County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

401 McIntire Road, North Wing
Charlottesville, VA 22902-4579
Telephone: 434-296-5832
WWW.ALBEMARLE.ORG

# ALBEMARLE COUNTY BOARD OF ZONING APPEALS
# ELECTRONIC MEETING VIA ZOOM
# AGENDA
# TUESDAY, MARCH 1, 2022 at 2:00 P.M

1. Call to Order

2. Establish a Quorum

3. 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

   B. AP2022-00001 WNG, LLC - Homestay
      Property Owner: WNG, LLC
      Appellant: WNG, LLC & Attila Woodward
      Staff: Lea Brumfield/Bart Svoboda

4. Approval of Minutes
   A. February 1, 2022

5. Old Business
   A. Review and Re-Adopt Rules of Procedure

6. New Business

7. 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.

**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**

From: Kelsey Schlein <kelsey@shimp-engineering.com>
Sent: Wednesday, February 23, 2022 10:15 AM
To: Marsha Alley
Cc: Lea Brumfield; Bart Svoboda; Andy Herrick; Bradford Manning
Subject: Re: Update on Albemarle County homestay regulations

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.
Hi Marsha,

Yes, that is correct, we are requesting a deferral of the public hearing to the May 3rd meeting.
Thank you!

On Wed, Feb 23, 2022 at 9:23 AM Marsha Alley <malley3@albemarle.org> wrote:
Good morning, Kelsey!

I will include your request for deferral of AP2021-013 to the BZA meeting on May 3, 2022 in
the BZA packet that is scheduled for distribution tomorrow. The BZA will consider your
request at their scheduled meeting on March 1, 2022.

Please confirm that this is your intent and that the requested meeting date is correct.

Thank you,
Marsha

From: Kelsey Schlein <kelsey@shimp-engineering.com>
Sent: Monday, February 21, 2022 1:10 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Bart Svoboda <bsvoboda@albemarle.org>; Andy Herrick <aherrick@albemarle.org>; Marsha Alley
<malley3@albemarle.org>; Bradford Manning <bradford@twoblindbrothers.com>
Subject: Re: Update on Albemarle County homestay regulations

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.
Hey Lea,

Thanks for this information. I've discussed this with Brad and we'd like to request deferral of
AP2021-013 until the BZA's May meeting. Can you let us know if the BZA can accommodate
this on their schedule and if so, could you let us know if you need anything more formal from
Brad to process the deferral request? Thanks again.

Best,

Kelsey

On Mon, Feb 21, 2022 at 9:03 AM Bradford Manning <bradford@twoblindbrothers.com> wrote:
Thanks for sharing,

How does this impact our particular situation?

I thought our issue was around the disallowance of the LLC to have a short-term rental permit.

BRADFORD MANNING

p: (917) 722-6284
m: (434) 249-4580
e: bradford@twoblindbrothers.com
w: http://twoblindbrothers.com
hq: 379 West Broadway | Suite 311 | New York NY 10013
follow us: Facebook | Twitter | Instagram | Youtube

On Thu, Feb 17, 2022 at 6:24 PM Lea Brumfield <lbrumfield@albemarle.org> wrote:
Ms. Schlein and Mr. Bradford,

As we prepare for the upcoming appeal hearing, postponed from our prior Board of Zoning Appeals
meeting, I wanted to reach out to update you on some proposed changes to the Albemarle County
Zoning Ordinance's homestay regulations, to make sure you were aware of the current situation.

Zoning Text Amendment 2021-04, Homestay Updates, is currently scheduled for a public hearing
before the Board on April 6th.  Among other changes, one proposed change would be to make rural
area parcels of greater than 5 acres eligible to apply for a special exception to permit a resident
manager to reside on a property in lieu of an owner residing on a property. This

would still be subject
to approval by the Board of Supervisors, who would consider each case on its own merits, but this
does open up eligibility to request the special exception where none existed before.

This Zoning Text Amendment was recommended for approval by the Planning Commission on
February 1st. The details of that meeting, including the Action Memo, Minutes, Recording, and
Agenda, which includes the staff report for the item, can be found here:
https://www.albemarle.org/Home/Components/Calendar/Event/2095/16?backlist=%2fgovernment
%2fcommunity-development%2fadvisory-boards%2fplanning-commission%2f-folder-1105%2f-toggle-allpast

I hope this information is helpful.

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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KELSEY SCHLEIN
Project Manager / Land Planner
Kelsey@Shimp-Engineering.com

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434.227.5140 // shimpdesign.com

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# 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

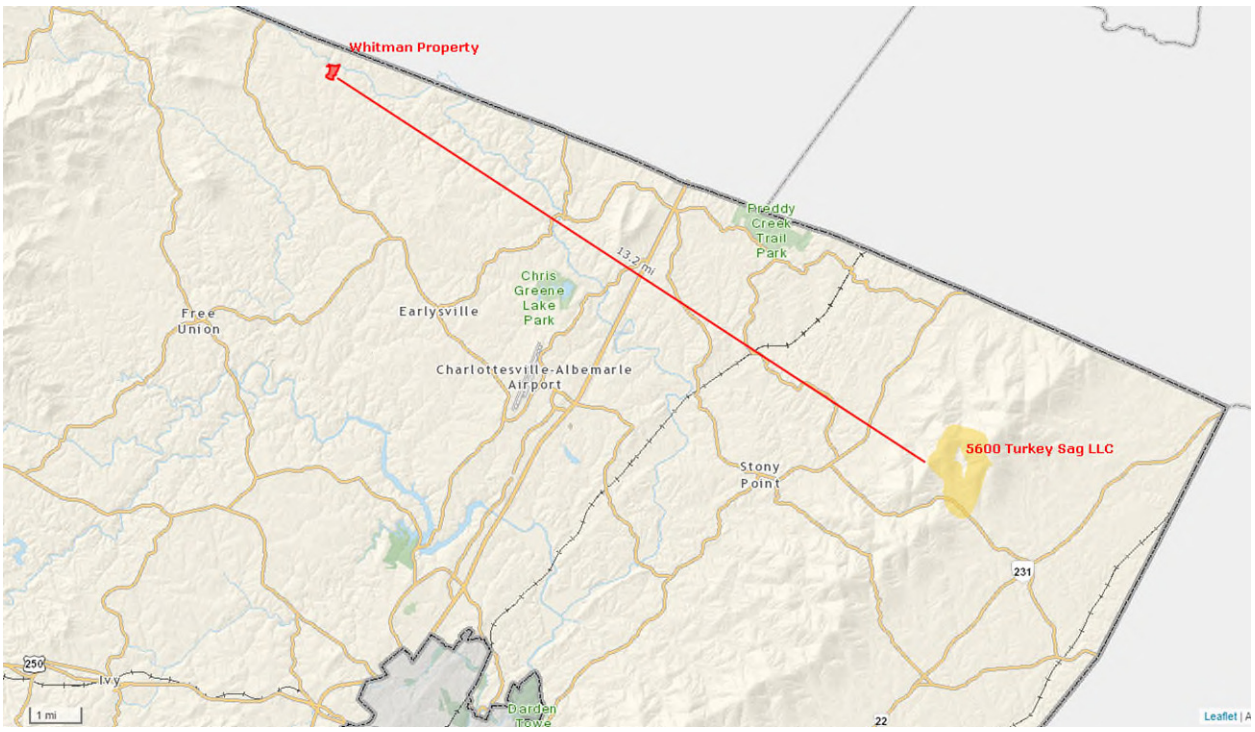
Attachment D: LOD202100013 Whitman Property Determination Letter

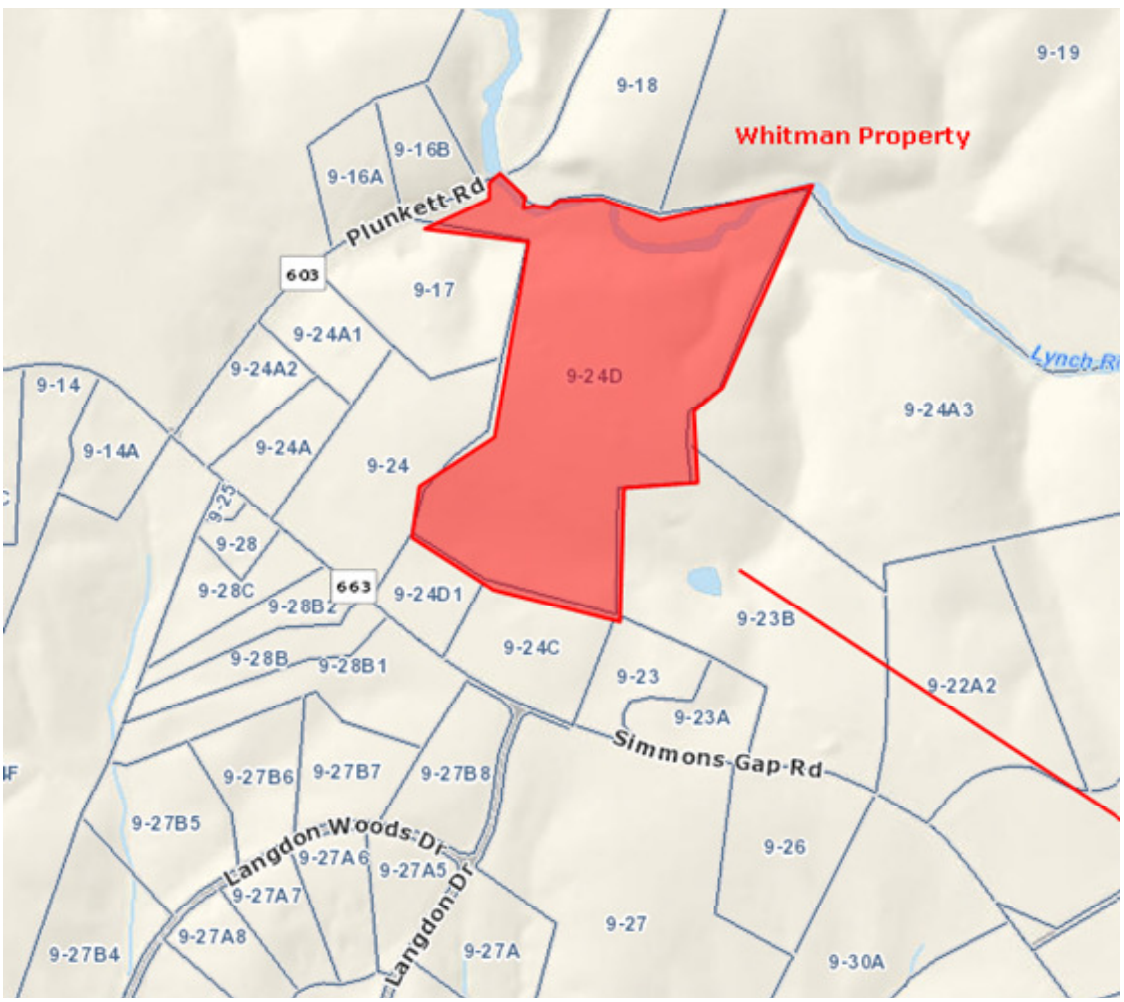
Attachment E: HS2021-037 5600 Turkey Sag Road LLC

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

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 |

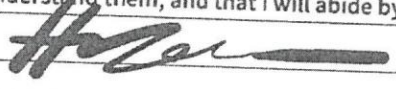
### 3. Responsible Agent Information

*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: |  | DATE: | 5/3/2021 |

### FOR OFFICE USE ONLY

Fee Amt: $158 Date Paid: 5/5/21
Receipt #: ICS173271AP2313AAC
Ck#: CC.
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

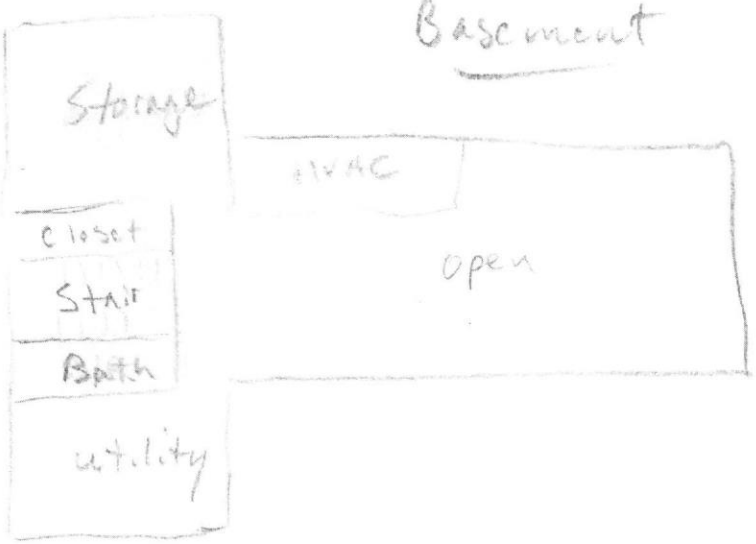


1/4/22

# 1202 Simmons Gap Rd

Floor Plans

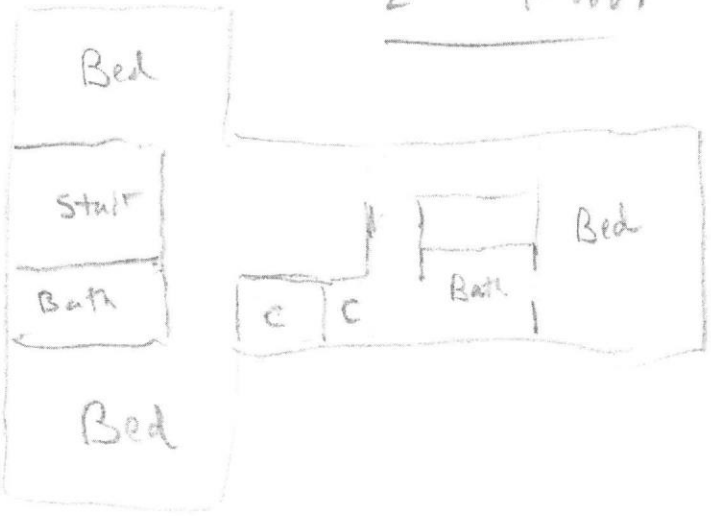
## Basement




## 1st Floor

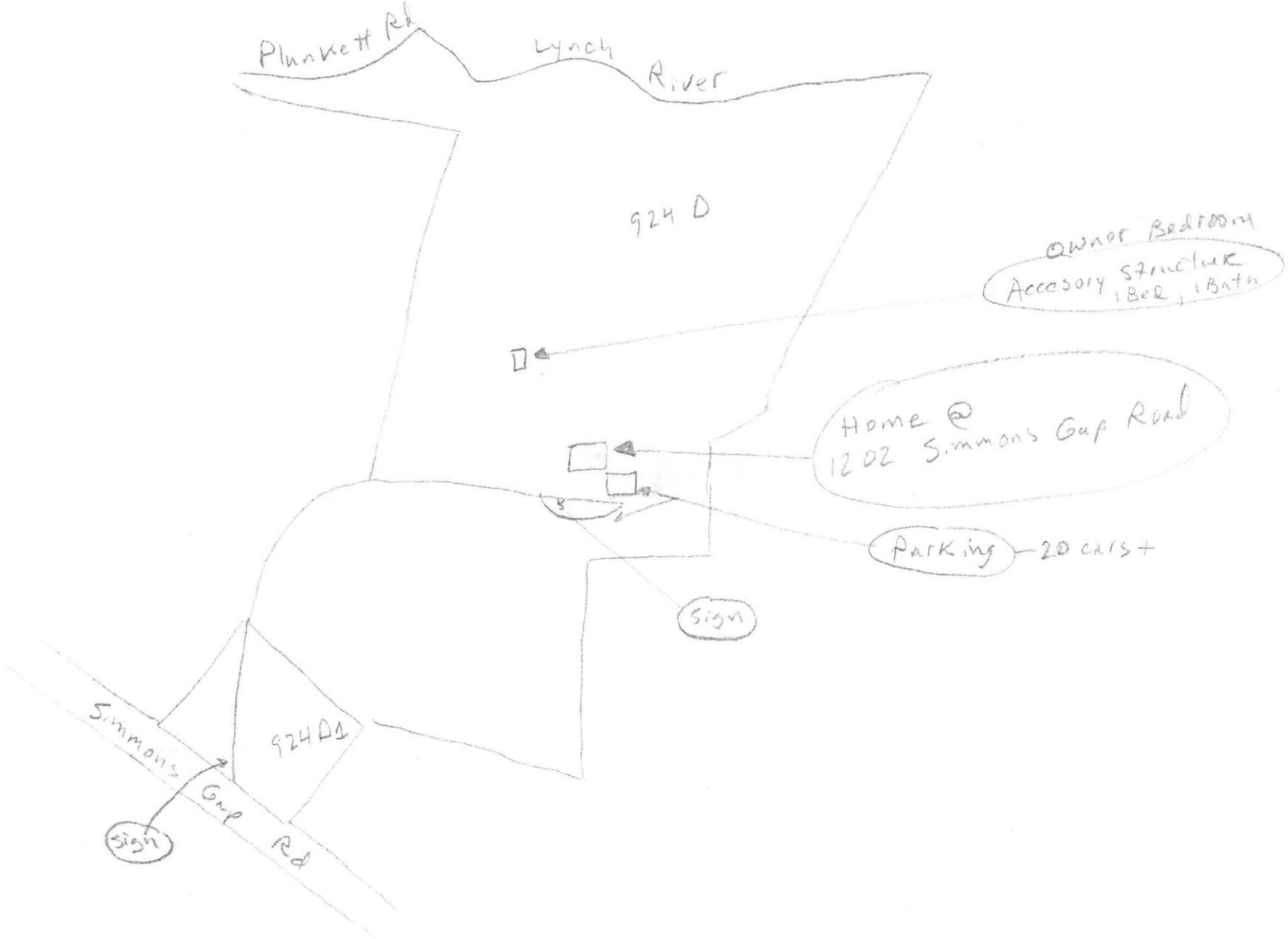



## 2nd Floor



# 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

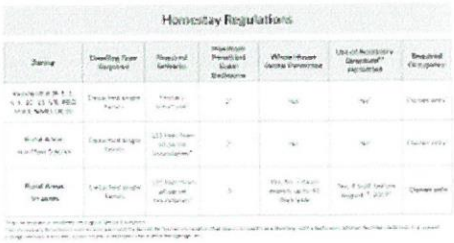



**image002.png**
248K

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 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 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

# 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 #: 9FT52339TW153611 $158
Ck#: C.C.
Received by:
HS# 2021-37

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

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

$17.76 3PP48413J3511870S

# Z Homestay
## Zoning Clearance Application

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

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| 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 |

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*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 J M DATE: 07/19/2021

FOR OFFICE USE ONLY

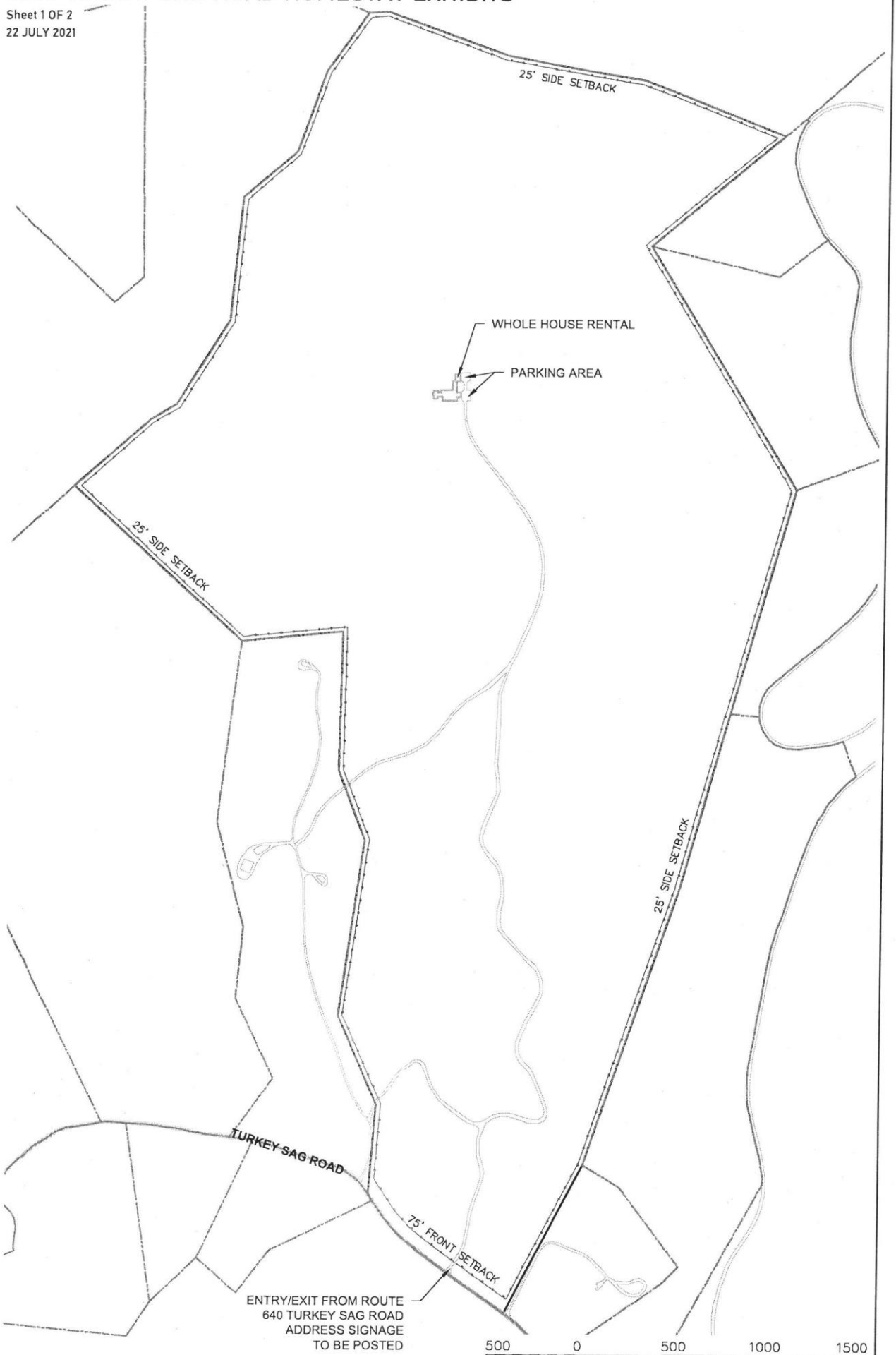
Fee Amt: $158 Date Paid: 8/10/21
Receipt #: 9FT52339TW153951
Ck#:
Received by:
HS# 2021-00037

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 Bramfield
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 ST STE E, CHARLOTTESVILLE VA 22902 • 434.227.5140 • JUSTIN@SHIMPENGINEERING.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

912 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

**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- SIGN #

ZONING ORDINANCE SECTION:

Fee Amount $295.36 Date Paid 11/24/21 By who? Shimp Engineering Receipt # (64)748097W2830534 Ck# 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 ___



36 23005

**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 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:

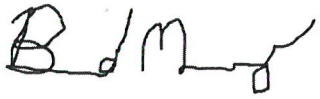
- *The answer resides in the calmness of your mind*
- *Ideas can come from anywhere, and talent resides everywhere*
- *The more accurate way to tell where language functions reside is to do a brain scan*

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

Application Type: Appeal of Zoning Administrator's Determination

Entered By: Jennifer Smith 11/29/2021

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 # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $713.36 Date Paid 11/24/21 By who? Shimp Engineering (64)748097W283034 Receipt # _____ Ck# _____ 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 _____



23005

**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

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 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 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:

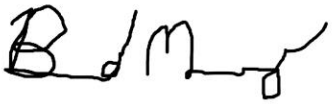
- *The answer resides in the calmness of your mind*
- *Ideas can come from anywhere, and talent resides everywhere*
- *The more accurate way to tell where language functions reside is to do a brain scan*

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 |
| Closing File Date | | | | Submittal Date Final | |
| Revision Number | | | | | |

| | | | |
|---|---|---|---|
| Total Fees | 743.36 | | |
| Total Paid | 743.36 | | |

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 # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $713.36 Date Paid 11/24/21 By who? Shimp Engineering (64)748097W283034 Receipt # _____ Ck# _____ 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 _____



23005

**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

**AP2022-00001 WNG, LLC - Homestay**
**Property Owner: WNG, LLC**
**Appellant: WNG, LLC & Attila Woodward**
**Staff: Lea Brumfield/Bart Svoboda**

From: Marsha Alley
Sent: Wednesday, February 23, 2022 11:00 AM
To: PO Garland
Cc: Bart Svoboda; Lea Brumfield; Andy Herrick
Subject: RE: WNG - Homestay Zoning Appeal - Deferral

Hi Mr. Garland,

I cannot confirm future action of the BZA; however, historically, they have accepted an
applicant’s request for deferral. I will send you a meeting invitation so that you can attend to
answer any questions that may arise.

Thank you,
Marsha

From: PO Garland <pogarland@gmail.com>
Sent: Wednesday, February 23, 2022 10:24 AM
To: Marsha Alley <malley3@albemarle.org>
Cc: Bart Svoboda <bsvoboda@albemarle.org>; Lea Brumfield <lbrumfield@albemarle.org>; Andy Herrick
<aherrick@albemarle.org>
Subject: Re: WNG - Homestay Zoning Appeal - Deferral

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.
Good morning Marsha,
That's correct. It is my intent and July 5 is the date. Though your email makes me ask
whether I need to be present and prepared to argue the appeal on March 1 since you said the "BZA will consider" the request, suggesting they could deny the request and

proceed with the appeal on March 1. Please let me know so I can plan accordingly.
Thank you,
Phil

On Wed, Feb 23, 2022 at 9:29 AM Marsha Alley <malley3@albemarle.org> wrote:
Good morning, Mr. Garland!

I am understanding that you are requesting a deferral of AP2022-001 to the BZA meeting on
July 5, 2022.

Please confirm that this is your intent and that the requested meeting date is correct.

I will include your request in the BZA packet that is scheduled for distribution tomorrow. The

BZA will consider your request at their scheduled meeting on March 1, 2022.

Thank you,
Marsha

From: Bart Svoboda <bsvoboda@albemarle.org>
Sent: Tuesday, February 22, 2022 2:31 PM
To: Marsha Alley <malley3@albemarle.org>
Subject: FW: WNG - Homestay Zoning Appeal - Deferral

From: PO Garland <pogarland@gmail.com>
Sent: Tuesday, February 22, 2022 1:56 PM
To: Bart Svoboda <bsvoboda@albemarle.org>
Subject: WNG - Homestay Zoning Appeal - Deferral

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

I talked with Attila Woodward, one of the family property owners about deferring WNG

LLC's March 1 appeal hearing until after the Board of Supervisors has a chance to adopt your department's amendment allowing 5+acre properties with residential managers to apply for Homestay Exemptions.  Based on our conversation last week, it looks like we'd need to defer the hearing until July 5.
.
Is that something you can do for us or do I need to contact someone else in the County?

Thanks for your help,

Phil

Philip Garland
434-326-6970

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

**PUBLIC HEARING:** March 1, 2022

**STAFF REPORT: AP2022-00001**

**APPLICANT/APPELLANT:** WNG LLC
310 4th Street NE, Suite 102, Charlottesville VA

Attila Woodward
1682 Colle Lane, Charlottesville VA

**Subject Tax Parcel Number:**
1699 Colle Lane, Charlottesville, VA - Tax Parcel 92-45 (the "Property")

**Location:**
The Property is located southeast of Charlottesville at 1330 Thomas Jefferson Parkway, on the eastern corner of Thomas Jefferson Parkway (SR53) and Milton Road (SR732), as shown on the attached map (Attachment A).

**Considering an Appeal:**
The BZA's decision on appeal is limited to determining whether the decision of the Zoning Administrator was correct and whether the zoning ordinance was 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 "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 1699 Colle Lane is located in the Rural Areas district on a 24.91-acre parcel. The regulations governing a homestay use on 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 June 28, 2021, the property owner, WNG LLC, applied for a Homestay Zoning Clearance (HS202100024 - Attachment B) at 1699 Colle Lane.

On July 13, 2021, Mr. Garland (Manager of WNG LLC) was informed by email (Attachment C) that staff was unable to approve the Homestay Zoning Clearance application because the property was owned by an LLC.

On August 13, 2021, on behalf of Mr. Attila Woodward and WNG LLC, Mr. Garland requested an official Zoning Determination (LOD2021-015 - Attachment D) regarding the denial of HS202100024.

On November 30, 2021, the Official Zoning Determination (Attachment E) was issued confirming the eligibility requirements for HS202100024.

On December 27, 2021, on behalf of Mr. Attila Woodward and WNG LLC, Mr. Garland filed an appeal (AP2022-001) of the Official Zoning Determination (Attachment E).

**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.

Because the "Property" is located in the Rural Areas Zoning District and is over five acres, 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).

**Staff's Response to Appeal:**

1.) There is no dispute with the appellants' statement that the LLC is the owner of the property. 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; it is an intentional step to distinctly separate the owner from the members. The LLC does not lose its legal ownership of the property just because a member or manager resides on the property. If the LLC is the owner of the subject Property, then its member(s) are not.

**The appellants' letter dated July 28, 2021 states that the property *"is titled in their family entity, WNG LLC."* As a limited liability company, registered with the State Corporation Commission, WNG LLC is actually a business entity. Regardless of what the appellant thinks the ordinance should allow, the resident manager option is not available on Rural Areas parcels larger than five acres.**

2. The appellants argue that nothing in the County Code suggests that only a natural person can "reside" on a property. 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 addresses 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 people can reside in structures or on a property.

**Because a business entity, such as an LLC, is not a person, it cannot reside on a property; it can only own it. A property owned by an LLC would not meet the requirements of *County Code* § 5.1.48(j)(2)(vi) and could not be approved for a homestay use.**

**Summary:**

On November 30, 2021, Official Zoning Determination LOD2021-015 (Attachment E) was issued, confirming the eligibility requirements for HS202100024. The evidence supports the determination that the application does not meet the requirements of *County Code* § 5.1.48(j)(2)(vi) and cannot be approved.

Because the Zoning Administrator's determination was and is correct, the Board of Zoning Appeals should affirm this determination.

**Proposed Motions:**

I move that the Board of Zoning Appeals affirm the Zoning Administrator's determination in LOD202100015.

**Attachments:**

Attachment A: Map WNG LLC Property

Attachment B: Homestay Zoning Clearance HS202100024

Attachment C: Email Denial 7-13-2021 WNG LLC

Attachment D: LOD202100015 Application WNG LLC

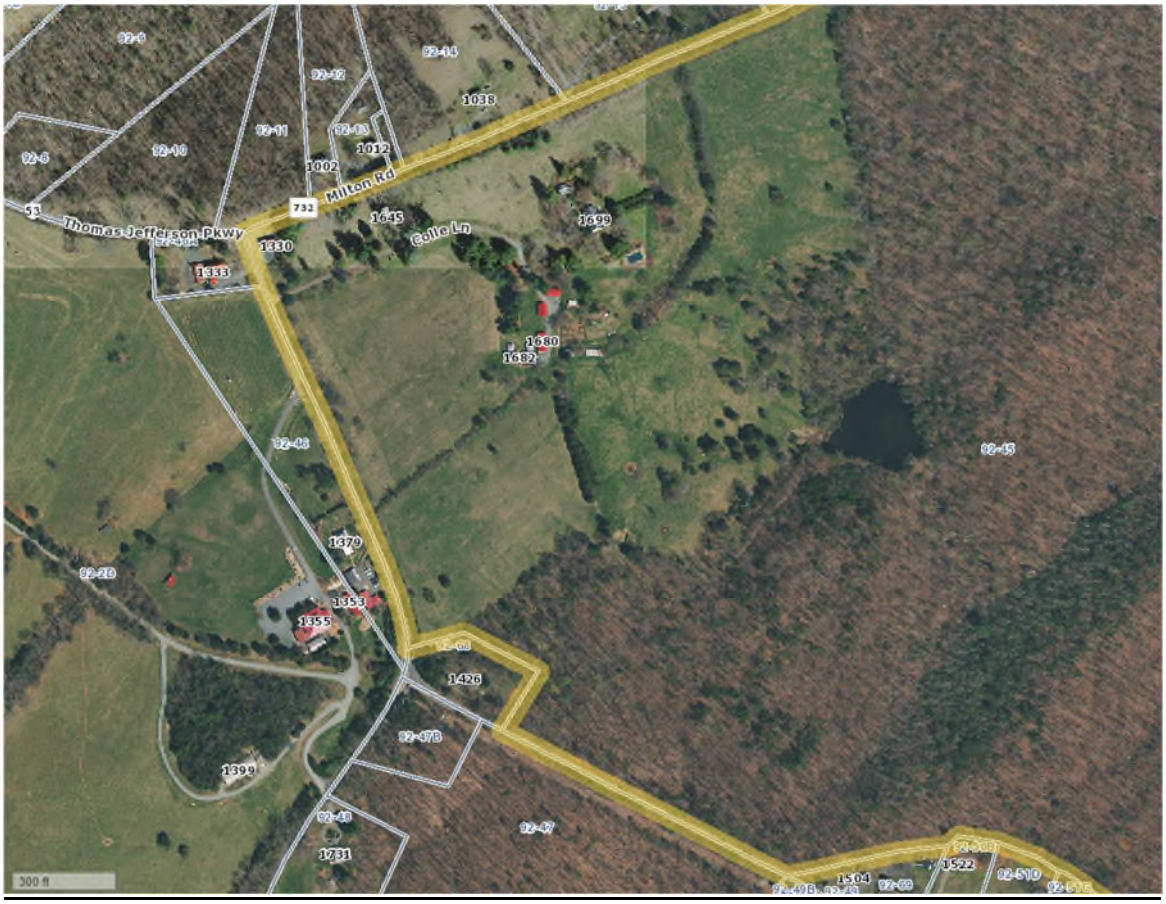
Attachment E: LOD202100015 Official Determination WNG LLC

Attachment F: Zoning Ordinance § 5.1.48 (Homestays)

Attachment G: AP202200001 Application - Justification WNG LLC

**Attachment A**



# Z Homestay
## Zoning Clearance

**Attachment B**

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

**FOR OFFICE USE ONLY** HS# 202100024

**Fee Amt: $158** Date Paid: 6/28/21 By: WNG LLC

**Receipt #:** 123590 Ck# 1834 By: Alicia Yigal

## 1. Applicant/Owner Information

| | | | |
|---|---|---|---|
| NAME: | WNG LLC | | |
| E-MAIL ADDRESS: | pogarland@gmail.com | PHONE: | 434-326-6970 |
| MAILING ADDRESS: | 310 4th St. NE, Suite 102, Charlottesville, Virginia 22902 | | |

## 2. Homestay Information

| | | | |
|---|---|---|---|
| TAX MAP AND PARCEL NUMBER (OR ADDRESS, IF UNKNOWN): | TM 92-45 Parcel 09200000004500 | | |
| ZONING: | ACREAGE: | HOMESTAY NAME: | |
| Rural | 205.93 | Colle | |
| RESPONSIBLE AGENT NAME: | Attila Woodward | SAME AS ABOVE (OWNER) | |
| RESPONSIBLE AGENT EMAIL: | attila@jeffersonvineyards.com | RESPONSIBLE AGENT PHONE: | 415-297-3896 |
| RESPONSIBLE AGENT ADDRESS: | 1682 Colle Lane, Charlottesville VA 22902 | | |

## 3. Verification of Requirements

| NUMBER OF GUEST BEDROOMS: | USING ACCESSORY STRUCTURES? | 2 FORMS PROOF OF RESIDENCY PROVIDED? | FLOOR PLAN SKETCH PROVIDED? |
|---|---|---|---|
| 5 | YES ☐ NO ☑ | YES ☑ NO ☐ | YES ☑ NO ☐ |
| **PARKING REQUIRED:** | **TOTAL HOMESTAY USES ON PARCEL** | | |
| Dwelling 2<br>Number of Guest Rooms + 5<br>Total Off-Street Parking 10 | 1 | | |

## 4. Applicant Signature

I hereby apply for approval to conduct the homestay identified above, and certify that this address is my legal residence. I also certify that I have read the restrictions on homestays, that I understand them, and that I will abide by them.

| SIGNATURE OF OWNER/APPLICANT: | DATE: |
|---|---|
| | 6/8/2021 |
| **PRINT NAME:** | **DAYTIME PHONE NUMBER:** |
| Philip Garland, Manager WNG LLC | 434-326-6970 |

Approved ☐ Approved with Conditions ☐ Denied ☒

Zoning Official: Ja Bramford Date: 7/9/21

VDH Approval Date: _____ Building Official Approval Date: _____ Fire Marshal Approval Date: _____

Conditions: _____

**SUBMIT THIS PAGE, YOUR SKETCH, YOUR VDH APPROVAL (IF REQUIRED) , AND YOUR $158 APPLICATION FEE TO COMMUNITY DEVELOPMENT, 401 MCINTIRE ROAD, CHARLOTTESVILLE, VA 22902**

## Provide Sketch Here or Attach Sketch to This Application




GROSS INTERNAL AREA
FLOOR 1: 2671 sq ft, FLOOR 2: 1397 sq ft
EXCLUDED AREAS: , REDUCED HEADROOM BELOW 1.5M: 164 sq ft
TOTAL: 4068 sq ft

POWERED BY matterport

**Attachment C**

## Lea Brumfield

**From:** Lea Brumfield
**Sent:** Tuesday, July 13, 2021 5:49 PM
**To:** PO Garland
**Subject:** RE: Homestay Zoning Clearance Rejected

Hi Phil,

To be clear, the current application you sent is not being rejected due to the form – even if you submit the new form, it legally *cannot* be approved while the property is held under an LLC. If you send in a new form that one will also be rejected. We cannot "consider" the application at all – it will be automatically denied as long as the property is held by an LLC.

Additionally, please note that you may not apply for a homestay as a second party. The property owners are required to sign the application, and are the responsible parties in regards to the homestay regulations, unless they are eligible for and approved for a "resident manager" on a smaller parcel (under 5 acres in size or in the residential districts). There is no "owner's agent" permitted for homestays.

We're certainly sympathetic with the goal of wanting to keep rural family properties intact, and the reasons for holding the property in an LLC while a sibling lives on it make sense, but unfortunately, there is no way to approve it. This is not a matter of interpretation – this is the regulation as it is written. We do not have any ability to interpret the regulation differently.

Unfortunately, the Board has been very specific on this point – we cannot "work around" a property held by a commercial entity. The only other fix I can suggest would be to subdivide to create a smaller parcel, under 5 acres. Due to a technicality in the regulations, parcels under 5 acres in size can apply for a Special Exception to be held by a commercial entity while the owner who holds the LLC lives on the parcel as a "resident manager." That is only possible, however, if the parcel has subdivision rights, and the subdivided parcel would meet all subdivision regulations, and the special exception would be decided by the Board of Supervisors.

I'm sorry to be the bearer of bad news, and I do understand it can be frustrating for property owners who want to use their property to make additional income with an Airbnb business, but this is the current ordinance we have to work with.

Please let me know if you have any additional questions.

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:** PO Garland <pogarland@gmail.com>
**Sent:** Tuesday, July 13, 2021 5:36 PM

**To:** Lea Brumfield <lbrumfield@albemarle.org>
**Subject:** Re: Homestay Zoning Clearance Rejected

**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.**

Hi Lea,

Sorry I missed your call the other day. I've been out of town and in the mountains with really poor reception until yesterday.

Anyway, thank you for sending the link to the new form. I had reused a copy of the application the County sent out last year and had no idea it had been revised. I will work on submitting an application on the new form as soon as possible.

Some background information may be helpful to you and the County planners when considering the application. The property at issue has been in the LLC owners' family since the 1930s. The LLC owners are five adult siblings who transferred title of the property to the LLC a number of years ago to facilitate the management of the property and to deter the property from being split up and subdivided. One or more of the siblings have lived on the property since the LLC was established. A primary reason for the family members wanting to do short term rentals (as opposed to long term rentals) is to generate revenue to help cover some of the expenses of the property and keep it in the family for their use rather than sell it off to a developer or some business. I suspect the County shares the owners' goal to maintain the rural character of the property and the surrounding area, and in this instance the short term rentals is the best and most realistic way to accomplish that goal.

That said, I understand you're working with the County ordinance as it's currently written and I'm certainly open to suggestions that don't entail transferring title out of the LLC.

I'll be glad to call and discuss it with you if you think it would be helpful.

Thank you for your consideration and help.

Phil

Philip Garland
434-326-6970

On Fri, Jul 9, 2021 at 4:43 PM Lea Brumfield <lbrumfield@albemarle.org> wrote:

> Hi Phil,
>
> I just left you a voicemail regarding your application for the homestay at Colle Lane/Thomas Jefferson Parkway, and as I mentioned, unfortunately your application legally cannot be approved, and we have to reject it.

Under our ordinance, Section 18-5.1.48, "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." Unfortunately, since an LLC is not a natural person, the County Attorney has determined that an LLC cannot physically reside on a parcel.

If you would be interested in pursuing a different ownership type, the County Attorney has determined that a family trust is an acceptable form of ownership, or the property must be put in the name of the person owning and residing on the property. However, this application will be refunded, and if you do move the property into a different form of ownership, you may apply again with that form.

Additionally, please note that the form you applied with has been out of date for over six months. We now require proof of ownership during the inspection of the property, not submitted with the form, and there are different form fields required. The current form can be found at: https://www.albemarle.org/government/community-development/apply-for/homestay-clearance

**Lea Brumfield** (she, her)

*Senior Planner II, Zoning Division*

Albemarle County

lbrumfield@albemarle.org

434-296-5832 x3023

401 McIntire Road, Charlottesville, VA 22902

**Attachment D**

FOR OFFICE USE ONLY LOD # 2021-15

Fee Amount $ 123.76 Date Paid 8/13/21 By who? WNG, LLC Receipt # 23787 Ck# 1847 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:** WNG LLC - Homestay Application - 1699 Colle Lane

**Tax map and parcel(s):** 09200-00-00-04500 **Zoning:** Residential

**Contact Person** (Who should we call/write concerning this project?): Philip Garland

Address 310 4th St. NE, Suite 102 City Charlottesville State VA Zip 22902

Daytime Phone (434) 326-6970 Fax # (___) _____ E-mail pogarland@gmail.com

**Owner of Record** WNG LLC

Address 310 4th St. NE, Suite 102 City Charlottesville State VA Zip _____

Daytime Phone (434) 326-6970 Fax # (___) _____ E-mail pogarland@gmail.com

**Applicant** (Who is the Contact person representing?): Attila Woodward and WNG LLC

Address 1682 Colle Lane City Charlottesville State VA Zip 22902

Daytime Phone (415) 297-3896 Fax # (___) _____ E-mail attila.woodward@gmail.com

# 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

7/28/2021
Date

Philip A Custard Manager-WRWC
Print Name

434-326-6970
Daytime phone number of Signatory

# Submittal Requirements

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

Signature of Owner

07/28/2021
Date

Attila S. Woodward (WNG, LLC Owner)
Print Name

415-297-3896
Daytime phone number of Signatory

Attila Woodward
1699 Colle Lane
Charlottesville VA 22902

July 28, 2021

Mr. Bart Svoboda
Director of Zoning
401 McIntire Road
Charlottesville VA 22902

RE: Request for Letter of Determination – Homestay Zoning Clearance
Parcel 09200-00-00-04500

Dear Director Svoboda,

WNG, LLC is the record title holder of the above-referenced parcel, TM 92-45 (the "Property"). We are writing to request a Letter of Determination that WNG LLC on behalf of its beneficial owners is eligible to apply for a Homestay Zoning Clearance under County Ordinance Section 5.1.48. Specifically, we seek a letter of determination that beneficial owners of an LLC can satisfy the Ordinance's "residency" requirement so long as at least one of the owners resides on the Property and can provide proof of residency.

The Property consists of approximately 207 acres, a main house, and several appurtenances including a couple houses, a cottage, and a historic country store. All structures on the Property were built prior to the 1980s. It is beneficially owned by five Woodward family siblings, but is titled in their family entity, WNG LLC.

The Property has been in the Woodward family since the 1930s when the current generation's grandparents purchased it and built the main house and surrounding buildings. Upon their grandfather's death in the early 1990s, the Property went into a life estate for their father, who later surrendered his life estate to them, and they in turn transferred title to WNG LLC. They created the LLC to facilitate the management and preservation of the Property. The ownership structure also serves important estate planning and liability protection purposes. WNG LLC is not a "commercial entity" in the general sense, but rather the best way for the family members to hold ownership of a family property just as many other families do in Albemarle County.

Woodward family members have consistently lived on the property since the 1930s and one or more of the siblings have lived on the property since the LLC was established. The owners treat the main house as a shared family house. Throughout their ownership, the family has been sensitive to the historic nature and location of the Property and have gone to lengths to preserve and protect it. Accordingly, they have no desire to convert it into a B&B or a long-term rental or use it as an event space. At the same time, it's important for the property to generate revenue to offset expenses, to maintain it as a family property, and to preserve

the rural character of the Property and the surrounding area.

Under County Ordinance Section 18-5.1.48, "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." In our case, the owners of the LLC and as such the beneficial owners of the Property reside on the Property year-round except when travelling on vacation. The relationship and residency of the title owner and beneficial owners is easy to identify and verify through an affidavit or other simple documentation, such as driver's licenses or voter registrations. Therefore, in situations like this where a beneficial owner of an LLC or another entity such as a trust resides on a parcel, there is no substantive reason for differentiating between a beneficial owner and a direct owner under the Homestay Zoning Ordinance. The Ordinance itself does not expressly draw such a distinction. Also, any distinction between types of entity owners (trusts v. LLCs) is unwarranted since ownership and residency can be established just as easily in each case.

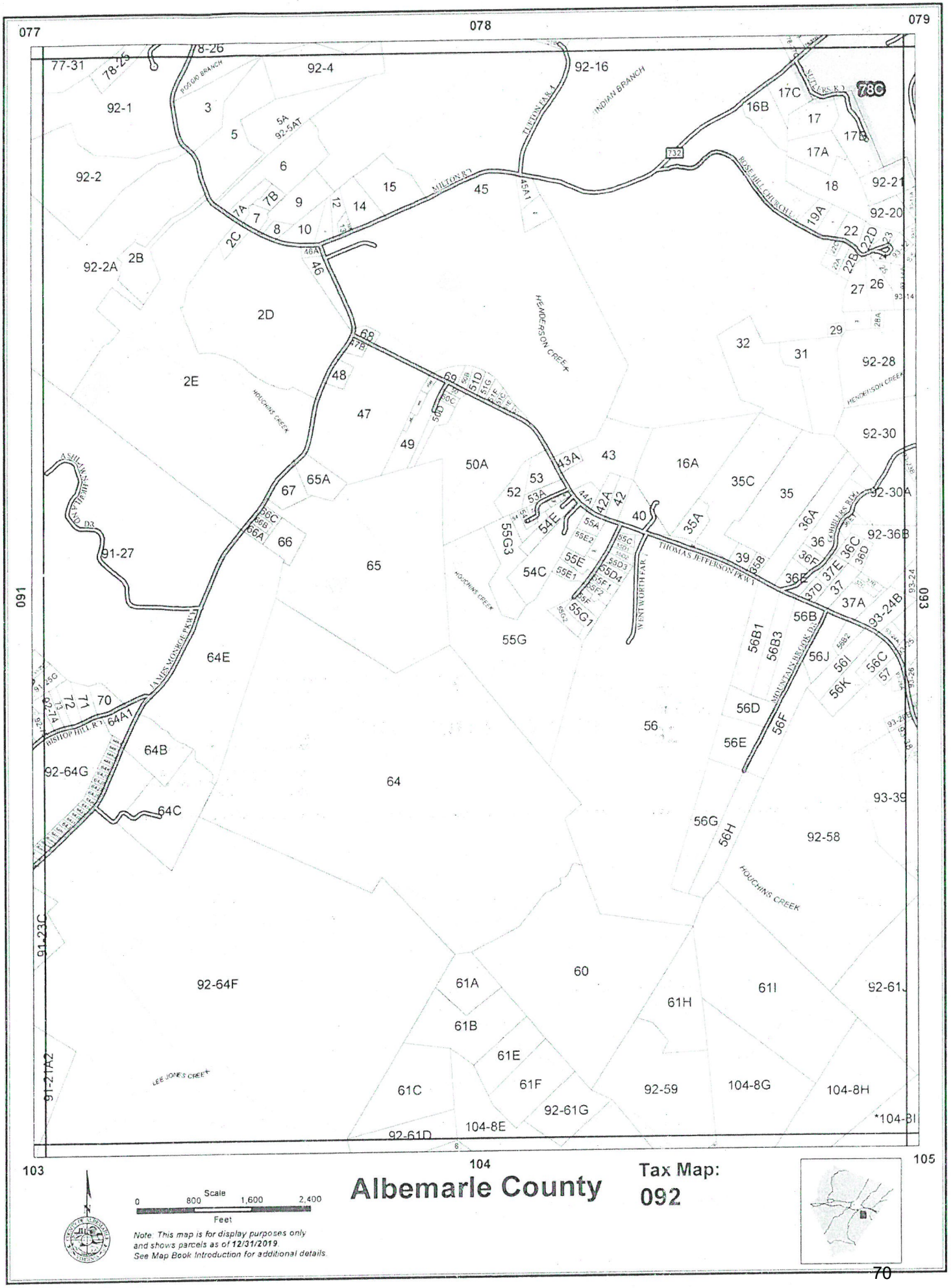
Furthermore, drawing a distinction between direct and beneficial owners does not appear to serve any purpose since in both cases a person who has an ownership interest in a subject parcel will be residing on the parcel. We have heard some people have concerns that a person could own multiple entities and thereby use multiple properties for short-term rentals and deplete the residential housing supply. Those concerns are unfounded because a natural person who is either a direct or beneficial owner can only reside in one place at a time and therefore only one parcel could qualify per owner for Homestay Zoning. Similarly other designed purposes for the Home Zoning Ordinance can be satisfied just as easily regardless of the ownership structure of a parcel.

Therefore, since a Woodward family member resides on the Property as a beneficial owner of the family LLC, we request a determination that WNG LLC can satisfy the Homestay Zoning Ordinance's "residency" requirement and apply for zoning clearance assuming it meets all other requirements of the Ordinance.

Respectfully,

Attila Woodward
WNG LLC Owner

Philip O. Garland
WNG LLC Manager


077
078
079
091
093
103
104
105
Albemarle County
Tax Map:
092
Scale
0 800 1,600 2,400
Feet
Note: This map is for display purposes only and shows parcels as of 12/31/2019.
See Map Book Introduction for additional details.
MILTON RD
THOMAS JEFFERSON PKWY
HENDERSON CREEK
HOUCHINS CREEK
INDIAN BRANCH
LEE JONES CREEK
WENTWORTH FAR
MOUNTAIN BROOK DR
BISHOP HILL RD
JAMES MONROE PKWY
92-1
92-2
92-2A
92-4
92-16
92-20
92-21
92-28
92-30
92-30A
92-36B
92-58
92-59
92-61J
92-64F
92-64G
91-27
91-23C
91-21A2
93-24B
93-39
104-8E
104-8G
104-8H
*104-8I
92-61D
92-61G

## Parcel Information

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |
| **Other Address(es)** | 1645 COLLE LN 1680 COLLE LN 1682 COLLE LN<br>1330 THOMAS JEFFERSON PKWY |
| **Subdivision** | N/A |
| **Property Name** | COLLE |
| **Description** | ACREAGE COLLE |
| **Lot** | 04500 |
| **Property Card(s)** | 4 |
| **Total Acres** | 205.93 |

## Owner Information

| | |
|---|---|
| **Owner** | WNG LLC |
| **Address** | 310 4TH ST NE SUITE 102 CHARLOTTESVILLE VA,<br>22902 |
| **Owner as of Jan 1st** | WNG LLC |

## Most Recent Assessment Information

| | |
|---|---|
| **Year** | 2021 |
| **Assessment Date** | 01/01/2021 |
| **Land Value** | $365,200 |
| **Land Use Value** | $0 |
| **Improvements Value** | $1,179,300 |
| **Total Value** | $1,544,500 |

## Most Recent Sales History

| | |
|---|---|
| **Previous Owner** | WOODWARD, MANGENOT, ALEXANDRA<br>WOODWARD, ATTILA SASHA WOODWARD ET AL |
| **Owner** | WNG LLC |
| **Sale Date** | 12/28/2012 |
| **Sale Price** | $0 |
| **Deed Book/Page** | 4281/457 |

## Other Tax Information as of Jan 1st

| | |
|---|---|
| **State Code** | Ag/Devel over 100 Acres |
| **Tax Type** | Conservation Use |
| **Parcel Level Use Code** | Arts & Crafts Bl -Elem/2nd Sch |

## Other Parcels...

...on COLLE LN

## Improvements

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |
| **Card** | 1 of 4 |
| **Card Type** | Residential |

## Infrastructure Improvements

Well/Septic

## Primary Building Additions

Patio - Good Quality.....568 sq ft
Porch, Average Quality.....27 sq ft
Unfinished Attic.....600 sq ft

## Outbuilding Improvements

Barn.....650 sq ft.....Year Built: 1774
Barn w/Loft.....800 sq ft.....Year Built: 1774
Canopy- Gas Market.....396 sq ft.....Year Built: 1774
Chicken House.....Year Built: 1774
Chicken House.....Year Built: 1774
Country Store.....824 sq ft.....Year Built: 1774
Garage.....Year Built: 1774
Gazebo.....Year Built: 1774
Granary.....412 sq ft.....Year Built: 1774
Greenhouse - Plastic.....130 sq ft.....Year Built: 1774
Office.....220 sq ft.....Year Built: 1774
Patio Brick.....1,027 sq ft.....Year Built: 1774
Pool Concrete.....800 sq ft.....Year Built: 1774
Pool House.....121 sq ft.....Year Built: 1774
Porch,Outbuilding.....77 sq ft.....Year Built: 1774
Shed-Attached Enclosed.....660 sq ft.....Year Built: 1774
Shop.....220 sq ft.....Year Built: 1774
Storage Bldg.....Year Built: 1774

## Primary Building Details

| | |
|---|---|
| **Card Level Use Code** | Retail Store |
| **Year Built** | 1774 |
| **Year Remodeled** | N/A |
| **Condition** | Average |
| **Grade** | A+2: A+2 Excellent Minus Quality |
| **Number of Stories** | 2 |
| **House Type** | 1.25 / 1.75 Story |
| **Finished Sq. Ft.** | 4,026 |
| **Basement Type** | Cellar |
| **Basement Garage Doors** | None |
| **Bsmt Fin. Sq. Ft.** | 0 |
| **Bsmt Tot. Sq. Ft.** | 0 |
| **Attic Tot. Sq. Ft.** | 0 |
| **Roof Material** | Slate |
| **Heating** | Forced Hot Air -Oil |
| **Cooling** | Central Air |
| **Fireplace(s) - Open** | 3 |
| **Fireplace(s) - Stacks** | 3 |
| **Fireplace Type** | Brick |
| **Wall Framing** | N/A |
| **Exterior Covering** | Weather Board |
| **Bedrooms** | 6 |
| **Dining Rooms** | 1 |
| **Family Rooms** | 0 |
| **Full Baths** | 5 |
| **Half Baths** | 0 |
| **Total Room Count** | 9 |

Every unit assumed to have kitchen and living room.
Bathrooms are not included in total room count.

Full Parcel Details

Click Here to View

Improvements

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |
| **Card** | 2 of 4 |
| **Card Type** | Residential |

Infrastructure Improvements

Septic

Primary Building Additions

Patio, Low Quality.....212 sq ft

Primary Building Details

| | |
|---|---|
| **Card Level Use Code** | Single Family |
| **Year Built** | 1754 |
| **Year Remodeled** | 1993 |
| **Condition** | Average |
| **Grade** | C+1: C+1 Average Plus Quality |
| **Number of Stories** | 1 |
| **House Type** | 1 Story |
| **Finished Sq. Ft.** | 951 |
| **Basement Type** | None |
| **Basement Garage Doors** | None |
| **Bsmt Fin. Sq. Ft.** | 0 |
| **Bsmt Tot. Sq. Ft.** | 0 |
| **Attic Tot. Sq. Ft.** | 0 |
| **Roof Material** | Slate |
| **Heating** | Forced Hot Air -Oil |
| **Cooling** | Central Air |
| **Fireplace(s) - Open** | 0 |
| **Fireplace(s) - Stacks** | 0 |
| **Fireplace Type** | None |
| **Wall Framing** | N/A |
| **Exterior Covering** | Weather Board |
| **Bedrooms** | 2 |
| **Dining Rooms** | 0 |
| **Family Rooms** | 0 |
| **Full Baths** | 1 |
| **Half Baths** | 0 |
| **Total Room Count** | 4 |

Every unit assumed to have kitchen and living room.
Bathrooms are not included in total room count.

Full Parcel Details

Click Here to View

Improvements

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |

| | |
|---|---|
| **Card** | 3 of 4 |
| **Card Type** | Residential |

Infrastructure Improvements

Well/Septic

Primary Building Additions

Garage, Average Quality.....484 sq ft

Primary Building Details

| | |
|---|---|
| **Card Level Use Code** | Single Family |
| **Year Built** | 1754 |
| **Year Remodeled** | N/A |
| **Condition** | Average |
| **Grade** | C+1: C+1 Average Plus Quality |
| **Number of Stories** | 1 |
| **House Type** | 1 Story Contemp |
| **Finished Sq. Ft.** | 2,007 |
| **Basement Type** | None |
| **Basement Garage Doors** | None |
| **Bsmt Fin. Sq. Ft.** | 0 |
| **Bsmt Tot. Sq. Ft.** | 0 |
| **Attic Tot. Sq. Ft.** | 0 |
| **Roof Material** | Asbestos |
| **Heating** | Forced Hot Air -Oil |
| **Cooling** | Central Air |
| **Fireplace(s) - Open** | 3 |
| **Fireplace(s) - Stacks** | 3 |
| **Fireplace Type** | Brick |
| **Wall Framing** | N/A |
| **Exterior Covering** | Weather Board |
| **Bedrooms** | 2 |
| **Dining Rooms** | 0 |
| **Family Rooms** | 0 |
| **Full Baths** | 1 |
| **Half Baths** | 1 |
| **Total Room Count** | 4 |

Every unit assumed to have kitchen and living room.
Bathrooms are not included in total room count.

Full Parcel Details

Click Here to View

Improvements

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |
| **Card** | 4 of 4 |
| **Card Type** | Residential |

Infrastructure Improvements

Well/Septic

Primary Building Additions

Porch, Average Quality.....112 sq ft

Porch, Screened.....152 sq ft

Primary Building Details

| | |
|---|---|
| **Card Level Use Code** | Single Family |
| **Year Built** | 1754 |
| **Year Remodeled** | N/A |
| **Condition** | Average |
| **Grade** | C-1: C-1 Average Minus Quality |
| **Number of Stories** | 2 |
| **House Type** | 2 Story |
| **Finished Sq. Ft.** | 1,292 |
| **Basement Type** | None |
| **Basement Garage Doors** | None |
| **Bsmt Fin. Sq. Ft.** | 0 |
| **Bsmt Tot. Sq. Ft.** | 0 |
| **Attic Tot. Sq. Ft.** | 0 |
| **Roof Material** | Metal |
| **Heating** | Forced Hot Air -Oil |
| **Cooling** | Central Air |
| **Fireplace(s) - Open** | 2 |
| **Fireplace(s) - Stacks** | 2 |
| **Fireplace Type** | Brick |
| **Wall Framing** | N/A |
| **Exterior Covering** | Weather Board |
| **Bedrooms** | 2 |
| **Dining Rooms** | 0 |
| **Family Rooms** | 0 |
| **Full Baths** | 1 |
| **Half Baths** | 0 |
| **Total Room Count** | 4 |
| | Every unit assumed to have kitchen and living room. Bathrooms are not included in total room count. |

Full Parcel Details

Click Here to View

Land Value Information

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |

Market Value

| | |
|---|---|
| **Land Type** | EAB - Easement Agriculture 2 |
| **Acre Type** | N/A |
| **Acres** | 21.94 |
| **Land Value** | $9,200 |
| **Land Type** | EAC - Easement Agriculture 3 |
| **Acre Type** | N/A |
| **Acres** | 9.91 |
| **Land Value** | $3,100 |
| **Land Type** | EAD - Easement Agriculture 4 |
| **Acre Type** | N/A |
| **Acres** | 3.54 |
| **Land Value** | $900 |
| **Land Type** | EFA - Easement Forestry 1 |
| **Acre Type** | N/A |
| **Acres** | 57.58 |
| **Land Value** | $23,500 |

| | |
|---|---|
| **Land Type** | EFB - Easement Forestry 2 |
| **Acre Type** | N/A |
| **Acres** | 47.71 |
| **Land Value** | $17,800 |
| **Land Type** | EFC - Easement Forestry 3 |
| **Acre Type** | N/A |
| **Acres** | 59.23 |
| **Land Value** | $15,700 |
| **Land Type** | HS1 - Homesite 1 |
| **Acre Type** | N/A |
| **Acres** | 3 |
| **Land Value** | $115,000 |
| **Land Type** | HS2 - Homesite 2 |
| **Acre Type** | N/A |
| **Acres** | 1 |
| **Land Value** | $60,000 |
| **Land Type** | HS2 - Homesite 2 |
| **Acre Type** | N/A |
| **Acres** | 1 |
| **Land Value** | $60,000 |
| **Land Type** | HS2 - Homesite 2 |
| **Acre Type** | N/A |
| **Acres** | 1 |
| **Land Value** | $60,000 |

Transfer History

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |

Sale Date: 12/28/2012

| | |
|---|---|
| **Owner** | WNG LLC |
| **Previous Owner** | WOODWARD, MANGENOT, ALEXANDRA<br>WOODWARD, ATTILA SASHA WOODWARD ET AL |
| **Sale Price** | $0 |
| **Deed Book/Page** | 4281/457 |

| | |
|---|---|
| **Owner** | WOODWARD, MANGENOT, ALEXANDRA<br>WOODWARD, ATTILA SASHA WOODWARD ET AL |
| **Previous Owner** | WNG LLC |
| **Sale Price** | $0 |
| **Deed Book/Page** | 4281/438 |

Sale Date: 11/05/2010

| | |
|---|---|
| **Owner** | WNG LLC |
| **Previous Owner** | WOODWARD, STANLEY JR LIFE ESTATE |
| **Sale Price** | $0 |
| **Deed Book/Page** | 3954/351 |

Sale Date: 08/12/1993

| | |
|---|---|
| **Owner** | WOODWARD, STANLEY JR LIFE ESTATE |
| **Previous Owner** | N/A |

| | |
|---|---|
| **Sale Price** | $0 |
| **Deed Book/Page** | 686/650 |

Assessment History

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |

Tax Year 2021

| | |
|---|---|
| **Assessment Date** | 01/01/2021 |
| **Land Value** | $365,200 |
| **Land Use Value** | $0 |
| **Improvements Value** | $1,179,300 |
| **Total Value** | $1,544,500 |

Tax Year 2020

| | |
|---|---|
| **Assessment Date** | 01/01/2020 |
| **Land Value** | $357,600 |
| **Land Use Value** | $0 |
| **Improvements Value** | $1,122,100 |
| **Total Value** | $1,479,700 |

Tax Year 2019

| | |
|---|---|
| **Assessment Date** | 01/01/2019 |
| **Land Value** | $318,900 |
| **Land Use Value** | $0 |
| **Improvements Value** | $929,900 |
| **Total Value** | $1,248,800 |

Tax Year 2018

| | |
|---|---|
| **Assessment Date** | 01/01/2018 |
| **Land Value** | $290,800 |
| **Land Use Value** | $0 |
| **Improvements Value** | $958,000 |
| **Total Value** | $1,248,800 |

Tax Year 2017

| | |
|---|---|
| **Assessment Date** | 01/01/2017 |
| **Land Value** | $292,200 |
| **Land Use Value** | $0 |
| **Improvements Value** | $956,600 |
| **Total Value** | $1,248,800 |

Tax Year 2016

| | |
|---|---|
| **Assessment Date** | 01/01/2016 |
| **Land Value** | $296,000 |
| **Land Use Value** | $0 |
| **Improvements Value** | $952,800 |
| **Total Value** | $1,248,800 |

Tax Year 2015

| | |
|---|---|
| **Assessment Date** | 01/01/2015 |
| **Land Value** | $305,400 |
| **Land Use Value** | $0 |
| **Improvements Value** | $930,200 |
| **Total Value** | $1,235,600 |

Tax Year 2014

| | |
|---|---|
| **Assessment Date** | 01/01/2014 |
| **Land Value** | $300,800 |
| **Land Use Value** | $0 |
| **Improvements Value** | $927,700 |
| **Total Value** | $1,228,500 |

Tax Year 2013

| | |
|---|---|
| **Assessment Date** | 01/01/2013 |
| **Land Value** | $293,200 |
| **Land Use Value** | $0 |
| **Improvements Value** | $930,200 |
| **Total Value** | $1,223,400 |

Tax Year 2012

| | |
|---|---|
| **Assessment Date** | 01/01/2012 |
| **Land Value** | $303,700 |
| **Land Use Value** | $0 |
| **Improvements Value** | $941,800 |
| **Total Value** | $1,245,500 |

Tax Year 2011

| | |
|---|---|
| **Assessment Date** | 01/01/2011 |
| **Land Value** | $304,300 |
| **Land Use Value** | $0 |
| **Improvements Value** | $953,400 |
| **Total Value** | $1,257,700 |

Tax Year 2010

| | |
|---|---|
| **Assessment Date** | 01/01/2010 |
| **Land Value** | $304,300 |
| **Land Use Value** | $0 |
| **Improvements Value** | $975,000 |
| **Total Value** | $1,279,300 |

Tax Year 2009

| | |
|---|---|
| **Assessment Date** | 01/01/2009 |
| **Land Value** | $301,500 |
| **Land Use Value** | $0 |
| **Improvements Value** | $989,200 |
| **Total Value** | $1,290,700 |

Tax Year 2008

| | |
|---|---|
| **Assessment Date** | 01/01/2008 |
| **Land Value** | $301,900 |
| **Land Use Value** | $0 |
| **Improvements Value** | $1,007,500 |
| **Total Value** | $1,309,400 |

Tax Year 2007

| | |
|---|---|
| **Assessment Date** | 01/01/2007 |
| **Land Value** | $303,000 |
| **Land Use Value** | $0 |
| **Improvements Value** | $1,042,300 |
| **Total Value** | $1,345,300 |

Tax Year 2006

| | |
|---|---|
| **Assessment Date** | 01/01/2006 |
| **Land Value** | $238,900 |
| **Land Use Value** | $0 |
| **Improvements Value** | $936,600 |
| **Total Value** | $1,175,500 |

Tax Year 2005

| | |
|---|---|
| **Assessment Date** | 01/01/2005 |
| **Land Value** | $238,900 |
| **Land Use Value** | $0 |
| **Improvements Value** | $936,600 |
| **Total Value** | $1,175,500 |

Tax Year 2004

| | |
|---|---|
| **Assessment Date** | 01/01/2004 |
| **Land Value** | $144,000 |
| **Land Use Value** | $0 |
| **Improvements Value** | $843,300 |
| **Total Value** | $987,300 |

Tax Year 2003

| | |
|---|---|
| **Assessment Date** | 01/01/2003 |
| **Land Value** | $144,000 |
| **Land Use Value** | $0 |
| **Improvements Value** | $843,300 |
| **Total Value** | $987,300 |

Tax Year 2002

| | |
|---|---|
| **Assessment Date** | 01/01/2002 |
| **Land Value** | $131,300 |
| **Land Use Value** | $0 |
| **Improvements Value** | $768,600 |

| | |
|---|---|
| **Total Value** | $899,900 |

Tax Year 2001

| | |
|---|---|
| **Assessment Date** | 01/01/2001 |
| **Land Value** | $131,300 |
| **Land Use Value** | $0 |
| **Improvements Value** | $768,600 |
| **Total Value** | $899,900 |

Tax Year 2000

| | |
|---|---|
| **Assessment Date** | 01/01/2000 |
| **Land Value** | $132,400 |
| **Land Use Value** | $0 |
| **Improvements Value** | $676,100 |
| **Total Value** | $808,500 |

Tax Year 1999

| | |
|---|---|
| **Assessment Date** | 01/01/1999 |
| **Land Value** | $132,400 |
| **Land Use Value** | $0 |
| **Improvements Value** | $676,100 |
| **Total Value** | $808,500 |

Tax Year 1998

| | |
|---|---|
| **Assessment Date** | 01/01/1998 |
| **Land Value** | $154,600 |
| **Land Use Value** | $0 |
| **Improvements Value** | $629,700 |
| **Total Value** | $784,300 |

Tax Year 1997

| | |
|---|---|
| **Assessment Date** | 01/01/1997 |
| **Land Value** | $154,600 |
| **Land Use Value** | $0 |
| **Improvements Value** | $629,700 |
| **Total Value** | $784,300 |

Tax Year 1996

| | |
|---|---|
| **Assessment Date** | 01/01/1996 |
| **Land Value** | $140,100 |
| **Land Use Value** | $0 |
| **Improvements Value** | $624,500 |
| **Total Value** | $764,600 |

Other Parcel Characteristics

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |

School Districts (Unofficial)

| | |
|---|---|
| **Elementary** | Stone-Robinson |
| **Middle** | Walton |
| **High** | Monticello |
| **How to Determine Official School Districts** | Click Here for More Info |

Magisterial District & Voting Precinct Information

| | |
|---|---|
| **Magisterial District** | Scottsville |
| **Voting Precinct** | Stone-Robinson |

Census Information

| | |
|---|---|
| **Tract** | 104.02 |
| **Block Group** | 1 |

Historical and World Heritage Information

| | |
|---|---|
| **Virginia Landmark Register?** | No |
| **National Historic Landmark?** | No |
| **National Register of Historic Places?** | No |
| **World Heritage Site?** | No |

Zoning Information

| | |
|---|---|
| **Primary** | Rural Areas |
| **Secondary** | Unassigned |
| **Minor** | Unassigned |
| **Other** | Unassigned |
| **Proffered?** | No* (data undergoing maintenance, please confirm with staff) |
| **Airport Impact Area?** | No |
| **Dam Inundation Zone?** | No |
| **Entrance Corridor?** | Yes |
| **Flood Hazard Overlay?** | No |
| **Natural Resource Extraction Overlay?** | No |
| **Scenic Byways Overlay?** | Yes |
| **Scenic Stream Overlay?** | No |
| **Steep Slopes - Managed?** | No |
| **Steep Slopes - Preserved?** | No |

Comprehensive Plan Information

| | |
|---|---|
| **Comp Plan Area** | Rural Area 4 |
| **Comp Plan Land Use - Primary** | Rural Area |
| **Comp Plan Land Use - Secondary** | Unassigned |
| **Comp Plan Land Use - Minor** | Unassigned |
| **Comp Plan Land Use - Other** | Unassigned |

Land Use Survey Information

| | |
|---|---|
| **Land Use - Primary** | Commercial |
| **Number of Structures - Primary** | 1 |
| **Number of Dwelling Units - Primary** | 0 |
| **Land Use - Secondary** | Residential -- Single-family (incl. modular homes) |
| **Number of Structures - Secondary** | 4 |
| **Number of Dwelling Units - Secondary** | 4 |
| **Land Use - Minor** | Forest |
| **Number of Structures - Minor** | 0 |
| **Number of Dwelling Units - Minor** | 0 |

Other Information

| | |
|---|---|
| **Subdivision** | N/A |
| **MPO/CHART Area?** | No |
| **Traffic Analysis Zone (TAZ)** | N/A |
| **Jurisdictional Area Designation** | No Service |
| **Watershed** | Middle Rivanna River |
| **Water Supply Protection Area?** | No |
| **Development Area?** | No |
| **Other Rural Land?** | Yes |
| **Ag/Forest District** | N/A |
| **Conservation Easement?** | Yes |
| **Open Space Use Agreement?** | No |

Parcel Photos / Sketches / Scans

| | |
|---|---|
| **Parcel ID** | 09200-00-00-04500 |
| **Primary Prop. Address** | 1699 COLLE LN |

Parcel Photos

No records found

Parcel Sketches

No records found

Parcel Scans

No records found

Parcel Plat

Official plats are stored at the Circuit Court Clerk's Office
Click Here

**Attachment E**

County of Albemarle
**COMMUNITY DEVELOPMENT**

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

November 30, 2021

Attila Woodward
1699 Colle Lane
Charlottesville, VA 22902
attila.woodward@gmail.com

**RE: OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY – 1699 Colle Lane at TMP 00920-00-00-04500 ("the Property")**

Mr. Woodward:

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 1699 Colle Lane 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 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 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 1699 Colle Lane 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 Denied on the basis of ownership of the property by WNG LLC.

Because the LLC itself (rather than the individual owners of that LLC) own the subject property, the LLC's individual owners do not qualify as an "owner" for purposes of *County Code* § 18-5.1.48. 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

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

**Attachment G**

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

## Planning Application

**PARCEL / OWNER INFORMATION**

TMP: 09200-00-00-04500 Owner(s): WNG LLC

Application #: AP202200001

**PROPERTY INFORMATION**

Legal Description: ACREAGE COLLE

Magisterial Dist.: Scottsville Land Use Primary: Commercial

Current AFD: Not in A/F District Current Zoning Primary: Rural Areas

**APPLICATION INFORMATION**

Street Address: 1682 COLLE LN CHARLOTTESVILLE, 22902

Entered By: Jennifer Smith 1/10/2022

Application Type: Appeal of Zoning Administrator's Determination

Project: WNG LLC - HOMESTAY

| | | | | | |
|---|---|---|---|---|---|
| Received Date | 12/31/21 | Received Date Final | | Submittal Date | | 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 | WNG LLC | 310 4TH ST NE SUITE 102 | CHARLOTTESVILL | 22902 | 4343266970 | |
| Applicant | WNG LLC & ATTILA WOODWARD | 1682 COLLE LANE | CHARLOTTESVILL | 22902 | 4152973896 | |
| Primary Contact | PHILIP GARLAND | 310 4TH ST NE, SUITE 102 | CHARLOTTESVILL | 22902 | 4343266970 | |

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2022-0001 SIGN #

ZONING ORDINANCE SECTION:

Fee Amount $ 743.36 Date Paid 12/31/21 By who? Philip Garland Receipt # 37N90785VV2408941H Ck# By: JS

received receipt 1/6/22

# 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?): Philip Garland

Address 310 4th St NE, Suite 102 City Charlottesville State VA Zip 22902

Daytime Phone (434) 326-6970 Fax # (___) _____ E-mail pogarland@gmail.com

**Owner of Record** WNG LLC

Address 310 4th St NE, Suite 102 City Charlottesville State VA Zip 22902

Daytime Phone (434) 326-6970 Fax # (___) _____ E-mail pogarland@gmail.com

**Applicant** (Who is the Contact person representing?): WNG LLC & Attila Woodward

Address 1682 Colle Lane City Charlottesville State VA Zip 22902

Daytime Phone (415) 297-3896 Fax # (___) _____ E-mail attila.woodward@gmail.com

**Project Name:** WNG LLC - Homestay

**Tax map and parcel:** TMP 00920-00-00-04500 **Zoning:** Rural Areas

**Physical Street Address** (if assigned):
1699 Colle Lane, Charlottesville, Virginia 22902

**Location of property** (landmarks, intersections, or other):
Intersection of Rt 53 and Milton Road

**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:

The determination is in error because of an apparent factual error in the determination letter and a flawed analysis regarding the relationship between the title owner and the beneficial (direct natural person) owner.

The factual background section of the Official Determination (see attached) refers to "The Property at 1202 Simmons Gap Road is located in the Rural Areas district on a 24.91-acre parcel" which is totally unrelated to the subject property and owner.

The analysis is flawed for a number of reasons, but specifically the Official Determination concludes that a trust (a legal entity with natural person beneficial owners) qualifies as an "Owner" under the Code, but an LLC (a legal entity with natural person beneficial owners) does not. This is an arbitrary distinction without any substantive basis related to a natural person's ownership interest in the entity.

For further explanation of our position, see the attached Request Letter to the Zoning Administrator.

## 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

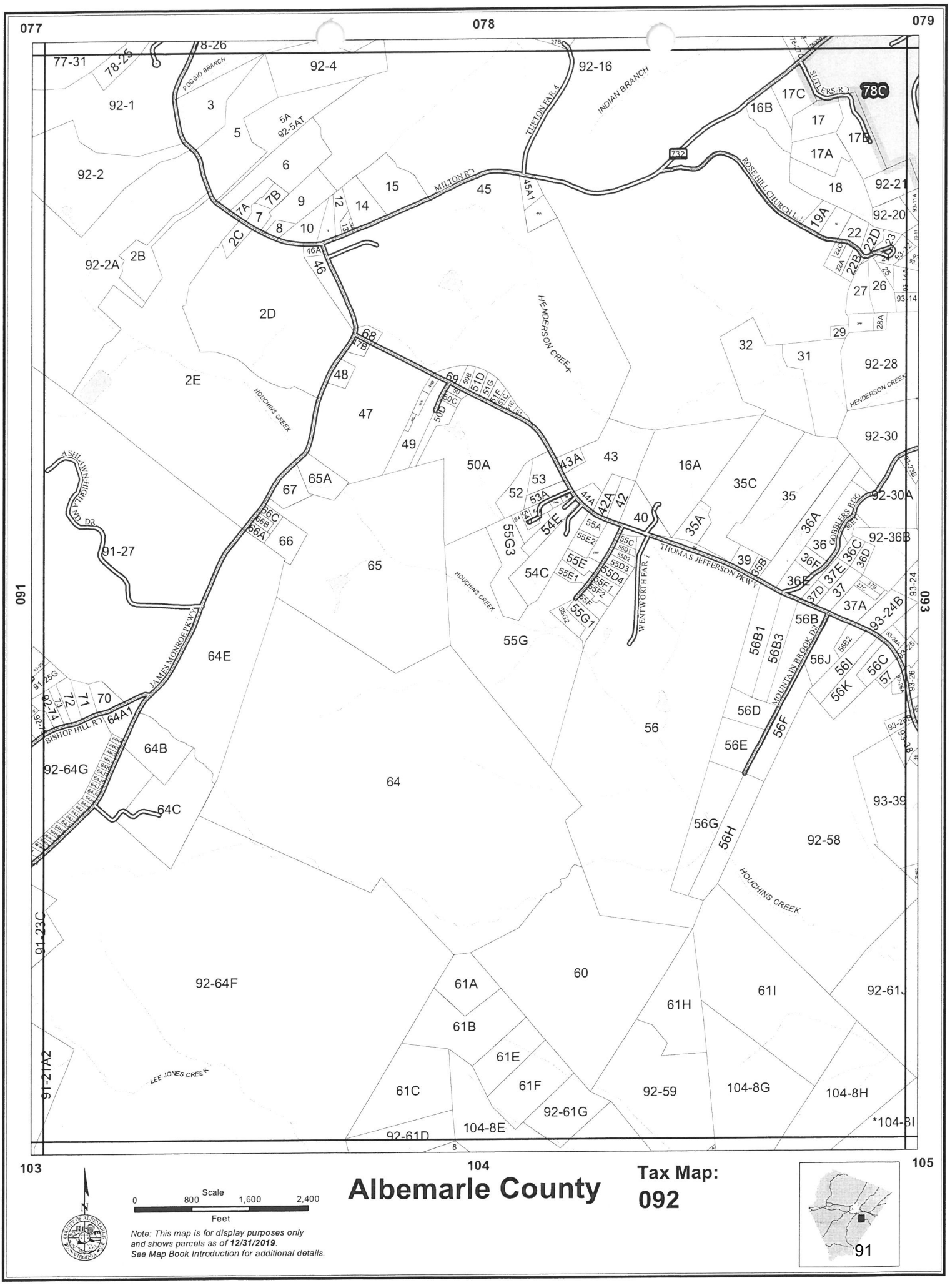
12-27-2021
Date

Philip Garland, Manager WNG LLC
Print Name

434-326-6970
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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


077
078
079
091
093
103
104
105
POGGO BRANCH
INDIAN BRANCH
TUETON FAR 1
MILTON RD
SUTLERS RD
ROSE HILL CHURCH LN
HENDERSON CREEK
HOUCHINS CREEK
LEE JONES CREEK
WENTWORTH FAR 1
THOMAS JEFFERSON PKWY
JAMES MONROE PKWY
CUSHULLA WAY
GOBBLERS RDG
MOUNTAIN BROOK DR
BISHOP HILL RD
78C
732
92-1
92-2
92-2A
92-4
92-16
92-20
92-21
92-28
92-30
92-30A
92-36B
92-58
92-59
92-61D
92-61G
92-64F
92-64G
91-27
91-23C
91-21A2
104-8E
104-8G
104-8H
*104-8I
Albemarle County
Tax Map:
092
Scale
0
800
1,600
2,400
Feet
Note: This map is for display purposes only and shows parcels as of 12/31/2019.
See Map Book Introduction for additional details.
91

Attila Woodward
1699 Colle Lane
Charlottesville VA 22902

July 28, 2021

Mr. Bart Svoboda
Director of Zoning
401 McIntire Road
Charlottesville VA 22902

RE: Request for Letter of Determination – Homestay Zoning Clearance
Parcel 09200-00-00-04500

Dear Director Svoboda,

WNG, LLC is the record title holder of the above-referenced parcel, TM 92-45 (the "Property"). We are writing to request a Letter of Determination that WNG LLC on behalf of its beneficial owners is eligible to apply for a Homestay Zoning Clearance under County Ordinance Section 5.1.48. Specifically, we seek a letter of determination that beneficial owners of an LLC can satisfy the Ordinance's "residency" requirement so long as at least one of the owners resides on the Property and can provide proof of residency.

The Property consists of approximately 207 acres, a main house, and several appurtenances including a couple houses, a cottage, and a historic country store. All structures on the Property were built prior to the 1980s. It is beneficially owned by five Woodward family siblings, but is titled in their family entity, WNG LLC.

The Property has been in the Woodward family since the 1930s when the current generation's grandparents purchased it and built the main house and surrounding buildings. Upon their grandfather's death in the early 1990s, the Property went into a life estate for their father, who later surrendered his life estate to them, and they in turn transferred title to WNG LLC. They created the LLC to facilitate the management and preservation of the Property. The ownership structure also serves important estate planning and liability protection purposes. WNG LLC is not a "commercial entity" in the general sense, but rather the best way for the family members to hold ownership of a family property just as many other families do in Albemarle County.

Woodward family members have consistently lived on the property since the 1930s and one or more of the siblings have lived on the property since the LLC was established. The owners treat the main house as a shared family house. Throughout their ownership, the family has been sensitive to the historic nature and location of the Property and have gone to lengths to preserve and protect it. Accordingly, they have no desire to convert it into a B&B or a long-term rental or use it as an event space. At the same time, it's important for the property to generate revenue to offset expenses, to maintain it as a family property, and to preserve

the rural character of the Property and the surrounding area.

Under County Ordinance Section 18-5.1.48, "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." In our case, the owners of the LLC and as such the beneficial owners of the Property reside on the Property year-round except when travelling on vacation. The relationship and residency of the title owner and beneficial owners is easy to identify and verify through an affidavit or other simple documentation, such as driver's licenses or voter registrations. Therefore, in situations like this where a beneficial owner of an LLC or another entity such as a trust resides on a parcel, there is no substantive reason for differentiating between a beneficial owner and a direct owner under the Homestay Zoning Ordinance. The Ordinance itself does not expressly draw such a distinction. Also, any distinction between types of entity owners (trusts v. LLCs) is unwarranted since ownership and residency can be established just as easily in each case.

Furthermore, drawing a distinction between direct and beneficial owners does not appear to serve any purpose since in both cases a person who has an ownership interest in a subject parcel will be residing on the parcel. We have heard some people have concerns that a person could own multiple entities and thereby use multiple properties for short-term rentals and deplete the residential housing supply. Those concerns are unfounded because a natural person who is either a direct or beneficial owner can only reside in one place at a time and therefore only one parcel could qualify per owner for Homestay Zoning. Similarly other designed purposes for the Home Zoning Ordinance can be satisfied just as easily regardless of the ownership structure of a parcel.

Therefore, since a Woodward family member resides on the Property as a beneficial owner of the family LLC, we request a determination that WNG LLC can satisfy the Homestay Zoning Ordinance's "residency" requirement and apply for zoning clearance assuming it meets all other requirements of the Ordinance.

Respectfully,

Attila Woodward
WNG LLC Owner

Philip O. Garland
WNG LLC Manager

County of Albemarle
**COMMUNITY DEVELOPMENT**

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

November 29, 2021

Attila Woodward
1699 Colle Lane
Charlottesville, VA 22902
attila.woodward@gmail.com

**RE: OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY – 1699 Colle Lane at TMP 00920-00-00-04500 ("the Property")**

Mr. Woodward:

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 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 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 1699 Colle Lane 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 Denied on the basis of ownership of the property by WNG LLC.

Because the LLC itself (rather than the individual owners of that LLC) own the subject property, the LLC's individual owners do not qualify as an "owner" for purposes of *County Code* § 18-5.1.48. 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.

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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

# 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: 09200-00-00-04500 Owner(s): WNG LLC

Application #: AP202200001

**PROPERTY INFORMATION**

Legal Description: ACREAGE COLLE

Magisterial Dist.: Scottsville Land Use Primary: Commercial

Current AFD: Not in A/F District Current Zoning Primary: Rural Areas

**APPLICATION INFORMATION**

Street Address: 1682 COLLE LN CHARLOTTESVILLE, 22902

Entered By: Jennifer Smith 1/10/2022

Application Type: Appeal of Zoning Administrator's Determination

Project: WNG LLC - HOMESTAY

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Received Date | 12/31/21 | Received Date Final | | Submittal Date | | 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 | WNG LLC | 310 4TH ST NE SUITE 102 | CHARLOTTESVILL | 22902 | 4343266970 | |
| Applicant | WNG LLC & ATTILA WOODWARD | 1682 COLLE LANE | CHARLOTTESVILL | 22902 | 4152973896 | |
| Primary Contact | PHILIP GARLAND | 310 4TH ST NE, SUITE 102 | CHARLOTTESVILL | 22902 | 4343266970 | |

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2022-[illegible] SIGN # [illegible]

ZONING ORDINANCE SECTION: _____

Fee Amount $ 743.36 Date Paid 12/31/21 By who? Philip Garland Receipt # 37N90785VV2608941H Ck# _____ By: JS

received receipt 1/6/22

# 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?): Philip Garland

Address 310 4th St NE, Suite 102 City Charlottesville State VA Zip 22902

Daytime Phone (434) 326-6970 Fax # (___) _____ E-mail pogarland@gmail.com

**Owner of Record** WNG LLC

Address 310 4th St NE, Suite 102 City Charlottesville State VA Zip 22902

Daytime Phone (434) 326-6970 Fax # (___) _____ E-mail pogarland@gmail.com

**Applicant** (Who is the Contact person representing?): WNG LLC & Attila Woodward

Address 1682 Colle Lane City Charlottesville State VA Zip 22902

Daytime Phone (415) 297-3896 Fax # (___) _____ E-mail attila.woodward@gmail.com

**Project Name:** WNG LLC - Homestay

**Tax map and parcel:** TMP 00920-00-00-04500 **Zoning:** Rural Areas

**Physical Street Address** (if assigned):
1699 Colle Lane, Charlottesville, Virginia 22902

**Location of property** (landmarks, intersections, or other):
Intersection of Rt 53 and Milton Road

**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:

The determination is in error because of an apparent factual error in the determination letter and a flawed analysis regarding the relationship between the title owner and the beneficial (direct natural person) owner.

The factual background section of the Official Determination (see attached) refers to "The Property at 1202 Simmons Gap Road is located in the Rural Areas district on a 24.91-acre parcel" which is totally unrelated to the subject property and owner.

The analysis is flawed for a number of reasons, but specifically the Official Determination concludes that a trust (a legal entity with natural person beneficial owners) qualifies as an "Owner" under the Code, but an LLC (a legal entity with natural person beneficial owners) does not. This is an arbitrary distinction without any substantive basis related to a natural person's ownership interest in the entity.

For further explanation of our position, see the attached Request Letter to the Zoning Administrator.

## 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

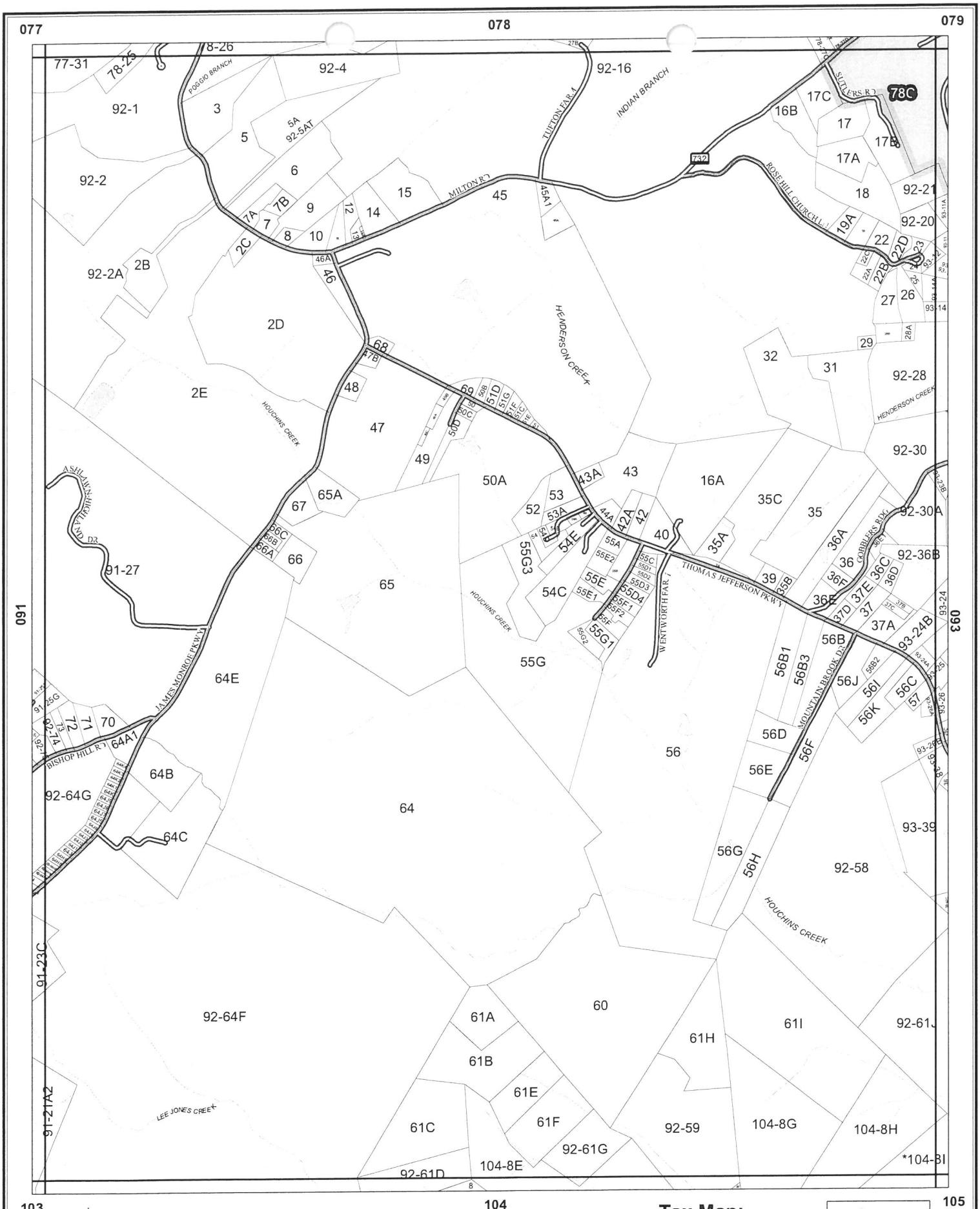
12-27-2021
Date

Philip Garland, Manager WNG LLC
Print Name

434-326-6970
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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


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ROSE HILL CHURCH LN
MILTON RD
TUETON FARM
INDIAN BRANCH
POGGO BRANCH
HENDERSON CREEK
HOUCHINS CREEK
LEE JONES CREEK
MOUNTAIN BROOK DR
GOBBLERS RDG
WENTWORTH FARM
THOMAS JEFFERSON PKWY
JAMES MONROE PKWY
BISHOP HILL RD
ASHLAWN CHARLOTTESVILLE DR
732
Albemarle County
Tax Map:
092
Scale
0
800
1,600
2,400
Feet
N
Note: This map is for display purposes only and shows parcels as of 12/31/2019.
See Map Book Introduction for additional details.
101

Attila Woodward
1699 Colle Lane
Charlottesville VA 22902

July 28, 2021

Mr. Bart Svoboda
Director of Zoning
401 McIntire Road
Charlottesville VA 22902

RE: Request for Letter of Determination – Homestay Zoning Clearance
Parcel 09200-00-00-04500

Dear Director Svoboda,

WNG, LLC is the record title holder of the above-referenced parcel, TM 92-45 (the "Property"). We are writing to request a Letter of Determination that WNG LLC on behalf of its beneficial owners is eligible to apply for a Homestay Zoning Clearance under County Ordinance Section 5.1.48. Specifically, we seek a letter of determination that beneficial owners of an LLC can satisfy the Ordinance's "residency" requirement so long as at least one of the owners resides on the Property and can provide proof of residency.

The Property consists of approximately 207 acres, a main house, and several appurtenances including a couple houses, a cottage, and a historic country store. All structures on the Property were built prior to the 1980s. It is beneficially owned by five Woodward family siblings, but is titled in their family entity, WNG LLC.

The Property has been in the Woodward family since the 1930s when the current generation's grandparents purchased it and built the main house and surrounding buildings. Upon their grandfather's death in the early 1990s, the Property went into a life estate for their father, who later surrendered his life estate to them, and they in turn transferred title to WNG LLC. They created the LLC to facilitate the management and preservation of the Property. The ownership structure also serves important estate planning and liability protection purposes. WNG LLC is not a "commercial entity" in the general sense, but rather the best way for the family members to hold ownership of a family property just as many other families do in Albemarle County.

Woodward family members have consistently lived on the property since the 1930s and one or more of the siblings have lived on the property since the LLC was established. The owners treat the main house as a shared family house. Throughout their ownership, the family has been sensitive to the historic nature and location of the Property and have gone to lengths to preserve and protect it. Accordingly, they have no desire to convert it into a B&B or a long-term rental or use it as an event space. At the same time, it's important for the property to generate revenue to offset expenses, to maintain it as a family property, and to preserve

the rural character of the Property and the surrounding area.

Under County Ordinance Section 18-5.1.48, "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." In our case, the owners of the LLC and as such the beneficial owners of the Property reside on the Property year-round except when travelling on vacation. The relationship and residency of the title owner and beneficial owners is easy to identify and verify through an affidavit or other simple documentation, such as driver's licenses or voter registrations. Therefore, in situations like this where a beneficial owner of an LLC or another entity such as a trust resides on a parcel, there is no substantive reason for differentiating between a beneficial owner and a direct owner under the Homestay Zoning Ordinance. The Ordinance itself does not expressly draw such a distinction. Also, any distinction between types of entity owners (trusts v. LLCs) is unwarranted since ownership and residency can be established just as easily in each case.

Furthermore, drawing a distinction between direct and beneficial owners does not appear to serve any purpose since in both cases a person who has an ownership interest in a subject parcel will be residing on the parcel. We have heard some people have concerns that a person could own multiple entities and thereby use multiple properties for short-term rentals and deplete the residential housing supply. Those concerns are unfounded because a natural person who is either a direct or beneficial owner can only reside in one place at a time and therefore only one parcel could qualify per owner for Homestay Zoning. Similarly other designed purposes for the Home Zoning Ordinance can be satisfied just as easily regardless of the ownership structure of a parcel.

Therefore, since a Woodward family member resides on the Property as a beneficial owner of the family LLC, we request a determination that WNG LLC can satisfy the Homestay Zoning Ordinance's "residency" requirement and apply for zoning clearance assuming it meets all other requirements of the Ordinance.

Respectfully,

Attila Woodward
WNG LLC Owner

Philip O. Garland
WNG LLC Manager

County of Albemarle
**COMMUNITY DEVELOPMENT**

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

November 29, 2021

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**Background**

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> (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.
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> (*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

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## Conclusion

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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 BOARD OF ZONING APPEALS**
VIRTUAL MEETING
TUESDAY, FEBRUARY 1, 2022 – 2:00 P.M.

| | |
|---|---|
| Board Members: | John Shepherd<br>Marcia Joseph<br>Ed Robb<br>Edward (Bo) Carrington, *absent*<br>Kurt Burkhart |
| Staff Members: | Bart Svoboda, Zoning Administrator<br>Francis MacCall, Deputy Zoning Administrator<br>Lisa Green, Manager of Code Compliance<br>Leah Brumfield, Senior Planner<br>Marsha Alley, BZA Clerk and Recorder |
| County Attorney: | Andy Herrick, Deputy County Attorney |
| BZA Attorney: | James Bowling, IV |

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

Mr. Shepherd read the following statement into the record: "Good afternoon. As Chair of the Albemarle County Board of Zoning Appeals, I call the meeting for February 1, 2022 to order. 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 BZA members who are electronically present at this meeting are: John Shepherd, Edgar Robb, Kurt Burkhart, and Marcia Joseph. 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."

**2. Establish a Quorum**
Mr. Shepherd identified those members electronically present as listed and established a quorum noting that Mr. Carrington was absent.

**3. Annual Organizational Meeting**
**A. Election of Officers**
**MOTION:** Mr. Shepherd moved to nominate Marcia Joseph for Chair. Mr. Robb seconded the motion, which passed 4-0.

Ms. Joseph accepted her position as Chair.

**MOTION:** Mr. Shepherd moved to nominate Bo Carrington for Vice-Chair and noted that Mr. Carrington had consented to accepting the position if elected. Mr. Burkhart seconded the motion, which passed 4-0.

DRAFT

**MOTION:** Ms. Joseph moved to nominate John Shepherd for Secretary. Mr. Robb seconded the motion, which passed 4-0.

**B. Review and Re-Adopt Rules of Procedure**

Mr. Burkhart suggested a revision regarding the use of "she and her," as well as "his and her verbiage," in the Rules of Procedure.

Mr. Bowling advised that the procedures can 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.

Mr. Herrick concurred and said if it were the consensus of the Board to make that change, staff would edit the proposed rules accordingly and bring them back for a formal vote at the next meeting.

**MOTION:** Mr. Shepherd moved that the BZA amend the Rules of Procedure to address all non-gender-neutral passages and bring them back for consideration. The motion was seconded by Mr. Robb and passed 4-0.

**C. Review and Adopt 2022 Meeting Schedule**

**MOTION:** Mr. Robb moved to adopt the 2022 Meeting Schedule as presented. Mr. Shepherd seconded the motion, which passed 4-0.

**4. Public Hearings**

**A. AP2021-003 Appeal of LOD2021-013 Homestays Ownership Eligibility**

Mr. Shimp stated that the applicant was requesting deferral until the following month, as they could not be present at this meeting.

Ms. Joseph noted that it has to be readvertised and may take more than a month.

Mr. Svoboda said if the BZA defers to a date specific, it would negate the need to readvertise.

Mr. Herrick confirmed that there was a meeting scheduled for March 1, 2022.

**MOTION:** Mr. Burkhart moved to defer AP2021-003 to March 1, 2022. Mr. Shepherd seconded the motion, which passed 4-0.

**5. Approval of Minutes**

**A. July 6, 2021**

Mr. Burkhart said he wanted to clarify that he was absent for adjournment due to technical difficulties in rejoining the meeting.

Ms. Joseph said the minutes did not need to be verbatim and she would like to see the time of adjournment included in the minutes.

Mr. Svoboda indicated that staff was working with the transcription service on summarizing.

**MOTION:** Ms. Burkhart moved to approve the minutes of July 6, 2021 as amended. Mr. Robb seconded the motion, which passed 4-0.

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**6. Old Business**

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

The report was received for information.

**7. New Business**

**A. Convene to Closed Session to discuss, consider, or interview prospective candidates for employment – BZA Legal Services Contract renewal for FY2022-23**

**MOTION:** At 2:34 p.m. Mr. Shepherd moved that the Board of Zoning Appeals go into a closed meeting pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, Under Subsection 1, to discuss employment of legal counsel for the Board of Zoning Appeals. Mr. Robb seconded the motion, which passed 4-0.

**B. Reconvene to Open Session – Certify Closed Meeting**

**MOTION:** At 2:55 p.m., Mr. Shepherd moved that the Albemarle County Board of Zoning Appeals certify by a recorded vote that, to the best of each member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed session, were heard, discussed, or considered in the closed session. Mr. Burkhart seconded the motion, which passed 4-0.

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

**MOTION:** Mr. Shepherd moved that the BZA continue its engagement with James Bowling for the fiscal year beginning July 1, 2022 and request that the Board of Supervisors authorize compensation to Mr. Bowling in the amount of $350 per hour with an annual cap of $5,000, representing a $50 per hour increase from the previous two years. Mr. Robb seconded the motion, which passed 4-0.

**8. Adjournment**

**MOTION:** Mr. Shepherd moved to adjourn the meeting. Mr. Robb seconded the motion, which passed 4-0.

The meeting adjourned at 3:01 p.m.

(Recorded by Marsha Alley and transcribed by Golden Transcription Services)

Respectfully Submitted,

_____

John Shepherd, Secretary Board of Zoning Appeals

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**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 the Chair's 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 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 all BZA members or to their places 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 parties to the case or their 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 the Chair's 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 therefor.

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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*. Any member(s) abstaining from voting on any motion shall state their abstention(s). The abstention(s) 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.

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(Adopted: 1-5-2016)
(Last Amended: 04-02-2019)
(Re-adopted: 01-07-2020, 01-05-2021, 03-01-2022)

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