Corporation	On 8/4/2020, the BZA voted 4:0 to defer this appeal to 9/1/2020. The Board of Supervisors subsequently granted certain special exceptions to the appellant owner. Prior to the 9/1/2021 BZA meeting, the appellant then withdrew AP2020-001. The underlying VIO-2019-428 was abated based on the special exceptions and 9/28/2020 onsite inspection.	Owner's appeal of a notice of zoning violations
AP2020-002	Justin Shimp	Withdrawn by the appellant after clarification with the Zoning Administrator May 14,2020	Appeal of Zoning Administrator's Determination LOD2019-020 regarding pedestrian trails and accessory uses
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

Special Use Permits

Two special use applications were heard in FY2021.

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

Variance

One variance application was heard in FY2021.

Application #	***Applicant or Project Name***	***Action***	***Issue***
VA2020-001	Corbett Agricultural Barn	Granted the variance with conditions (5-0) December 1, 2020	Setback variance for agricultural barn

Training/Organizational/Business

The Deputy County Attorney provided legal training at the October and November 2020 meetings.

An organizational meeting was held in January 2021.

A business meeting for the approval of minutes and recognition of service for Randolph Rinehart was held in May 2021.

VI. COURT ACTION

During FY2021, two decisions of the BZA were the subject of Circuit Court appeals:

- In re: October 1, 2019 Decision of the BZA [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.
- In re: February 4, 2020 Decision of the BZA [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 voluntarily non-suited (withdrew) both of its appeals.