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
AGENDA
TUESDAY, JUNE 6, 2023 at 2:00 P.M
LANE AUDITORIUM

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   A. AP2023-00001 Appeal of HO2023-002: Legal Gun, LLC {Sign #3}
      Appellant: Margaret Maupin
      Property Owner(s): Susan Holley or Timothy A. Wehner
      Tax Map Parcel ID: 04300-00-00-034E0
      Staff: Bart Svoboda

   B. AP2023-00002 Appeal of Determination of a Homestay Request {Sign #15}
      Appellant: Jared L. Harwood
      Property Owner(s): Jared L. and Allison L. Harwood
      Tax Map Parcel ID: 06900-00-00-006F0
      Staff: Bart Svoboda

4. Approval of Minutes
   A. May 2, 2023

5. Old Business

6. New Business

7. Adjournment

Opportunities for the public to access and participate in the meeting will be posted at https://www.albemarle.org/community/county-calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received.

BOARD OF ZONING APPEALS IN-PERSON MEETING GUIDELINES

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

General Information:

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

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

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

To Members of the Public:

Public comment is welcome during Public Hearings. A sign-up sheet will be available in Lane Auditorium prior to the meeting for anyone who would like to comment on a scheduled public hearing. If you wish to comment on those matters for which comments from the public will be received, please list your name on the appropriate sign-up sheet. When your name is announced for comment, please come to the microphone and state your name for the record. For uncommon spellings, please spell your name for the recording clerk. If you are with a group of people, you may want to have a spokesperson present your position to the Board.

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

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

Additional Guidelines for Applicants and Appellants addressing the Board:

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

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

STAFF: Bart Svoboda
PUBLIC HEARING: June 6, 2023

STAFF REPORT: AP2023-00001

APPLICANT/APPELLANT: Margaret Maupin

Subject Parcel Number:
04300-00-00-034E0 (the "Property")

Location:
The Property is located at 2822 Free Union Road (Route 601) in northern Albemarle County (Attachment A).

Background:

On January 5, 2023, Timothy Wehner, the property owner, applied for a Home Occupation zoning clearance (Attachment B). As part of the process, on January 23, 2023, adjoining property owners were notified (Attachment C) of the application. This led to a series of conversations with the appellant from approximately January 26 through April 18, 2023 regarding the regulations and review process for Home Occupations.

On February 17, 2023, the home occupation zoning clearance HO202300002 was approved (Attachment D).

On March 20, 2023, Margaret Maupin appealed (Attachment E) the issuance of the zoning clearance .

Determination and Appellant's Appeal:

The Official Determination, the home occupation zoning clearance (Attachment D), dated February 17, 2023, was issued upon meeting the requirements of Albemarle County Code § 18-5.2A. The appellant's justification statement and information are included (Attachment E). The ultimate question is not whether a home occupation zoning clearance should be approved or disapproved as a policy matter, but whether the home occupation satisfies the applicable ordinance.

Grounds for Zoning Administrator's Determination:

The Zoning official issued the zoning clearance based on the criteria listed in Albemarle County Code § 18-5.2A - Home occupations in the rural areas zoning district (Attachment F). When the requirements of the law or policy have been satisfied, approval is required; there is no discretion to deny when an act is ministerial.

Staff's Response to Appeal:

The question that is before the Board of Zoning Appeals is whether a zoning clearance may be denied, even when the home occupation meets all the requirements of the applicable regulations. This approval is a ministerial act. The statements in land use regulations regarding general purposes of protecting the public health, safety, and welfare, or preventing nuisances, do not provide a basis to deny an application. A ministerial act simply applies the facts to the established standards that govern the decision. When all the requirements of a statute or ordinance are satisfied, an application must be approved.

The Zoning Administrator offers the following responses to each of the appellant's nine arguments:

1. **That the Zoning Administrator was in error in permitting a firearms-related business in our neighborhood because it is manifestly incompatible with County Ordinance §5.2Aa which states that there is to be a balance between encouraging limited home-based economic development with the need to protect and preserve the quality and character of the County's agricultural areas and residential neighborhoods.**

   The Zoning Ordinance's general purposes of protecting the public health, safety, and welfare, or preventing nuisances, do not provide a basis to deny an application that meets the Ordinance's specific criteria.

2. **That the Zoning Administrator was in error in that the storage of guns at this location is inconsistent with the County's stated aim to preserve and protect the rural nature of the neighborhood. Public knowledge of the storage of firearms on said premises will invite theft which would in turn spread into our peaceful neighborhood.**

   This allegation does not provide a basis under the ordinance to deny the application.

3. **That the applicant needs a license from the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) as well as the permit from the County and that the ATF lists nine categories under which the applicant can apply for a license. (See below for listing of these nine types, copied from p.1 of FFL application, ATF Form 7.) It *is* an error for the Zoning Administrator to have granted the Major Home Occupation permit for a firearms-related business with no knowledge of, or access to, the type of license for which the applicant has applied.**

   The licensing requirements of ATF are not within the jurisdiction of the Zoning Administrator.

4. **That the Zoning Administrator was in error in that the introduction of a firearms-related business will inevitably be accompanied by a higher crime rate because of the potentially dangerous nature of some gun buyers coming to purchase or store firearms.**

   Again, these allegations do not provide a basis under the ordinance to deny an application.

5. **That the Zoning Administrator was in error in that the presence of a firearms-related business in our area will cause harm by inevitably and ultimately depressing property values.**

   Again, this allegation does not provide a basis under the ordinance to deny an application.

6. **That the Zoning Administrator was in error in that the fact that this permit to manufacture and sell guns is within three to six miles of two elementary schools causes harm by posing a danger to said children by exposing them to possible gun violence.**

   Again, this allegation does not provide a basis under the ordinance to deny an application.

7. **That the Zoning Administrator was in error in that the presence of a Major Home Occupation firearms-related business will cause harm by increasing traffic at an already dangerous section of Free Union Road. The applicant's driveway is immediately adjacent to the Woodlands Road intersection which already has documented accidents.**

   Again, this allegation does not provide a basis under the ordinance to deny an application. Also, the Virginia Department of Transportation (VDOT) considers the traffic associated with a home occupation an extension of the existing dwelling.

8. **That the Zoning Administrator was in error approving this permit because the criteria that determines whether an application should be approved or denied did not take into account the profundity of community concerns and opposition to the presence of a firearms-related business in the neighborhood, as manifested by the included nearly 100 signatures on the petition in opposition.**

   Staff considers all concerns. As previously noted, a series of conversations was held with the appellant regarding the regulations and review process for Home Occupations. However, because no such concern was an ordinance requirement, there was no basis to deny the application.

9. **That the Zoning Administrator was in error approving this permit because it violates one of the three Requirements for Home Occupation businesses as stated on the Albemarle County Home Occupations web page.**

   The appellant appears to be referring to the following language on the County website:

   Requirements for all home occupations are listed below.
   - *The business must be performed by an occupant of the home.*
   - *The home occupation must not interfere with the quality and character of the neighborhood.*
   - *You must apply for and receive an approved Home Occupation Clearance before commencing your business.*

   The website language does not override the ordinance requirements. It serves as a general guide for applicants and does not provide a basis under the ordinance to deny an application.

Summary:

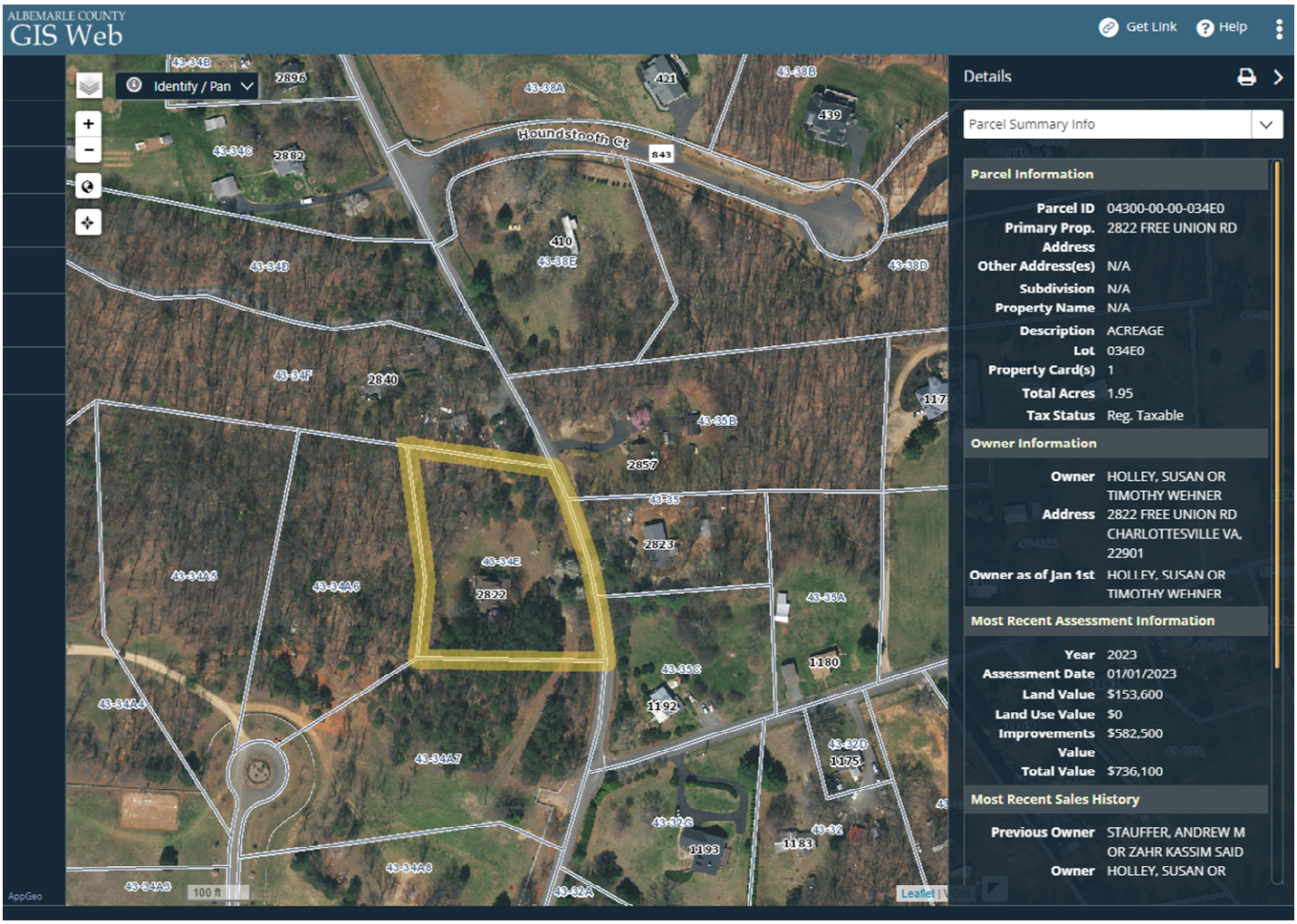
The ultimate question is not whether a home occupation should be approved or disapproved as a policy matter, but whether the home occupation satisfies the applicable ordinance. The Zoning official in fact applied the Albemarle County Zoning Ordinance correctlyin determining that Home Occupation HO202300002 met the requirements of Albemarle County Code § 18-5.2A. Therefore, the application must be and was approved (Attachment D).

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

Proposed Motion:
I move that the Board of Zoning Appeals adopt the attached Decision (Attachment G) affirming the Zoning official's determination.

Attachments:
Attachment A: Location Map of the Property
Attachment B: HO2023-002 Application, dated January 5, 2023
Attachment C: APO Notice for HO2023-002, dated January 23, 2023
Attachment D: Approval of HO2023-002, dated February 17, 2023
Attachment E: Appeal Application and Information, AP2023-001, dated March 20, 2023
Attachment F: Albemarle County Zoning Ordinance §18-5.2A
Attachment G: Draft Decision Order for AP2023-001

Attachment A



Attachment B

Your Submission Details

Submission Number:
HO-2023-2

Status:
Submitted

Message:

Applicant Name:
Timothy Wehner

Applicant Email:
wehnerlaw@gmail.com

Location:
2822 FREE UNION RD

Submission Type:
Home Occupation Clearance

Last Updated:
January 5, 2023

Submission URL:
https://app.oncamino.com/albemarlecounty-va/dashboard/185015/guide

Contact the agency for more help

434-296-5832

camino@albemarle.org

401 McIntire Road,
Charlottesville

① Application Information

Home Occupation Application Information - Major

Group: Home Occupation **Step is Completed By:** Applicant

② Requirements and Restrictions (HO)

Terms and Conditions - Major

Group: Home Occupation **Step is Completed By:** Applicant

Please read the following Terms and Conditions, and mark this step as complete, to confirm that you understand them.

1. **HOME OCCUPATION ACTIVITY:** All home occupation activity shall be within the home and or accessory structure(s).
2. **EXTERIOR APPEARANCE**: There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of the home occupation, except that
   · One home occupation sign may be erected as authorized by **Section 4.15.9 b6**. **Please contact a Zoning Planner for more information about signage.**
3. **VISITORS & SALES:** Customers, clients, and students can visit the property where the home occupation is conducted.
   · Only goods that are hand-crafted on-site and goods that are directly related to the home occupation, including but not limited to tools for pottery making and frames for artwork, are permitted to be for sale to customers who come to the site.
4. **TRAFFIC:** The traffic generated by the home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. A "vehicle round trip" means one vehicle entering and exiting the site. **THIS CONDITION MAY BE MODIFIED WITH A SPECIAL EXCEPTION. PLEASE SUBMIT A SPECIAL EXCEPTION APPLICATION.**
5. **PARKING:** All vehicles used in the home occupation and all vehicles of employees, customers, clients, or students related to the home occupation shall be parked or stored on-site ***(Maximum of two (2) motor vehicles and two (2) trailers permitted).***
6. **OUTDOOR STORAGE:** No outside storage of goods, products, equipment other than vehicles used in the home

occupation or any materials associated with the home occupation. ***(Natural landscaping materials such as mulch and plants are permitted to be stored outside an enclosed building).***

7. **HOURS OF OPERATION:** The home occupation may operate up to six (6) days per week, and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients, or students visiting the site.
8. **PERFORMANCE STANDARDS:** All home occupations shall comply with **Section 4.14 performance Standards**.

Prohibited Uses Confirmation - Rural

Group: Home Occupation **Step is Completed By:** Applicant

Mark this step complete to confirm that you are not applying for any of the prohibited uses below:

- Animal rescue centers
- Junk yards
- Restaurants
- Storage yards
- Gun sales (unless made by family occupants)
- Onsite pet grooming
- Body shops
- Rentals of equipment, trailers, vehicles or machinery Shooting ranges
- Commercial stables
- Not occasional rummage or garage sales
- Veterinary clinics or hospitals
- Pyrotechnics manufacturing or sales
- And other uses contrary to the purpose of rural area home-based business or permitted only by Special Use Permit per Section 10.2.2

③ Signatures and Disclaimers

Acknowledgement of Compliance with Home Occupation Regulations

Group: Home Occupation **Step is Completed By:** Applicant

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

Certification that Notice of the Application has been provided to the Landowner

Group: Universal Application Information **Step is Completed By:** Applicant

Marking this step as COMPLETE certifies that notice of this application will be provided to the property owner of record of the noted address and Tax Map Parcel Number by delivering a copy of the application either by

Hand,

Email, OR by

Mail

④ Review Fees

Home Occupation Fee

Group: Home Occupation **Fee:** $31.20 _ZONCL-HOME **Step is Completed By:** Applicant

⑤ OFFICE USE ONLY

◯ **Home Occupation Approval - MAJOR**

Group: Home Occupation **Step is Completed By:** Agency

Staff will review your application for compliance with the Major Home Occupation regulations and notify adjacent property owners. The staff will issue an approval letter if all applicable regulations are met. A final decision may take 4-6 weeks from the submittal of your application. Issuance of an approval may take longer if special exceptions are required to be approved. Please get in touch with staff by clicking the HELP link at the top of the page. If you have questions about your submission, please provide your submission number for reference.

Questions and Answers

1 **Do you reside in the dwelling to be used for your home business? NOTE: You MUST reside in the dwelling you are proposing to operate the business from.**

Yes | No

2 **Will your business involve the preparation of food for sale?**

Yes | No

3 **Will the business use MORE than 25% of the total gross square footage of your home? PLEASE NOTE: Using more that 25% of your dwelling square footage will require a Special Exception granted by the Board of Supervisors.**

Yes | No

4 **Will the business use MORE than 1500 square feet? PLEASE NOTE: Using more than 1500 square feet will require a Special Exception granted by the Board of Supervisors.**

Yes | No

5 **Will you have employees and/or customers coming to the property, or use an accessory structure like a detached garage or shed?**

Yes | No

6 **What is your Payment Method?**

Pay Now by Credit Card

7 **Your input is valuable to us. Would you be interested in completing a short survey about your experience today?**

Yes | No

Data Fields

OFFICE USE ONLY - Payment Type

1 **Payment Method**

Pay Now by Credit Card

Project Information

1 **Tax Map and Parcels**

043000000034e0

Home Occupation Details

1 **Customers Clients or Students - MAJOR**

I WILL have customers, clients or students coming to my home.

2 **Accessory Structure**

I WILL NOT be using an accessory structure.

3 **Business Name**

1. Legal Gun LLC (is registered with SCC) 2. Timothy Wehner, PLLC (will be registered)

4 **Business Type**

Firearms-related services and legal services, including secure storage for long-term travelers (e.g., military personnel,) legal services for estates with firearms, hand-crafted manufacturing of firearms, and transfers

5 **Description of Use**

Employees other than the owner: none Business vehicles: none Hours: 1400-1600 Saturday and Sunday, and weekday evenings by appointment Business will be conducted in the home, with a separate entrance for customers/clients Customer traffic is expected to be low. Intent is to expand range of services if successful, and at that time, move most existing services to commercial space

6 **Area to be used for your Home Occupation**

No

7 **Traffic Generated - Major**

I understand that if my business generates traffic, that said traffic WILL NOT exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week? NOTE: A vehicle round trip means one (1) vehicle entering and exiting the site.

8 **Home Occupation Square Footage - MAJOR**

400.0

9 **Employees coming to the home**

0.0

10 **Employees Customers Accessory Structures**

Yes

11 **Use of an accessory stucture - MAJOR**

n/a

Owner Information (not agent or consultant)

1 **Property Owner Name**

HOLLEY, SUSAN OR TIMOTHY WEHNER

2 **Property Owner Street Address**

2822 Free Union Rd.

3 **Property Owner City**

Charlottesville

4 **Property Owner State**

VA

5 **Property Owner Zip**

22901

6 **Property Owner Phone Number**

434-202-1944

7 **Property Owner Email**

wehnerlaw@gmail.com

Applicant Information

1 **Applicant Name**

Timothy Wehner

2 **Applicant Street**

2822 Free Union Rd.

3 **Applicant City**

Charlottesville

4 **Applicant State**

VA

5 **Applicant Zip**

22901

6 **Applicant Phone Number**

202-329-9390

7 **Applicant Email**

wehnerlaw@gmail.com

For agency use (GIS Queries)

8 **This submission location does not have the attribute "ZoningPrimary" equal "Rural Areas" in the "Parcels" layer.**

false

9 **This submission location does not have the attribute "ZoningPrimary" equal "Rural Areas" in the "Parcels" layer.**

false

10 **This submission location has the attribute "ZoningPrimary" equal "Rural Areas" in the "Parcels" layer.**

true

11 **This submission location has the attribute "ZoningPrimary" equal "Rural Areas" in the "Parcels" layer.**

true

12 **This submission location does not have the attribute "ZoningPrimary" equal "Rural Areas" in the "Parcels" layer.**

false

Disclaimer

This PDF was generated on January 5, 2023 and may be out of date.

County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

January 23, 2023

RE: HO2023-002: Legal Gun, LLC.
Tax Map Parcel ID: 04300-00-00-034E0
2822 Free Union Rd.
Charlottesville, VA 22901

Dear Adjoining Property Owner:

Albemarle County has received a request to establish a Major Home Occupation on the parcel listed above. Per Section 5.2A (n) of the Zoning Ordinance, you are receiving this notification because you are the owner or agent of abutting property or property immediately across the street from the site under review. The location of the site under review is shown on the attached vicinity map as **2822 Free Union Rd, Charlottesville, VA 22911.**

> This request is to run a firearms-related business out of a dwelling utilizing roughly 400 sq.ft. Operations will entail altering of existing firearms, secure storage of firearms, and legal services including for estates with firearms. No accessory structures will be utilized and there will be no employees. Business hours will be from 2:00 – 4:00 PM on weekends and on weekday evenings by appointment only. Customers/clients will utilize a separate entrance and customer trips will not exceed 10 round trips per day or 30 per week.

> The County will not take action on this request until at least five days after the date of this letter. We invite any comments, questions, or concerns you may have about this proposal. However, if the application meets all ordinance requirements, it will be approved. Please contact Jeff Baker at (434) 296-5832, ext. 3024 or jbaker@albemarle.org for additional information.

All information related to this request is available for review in the Department of Community Development during normal business hours (8 a.m.-5p.m., Mon-Fri). To assure the information is ready for your viewing and to allow staff to be available to help with any questions, we encourage you to schedule a viewing time. Please call (434) 296-5832 during business hours to schedule an appointment.

Sincerely,

Jeff Baker, Senior Planner
Zoning Division, Community Development

Attachment D

County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

WWW.ALBEMARLE.ORG

HOME OCCUPATION

Mx. Timothy Wehner, you have been **APPROVED** for the following type of Home Occupation:

MAJOR

The following Terms & Conditions apply to the noted Home Occupation type above:

1. **HOME OCCUPATION ACTIVITY:** All home occupation activity shall be within the home and or accessory structure(s).

2. **EXTERIOR APPEARANCE**: There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of the home occupation, except that one home occupation sign may be erected as authorized by **Section 4.15.9 b6. Please contact a Zoning Planner for more information about signage.**

3. **VISITORS & SALES:** Customers, clients, and students can visit the property where the home occupation is conducted. Only goods that are hand-crafted on-site and goods that are directly related to the home occupation, including but not limited to tools for pottery making and frames for artwork, are permitted to be for sale to customers who come to the site.

4. **TRAFFIC:** The traffic generated by the home occupation shall not exceed ten (10) vehicle round trips per day or more than thirty (30) vehicle round trips per week. A "vehicle round trip" means one vehicle entering and exiting the site.

5. **PARKING:** All vehicles used in the home occupation and all vehicles of employees, customers, clients, or students related to the home occupation shall be parked or stored on-site ***(Maximum of two (2) motor vehicles and two (2) trailers permitted).***

6. **OUTDOOR STORAGE:** No outside storage of goods, products, equipment other than vehicles used in the home occupation or any materials associated with the home occupation. ***(Natural landscaping materials such as mulch and plants are permitted to be stored outside an enclosed building).***

7. **HOURS OF OPERATION:** The home occupation may operate up to six (6) days per week, and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients, or students visiting the site.

8. **PERFORMANCE STANDARDS:**
All home occupations shall comply with **Section 4.14 performance Standards.**

Application Number: HO-2023-2

To operate at: 2822 Free Union Rd. (Address) Charlottesville as 1. Legal Gun LLC (is registered with SCC) 2. Timothy Wehner, PLLC (will be registered) (Business Name) to engage in the following: Operations will entail altering existing firearms, secure storage of firearms, and legal services including for estates with firearms. No Employees. Business hours on weeks are 2pm to 4pm and weekdays by appointment only.

For detailed information regarding the approval of this home occupation, please refer to the approval letter issued by both the Building Official and the Zoning Official of Albemarle County.

For Office Use:

Tax Map & Parcel ID: 06300-00-00-019E0 PAID: $31.20 DATE: 02/17/2023

County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

February 17, 2023

RE: HO2023-002: Legal Gun, LLC.
Tax Map Parcel ID: 04300-00-00-034E0
2822 Free Union Rd.
Charlottesville, VA 22901

Dear Business Owner:

Your above-referenced **Major Home Occupation** application has been approved for the following:

> This request is to run a firearms-related business out of a dwelling utilizing roughly 400 sq.ft. Operations will entail altering of existing firearms, secure storage of firearms, and legal services including for estates with firearms. No accessory structures will be utilized and there will be no employees. Business hours will be from 2:00 – 4:00 PM on weekends and on weekday evenings by appointment only. Customers/clients will utilize a separate entrance and customer trips will not exceed 10 round trips per day or 30 per week.

Other Official _____ **Date** 2/17/23

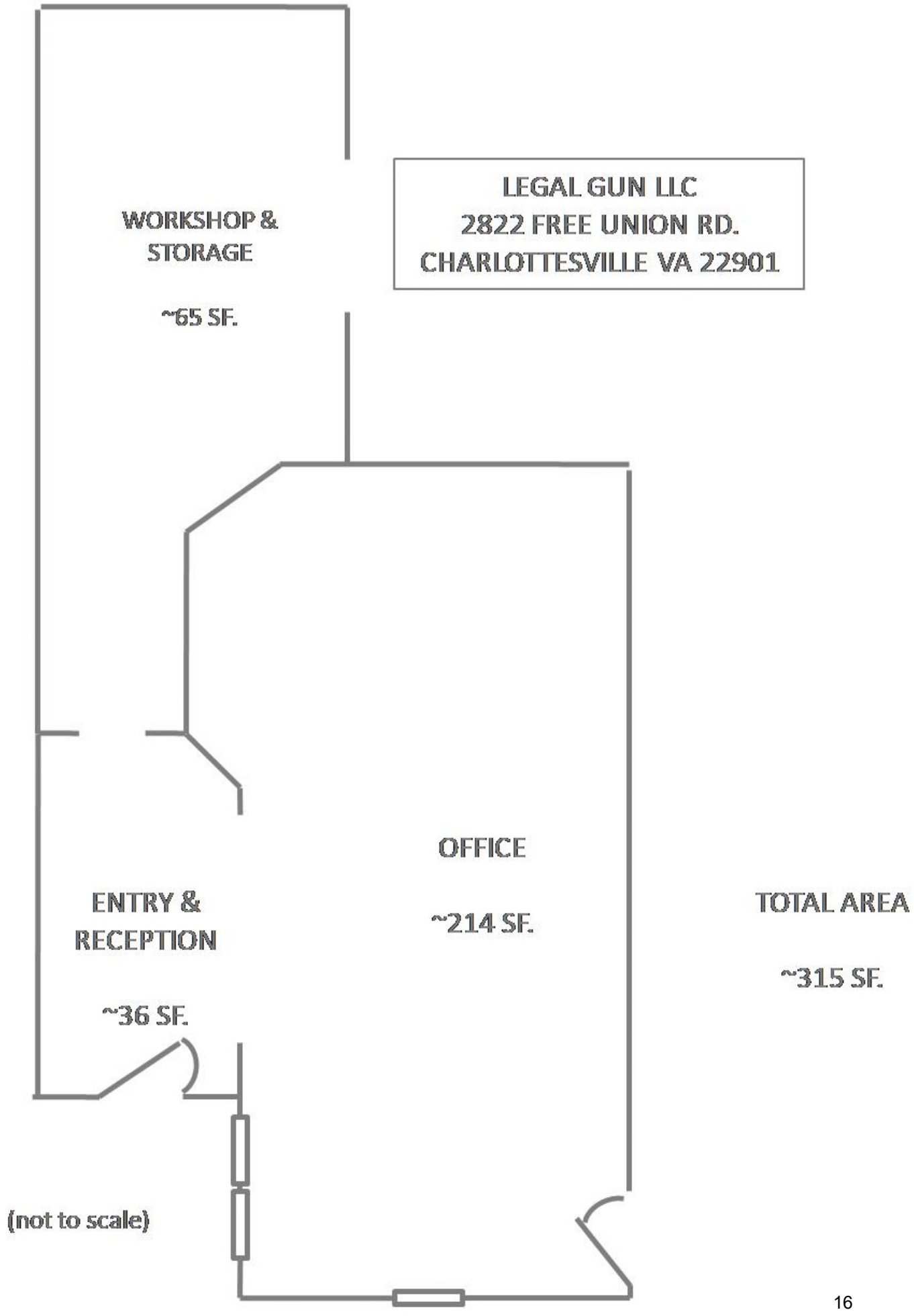
Building Official _____ **Date** 2/17/23

Zoning Official ATF notified **Date** 1/18/23

Should you have any questions or concerns, please do not hesitate to contact the Community Development office at 434-296-5832.

Sincerely,

Jeff Baker, Senior Planner
Zoning Division, Community Development


LEGAL GUN LLC
2822 FREE UNION RD.
CHARLOTTESVILLE VA 22901
WORKSHOP &
STORAGE
~65 SF.
OFFICE
~214 SF.
ENTRY &
RECEPTION
~36 SF.
TOTAL AREA
~315 SF.
(not to scale)

FOR OFFICE USE ONLY AP # 2023-00001 SIGN # _____

ZONING ORDINANCE SECTION: _____

Fee Amount $343.36 Date Paid 3/20/23 By who? Free Union Extention Receipt # 12.6092 Ck# 194 By: DW

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?): Margaret Maupin

Address 2857 Free Union Rd City Ch'ville State VA Zip 22901

Daytime Phone (434) 973-5714 Fax # (___) _____ E-mail momaupin@comcast.net

Owner of Record Timothy A. Wehner

Address 2822 Free Union Rd. City Ch'ville State VA Zip 22901

Daytime Phone (434) 202-1944 ~~Fax #~~ (202) 329-9390 E-mail wehnerlaw@gmail.com

Applicant (Who is the Contact person representing?): Free Union Homemakers Club

Address (see Contact Person info) City _____ State _____ Zip _____

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

Project Name: Appeal of HO2023-002: Legal Gun, LLC

Tax map and parcel: 04300-00-00-034E0 **Zoning:** Rural Areas

Physical Street Address (if assigned): 2822 Free Union Rd. Ch'ville, VA 22901

Location of property (landmarks, intersections, or other): From Barracks Rd: out Garth Rd. Ⓡ at Hunt Country Store, 3/4 mi turn Ⓛ just after Woodlands Rd. intersection. From Reservoir: Turn onto Woodlands Rd. 4 mi. Ⓡ onto Free Union Rd. IMMEDIATE Ⓛ.

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. N/A
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. N/A
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.

Margaret Maupin
Signature of Owner or Contract Purchaser, Agent

March 20, 2023
Date

Margaret Maupin
Print Name

434-973-5714
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

Marsha Alley

From: Bart Svoboda
Sent: Monday, April 24, 2023 12:29 PM
To: Marsha Alley
Subject: FW: FW: Notice of Appeal (AP2023-001) to Timothy Wehner

---

From: momaupin@comcast.net <momaupin@comcast.net>
Sent: Tuesday, April 18, 2023 3:50 PM
To: Bart Svoboda <bsvoboda@albemarle.org>
Subject: Re: FW: Notice of Appeal (AP2023-001) to Timothy Wehner

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,

We did speak about this question on the phone. When we brought the appeal to your office on March 20 we remember you saying that *The Homemakers Club* would not have "standing." Is that correct? And because of that, the three of us agreed that I would have to be the appellant.

On another note, I viewed the information in the link attached and notice that the third graph in the ***Scientific American*** article is very faint and hardly readable. If anyone is viewing the material they then will not be able to see that the "Nongun Homicides per 100,000 People" decreases dramatically compared to the "Total Homicides per 100,000 People" and "Gun Dealers per Square Mile," both of which dipped and then increased dramatically, all of which were during the same time period (2003-2019).

Perhaps that can be corrected. My copy of the article presents a perfectly clear and legible third graph.

Let me know if you need any more info.

Margaret Maupin

> On 04/18/2023 9:10 AM Bart Svoboda <bsvoboda@albemarle.org> wrote:
>
> Ms. Maupin,

As requested, attached is the email and notice sent to Mr. Wehner.

Also, could you verify the appellant? Is the appellant Margaret Maupin or the Free Union Homemakers Club?

Regards,

Bart

This e-mail is not intended to be and shall not be deemed to be an official order, requirement, decision or determination made by or on behalf of the Zoning Administrator.

Bart J. Svoboda

Director of Zoning

Albemarle County

bsvoboda@albemarle.org

office: (434)296-5832 ext.3225

401 McIntire Road, North Wing, Charlottesville, VA 22902

From: Marsha Alley <malley3@albemarle.org>
Sent: Wednesday, March 22, 2023 2:02 PM
To: WEHNERLAW@GMAIL.COM
Cc: Bart Svoboda <bsvoboda@albemarle.org>
Subject: Notice of Appeal (AP2023-001) to Timothy Wehner

Good afternoon, Mr. Wehner:

Attached you will find the required notice of the recent submittal of an appeal on property that you own. This notice will also be sent via USPS.

If you have any questions, feel free to contact me at the information below.

Sincerely,

Marsha Alley

Management Analyst II – Zoning

Albemarle County

malley3@albemarle.org

(434) 296-5832 ext. 3417

401 McIntire Road, North Wing, Charlottesville, VA 22902

March 17, 2023

2. Justification for applicant's position:

APPEAL OF MAJOR HOME OCCUPATION PERMIT FOR
Timothy A. Wehner at 2822 Free Union Road
****

We, the undersigned, as well as those signatories on the Petition for Appeal, believe the zoning administrator's determination to grant a Major Home Occupation Permit for a firearms business at 2822 Free Union Road (HO 2023 2) was made in the following error and causes the following harm:

1. **That the Zoning Administrator was in error in permitting a firearms-related business in our neighborhood because it is manifestly incompatible with County Ordinance Section 5.2Aa which states that there is to be a balance between encouraging limited home-based economic development with the need to protect and preserve the quality and character of the County's agricultural areas and residential neighborhoods.** We believe that permitting a firearms-related business in the midst of family-oriented County neighborhood is antithetical to the interests of an area dedicated to small homes and small farms. We believe that the presence of a gun dealer in our neighborhood will create insecurity, thereby causing harm. This will inevitably change the peaceful character of the area.

2. **That the Zoning Administrator was in error in that the storage of guns at this location is inconsistent with the County's stated aim to preserve and protect the rural nature of the neighborhood. Public knowledge of the storage of firearms on said premises will invite theft which would in turn spread into our peaceful neighborhood**. Neither the County nor the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) has any requirements whatever as to the security measures needed to safely store these guns.

3. **That the applicant needs a license from the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) as well as the permit from the County and that the ATF lists nine categories under which the applicant can apply for a license.** (See below for listing of these nine types, copied from p.1 of FFL application, ATF Form 7.) **It is an error for the Zoning Administrator to have granted the Major Home Occupation permit for a firearms-related business with no knowledge of, or access to, the type of license for which the applicant has applied.**

Type	Description of License Type	Fee
01	Dealer in Firearms Other than Destructive Devices *(Includes: rifles, shotguns, pistols, revolvers, gunsmith activities, and National Firearms Act (NFA) weapons) (see instruction #10)*	$200
02	Pawnbroker in Firearms Other than Destructive Devices *(Includes: rifles, shotguns, pistols, revolvers, gunsmith activities, and National Firearms Act (NFA) weapons) (see instruction #10)*	$200
03	Collector of Curios and Relics *(NOTE: This is not a license to conduct business, see instruction #8)*	$30
06	Manufacturer of Ammunition for Firearms Other Than Ammunition for Destructive Devices or Armor Piercing Ammunition *(see instruction #11)*	$30
07	Manufacturer of Firearms Other than Destructive Devices *(see instruction #11)*	$150
08	Importer of Firearms Other than Destructive Devices or Ammunition for Firearms Other than Destructive Devices, or Ammunition Other than Armor Piercing Ammunition *(NOTE: Importer of handguns and rifles, see instruction #9)*	$150
09	Dealer in Destructive Devices *(see instruction #10)*	$3000
10	Manufacturer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition *(see instruction #11)*	$3000
11	Importer of Destructive Devices, Ammunition for Destructive Devices, or Armor Piercing Ammunition *(see instruction #9)*	$3000
	Total Fees	$0

4. **That the Zoning Administrator was in error in that the introduction of a firearms-related business will inevitably be accompanied by a higher crime rate because of the potentially dangerous nature of some gun buyers coming to purchase or store firearms.** The location of this permitted use is in a residential area of the rural zoning district. Prior to the County granting of this firearms-related permit we in this neighborhood enjoyed a quiet peaceful world with a low crime rate and a genuine sense of neighborliness and security. We do not want that characterization to be altered.
    a. Attached please note an article from the November 3, 2021 *Scientific American* entitled "Where Gun Stores Open, Gun Homicides Increase." The article lays out the deleterious effect of and reasons for increased gun violence in areas where gun dealers are located. Within this study researchers compared firearm-related homicides to other homicides and "their analysis found that when a gun dealership opens, homicides within a surrounding area of 100 square miles increase by as much as 3.9% in subsequent years." Poignant charts clearly indicate that the more gun dealers there are, the higher the rates of homicides, even when the rate of homicides by any other tool decreased over the same period of time.

5. **That the Zoning Administrator was in error in that the presence of a firearms-related business in our area will cause harm by inevitably and ultimately depressing property values.**

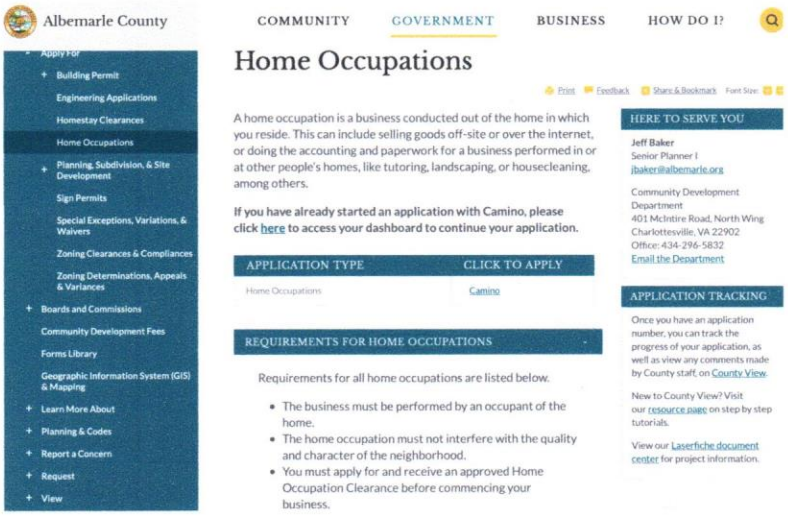
6. **That the Zoning Administrator was in error in that the fact that this permit to manufacture and sell guns is within three to six miles of two elementary schools causes harm by posing a danger to said children by exposing them to possible gun violence.**

7. **That the Zoning Administrator was in error in that the presence of a Major Home Occupation firearms-related business will cause harm by increasing traffic at an already dangerous section of Free Union Road. The applicant's driveway is immediately adjacent to the Woodlands Road intersection which already has documented accidents.** As many of the applicant's customers will be driving north from Charlottesville on Free Union Road where the line of sight is limited, they will descend the hill and need to make an immediate left turn into the driveway, thus posing a potential traffic hazard.

8. **That the Zoning Administrator was in error approving this permit because the criteria that determines whether an application should be approved or denied did not take into account the profundity of community concerns and opposition to the presence of a firearms-related business in the neighborhood, as manifested by the included nearly 100 signatures on the petition in opposition.** If the County is restricting home businesses because of the impact on the neighbors or neighborhood, as is evidenced on the prohibited businesses list (junkyards, frequent yard sales, etc.) then this appeal clearly demonstrates the concerns and the opposition of the local community to the introduction of a firearms-related business in their midst.

9. **That the Zoning Administrator was in error approving this permit because it violates one of the three Requirements for Home Occupation businesses as stated on the Albemarle County Home Occupations web page.** The three requirements are listed in

screenshot below. Without question, approving this firearms-related business interferes with the second requirement which states that the "home occupation must not interfere with the quality and character of the neighborhood."



10. **That we believe that the Zoning Administrator is in error and the determination will cause harm as per these ten points. We further believe that other unknown hazards or dangers could arise as a result of this error, any of which could negatively impact the safety and security of our neighborhood and community.**

5. Reference to the relevant Zoning Ordinance section or …. case precedence to justify appeal.

Albemarle County Section 5.2A is the focus of this appeal. At the request of the appellants, access to the County's system to research previous cases or any relevant cases of precedence has only just been explained. This system is complex and not user friendly. The appellants need to familiarize themselves with this system in order to determine if there are any cases of precedence that might be relevant to our case. If so, the relevant cases will be presented at the meeting on June 6, 2023.

Margaret,

Bart is out of the office due to the passing of a relative. I am informed that the end of the appeal timeframe will be close of business on Monday, not Sunday as I think you had mentioned.

Thanks,

Jeff Baker
Zoning Permit Planner
Albemarle County

jbaker@albemarle.org
office 434-296-5832 x3024
401 McIntire Road, Charlottesville, VA 22902

From: momaupin@comcast.net <momaupin@comcast.net>
Sent: Tuesday, March 14, 2023 11:26 AM
To: Jeffrey Baker <jbaker@albemarle.org>
Cc: Bart Svoboda <bsvoboda@albemarle.org>
Subject: RE: brief meeting HO 2023 2

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.

Jeff and Bart,
Thanks for getting back to me. I have a few questions about how to fill out the forms for an appeal that I'd like to go over and how to go where on your system to look up some of the details from that last email that you sent. I'm curious if any Business Occupation appeals were successful and when they might have been.....but I understand that if that task is a time consuming one, it might not be the best use of your time. I believe that Sunday is the end of the 30 day period, so I would have to have papers postmarked by Sunday or in your hands by Sunday?

Does 9:00 or 1:00 work for y'all?

Thank you for your patience with my myriad of questions. I know you're both busy with so much going on.

Margaret

> On 03/14/2023 10:31 AM Jeffrey Baker <jbaker@albemarle.org> wrote:
>
> Margaret,
>
> How about this coming Thursday, whenever is convenient for you? Also, is there anything specific for this meeting so we can prepare in advance?
>
> Thanks,

Jeff Baker
Zoning Permit Planner
Albemarle County

jbaker@albemarle.org
office 434-296-5832 x3024
401 McIntire Road, Charlottesville, VA 22902

From: momaupin@comcast.net <momaupin@comcast.net>
Sent: Sunday, March 12, 2023 11:47 AM
To: Bart Svoboda <bsvoboda@albemarle.org>; Jeffrey Baker <jbaker@albemarle.org>
Subject: brief meeting HO 2023 2

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

Bart and/or Jeff,

Top o the Morning to you!

Could I schedule a meeting with you preferably on Wednesday (the Ides of March), but maybe Tuesday if you can't do Wednesday?

Margaret Maupin

Petition: to Appeal the Zoning Administrator's Determination Approving a Major Home Business at 2822 Free Union Road

We, the undersigned, are appealing the Zoning Administrator's determination which approves the Major Home Business involving "firearms related services and legal services, including secure storage for long-term travelers, (e.g. military personnel,) legal services for estates with firearms, hand-crafted manufacturing of firearms and transfers" at 2822 Free Union Road. Having a gun dealer in the neighborhood will, de facto, change the ambiance and rural nature of our community. Firearms production is antithetical to the interests of a rural, family-oriented neighborhood and the thought of this aggrieves us. It also aggrieves us that the applicant is offering legal services with regard to firearms, and yet is not a registered lawyer in the Commonwealth of Virginia (per Membership Dep't. of Virginia State Bar). From a safety perspective we have serious concerns about the type of people who will be coming into the neighborhood to purchase these guns or to have their own guns modified. Furthermore, the presence of a firearms dealer in our family-oriented neighborhood will negatively effect property values.

We, the undersigned, also appeal to the members of the Board of Supervisors to modify the current Ordinance 5.2A to deny firearms businesses in homes in any part of Albemarle County, as they have already denied other small businesses (e.g. animal rescue centers, on-site pet grooming, etc.) from home settings. We believe it is **not** the intent and purpose of the Ordinance---which we understand is intended to promote small business opportunities in private homes in rural areas of the County and to "protect and preserve the quality and character of the county's agricultural and residential neighborhoods..."---to allow firearms businesses, when in the past they have denied potters a tile-making business.

	Printed Name	Signature	Address	Phone
1.	BARBARA LINK	Barbara Link	Monticello Ave. Cville	
2.	NANCY BAUM	Nancy Baum	Pantops Mtn Rd	
3.	Joan Chapman	Joan Chapman	350 Pantops Way C-ville, VA 22911	
4.	Patricia Barth	Patricia Barth	1610 River Walk Crossing Cville	
5.	Dorothy Bedard	Dorothy N. Bedard	1977 Arbor Ct Charlottesville VA 22911	
6.	Amanda Beresford		2295 Tyler Pl, Cville VA 22901	
7.	DAVID MARSHALL	David Marshall	1144 Hearthglow Ct, C'ville VA 22901	
8.	Judith Freeman	Judy Freeman	1144 Hearthglow Ct. 22901	
9.	Elizabeth Mostellar		1805 Tinkers Cove Rd. C'ville VA 22911	
10.	Henry Marshall		1805 Tinkers Cove Rd., C'ville VA 22911	
11.	Jose calderon		251 Hetherfield Dr, Rockville VA 229	
12.	Kevin Mitchell		3415 Peaving Hollow, Crozet 22932	68
13.	Jacob Blevins		63 Little Herb Lane Palmyra 22963	
14.	Janis M. JAQUITH		2445 Cascades Dr. Free Union 22940	
15.	[redacted]	[redacted]	[redacted]	
16.	RICHARD MALNIGHT		445 HOUNDSTOOTH CT, CVILLE, VA 22901	
17.	Anne malnight	Anne malnight	445 Houndstooth Ct Cville VA 22901	
18.	Harry Landers		2445 Cascades Dr Free Union 22940	
19.	Alex Doyle		439 Houndstooth Ct Cville 22901	
20.	Karen Warburton		439 Houndstooth Ct 22901	
21.	Megan Kiernan		2822 Free Union 22901	
22.	Julia Scialle		1911 Woodlands Cove 22901	
23.	Nell Davis		Amy Fraies - FRAITES	
24.				
25.				

Petition: to Appeal the Zoning Administrator's Determination Approving a Major Home Business at 2822 Free Union Road

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	Printed Name	Signature	Address	Phone
1.	Margaret Maupin	Margaret Maupin	2857 Free Union Rd.	434-973-5714
2.	MICHAEL MAUPIN	Michael Maupin	2857 FREE UNION RD. CHARLOTTESVILLE	434 973 5714
3.	Jennifer Worth	Jennifer Worth	421 Houndstooth CT. Crville	434 466 53606
4.	Brian Worth	Brian Worth	421 Houndstooth Ct, Cville	650 468 3841
5.	SAUNDY VENN	Saundy Venn	6091 Free Union Rd.	434 293 3912
6.	MARY Stinnette	Mary Stinnette	5161 Wesley Chapel Rd.	22940
7.	Candice Kalinski	Candice Kalinski	1192 Woodlands Rd	22901
8.	Alexandra Lewis	Alex	1193 Woodlands Rd 22901	571-213-3595
9.	Kathryn Fish	Kathryn Fish	2300 Reynard Woods Rd. 22901	540-320-4920
10.	Kathleen Fenley	Kathleen Fenley	1161 Woodlands Rd 22901	434-987-5192
11.	MATT SISSONS	Matt Sissons	1148 Woodlands Rd 22901	
12.	AMY WELLS	Amy Wells	1143 Woodlands Rd 22901	
13.	Julie Wilkinson	Julie Wilkinson	2854 Free Union, VA 22901	
14.	Timothy Wilkinson	Timothy Wilkinson	2854 Free Union Rd, VA 22901	434-202-4238
15.	ROBERT H. RUFF	Robert H. Ruff	410 Houndstooth Ct. Cville 22901	713-562-7112
16.	John W. Swartzwelder	John W. Swartzwelder	2899 Free Union Rd.	CVL VA 22901
17.	NANCY J SWARTZWELDER	Nancy J Swartzwelder	2899 Free Union Rd.	Cville, Va 22901
18.	Douglas E Caton	Douglas E Caton	1125 FOUR WINDS LANE	434 973-4039
19.	Ellen Brack	Ellen Brack	1908 Woodlands Cv	
20.	George Cahen, Jr.	George J. Cahen Jr	1045 Woodlands Rd.	434.973.1267
21.	Rebecca Sheehy	Rebecca Sheehy	3195 Fox Mt. Rd, Crozet, VA	434.973-0699
22.	KERIN YATES	Kerin N. Yates	4409 Free Union Rd Free Union VA	4349641840
23.	D. Diana Johnson	D. Diana Johnson	3338 Ridge Rd. Crville, VA 22901	434.975.0583
24.	Teresa Gillie	Teresa Gillie	2415 Cascades Dr Free Union	22940/981-7916
25.	Pamela Hand	Pamela Hand	4330 Springwood Dr Free Union VA 22940	434.963.2546

Petition: to Appeal the Zoning Administrator's Determination Approving a Major Home Business at 2822 Free Union Road

We, the undersigned, are appealing the Zoning Administrator's determination which approves the Major Home Business involving "firearms related services and legal services, including secure storage for long-term travelers, (e.g. military personnel,) legal services for estates with firearms, hand-crafted manufacturing of firearms and transfers" at 2822 Free Union Road. Having a gun dealer in the neighborhood will, de facto, change the ambiance and rural nature of our community. Firearms production is antithetical to the interests of a rural, family-oriented neighborhood and the thought of this aggrieves us. It also aggrieves us that the applicant is offering legal services with regard to firearms, and yet is not a registered lawyer in the Commonwealth of Virginia (per Membership Dep't. of Virginia State Bar). From a safety perspective we have serious concerns about the type of people who will be coming into the neighborhood to purchase these guns or to have their own guns modified. Furthermore, the presence of a firearms dealer in our family-oriented neighborhood will negatively effect property values.

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	Printed Name	Signature	Address	Phone	Miles
1.	Deborah M. Garth	Deborah M Garth	625 Ivy Farm Dr 22901	434-295-0584	3 miles
2.	David K. Garth	David K Garth	625 Ivy Farm Dr 22901	434-295-0584	3 miles
3.	Andrew J. Hall	Andrew J Hall	599 Ivy Farm Dr. 22901	434-241-4183	3 mi
4.	Zada E. Hall	Zada Hall	599 Ivy Farm Dr. 22901	434-282-9357	3 mil
5.	Peter Garth	Peter D Garth	1965 Stillhouse Rd	434-244-3493	3
6.	Darien Hall	Darien Hall	599 Ivy Farm Dr.		3
7.	GREGORY GOVAN	Gregory Govan	4410 Pigeon Top Trl	434-823-2627	10.
8.	Jane T. Govan	Jane T. Govan	4410 Pigeon Top Tr.	434 960-6244	10.
9.	Addison Hall	Addison Hall	599 Ivy Farm Dr. 22901	4342029018	3 miles
10.	Melanie Garth	Melanie d Garth	1965 Stillhouse Rd Cville 22901		3 miles
11.	Christina Keller	C Keller	655 Ivy Farm Dr. Cville 22901	4342459401	3 mi
12.	JEFF KELLER		655 IVY FARM DR. CVILLE 22901	4342459401	3 miles
13.	Dale Elizabeth Dealtrey	E. Dealtrey	2238 Wingfield Rd Cville 22901	434-260-2639	4 miles
14.	HOWARD MILLER		2238 WINGFIELD RD, CVILLE	434-953-7662	4 miles
15.	Cecelia Babbott	Cecelia Babbott	770 Ivy Farm Dr	4132056234	3 miles
16.	Laura A. Malnight	Laura A. Malnight	445 Hounds Tooth Ct. Cville, 22901	610 263 2856	
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Petition: to Appeal the Zoning Administrator's Determination Approving a Major Home Business at 2822 Free Union Road

We, the undersigned, are appealing the Zoning Administrator's determination which approves the Major Home Business involving "firearms related services and legal services, including secure storage for long-term travelers, (e.g. military personnel,) legal services for estates with firearms, hand-crafted manufacturing of firearms and transfers" at 2822 Free Union Road. Having a gun dealer in the neighborhood will, de facto, change the ambiance and rural nature of our community. Firearms production is antithetical to the interests of a rural, family-oriented neighborhood and the thought of this aggrieves us. It also aggrieves us that the applicant is offering legal services with regard to firearms, and yet is not a registered lawyer in the Commonwealth of Virginia (per Membership Dep't. of Virginia State Bar). From a safety perspective we have serious concerns about the type of people who will be coming into the neighborhood to purchase these guns or to have their own guns modified. Furthermore, the presence of a firearms dealer in our family-oriented neighborhood will negatively effect property values.

We, the undersigned, also appeal to the members of the Board of Supervisors to modify the current Ordinance 5.2A to deny firearms businesses in homes in any part of Albemarle County, as they have already denied other small businesses (e.g. animal rescue centers, on-site pet grooming, etc.) from home settings. We believe it is **not** the intent and purpose of the Ordinance---which we understand is intended to promote small business opportunities in private homes in rural areas of the County and to "protect and preserve the quality and character of the county's agricultural and residential neighborhoods..."---to allow firearms businesses, when in the past they have denied potters a tile-making business.

	Printed Name	Signature	Address	Phone
1.	DEBORAH LITTLE	Deborah B. Little	4415 Old Fields Rd Free Union	434-973-2515
2.	Douglas Little	Douglas E. Little	4415 Old Fields Rd Free Union	434-973-2515
3.	Denise Zito	Denise R. Zito	3567 Ballards Mill Free Union	823-4798
4.	John Parcells	John Parcells	3567 Ballards Mill Rd, Free Union	823-4798
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Petition: to Appeal the Zoning Administrator's Determination Approving a Major Home Business at 2822 Free Union Road

We, the undersigned, are appealing the Zoning Administrator's determination which approves the Major Home Business involving "firearms related services and legal services, including secure storage for long-term travelers, (e.g. military personnel,) legal services for estates with firearms, hand-crafted manufacturing of firearms and transfers" at 2822 Free Union Road. Having a gun dealer in the neighborhood will, de facto, change the ambiance and rural nature of our community. Firearms production is antithetical to the interests of a rural, family-oriented neighborhood and the thought of this aggrieves us. It also aggrieves us that the applicant is offering legal services with regard to firearms, and yet is not a registered lawyer in the Commonwealth of Virginia (per Membership Dep't. of Virginia State Bar). From a safety perspective we have serious concerns about the type of people who will be coming into the neighborhood to purchase these guns or to have their own guns modified. Furthermore, the presence of a firearms dealer in our family-oriented neighborhood will negatively effect property values.

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	Printed Name	Signature	Address	Phone
1.	Virginia Rovnyak	Virginia Rovnyak	6862 Castleberry Ct. Crozet, VA	540-466-6930
2.	James Rovnyak	James Rovnyak	"	"
3.			We live 14.4 miles by car from the permit site	
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Petition: to Appeal the Zoning Administrator's Determination Approving a Major Home Business at 2822 Free Union Road

We, the undersigned, are appealing the Zoning Administrator's determination which approves the Major Home Business involving "firearms related services and legal services, including secure storage for long-term travelers, (e.g. military personnel,) legal services for estates with firearms, hand-crafted manufacturing of firearms and transfers" at 2822 Free Union Road. Having a gun dealer in the neighborhood will, de facto, change the ambiance and rural nature of our community. Firearms production is antithetical to the interests of a rural, family-oriented neighborhood and the thought of this aggrieves us. It also aggrieves us that the applicant is offering legal services with regard to firearms, and yet is not a registered lawyer in the Commonwealth of Virginia (per Membership Dep't. of Virginia State Bar). From a safety perspective we have serious concerns about the type of people who will be coming into the neighborhood to purchase these guns or to have their own guns modified. Furthermore, the presence of a firearms dealer in our family-oriented neighborhood will negatively effect property values.

We, the undersigned, also appeal to the members of the Board of Supervisors to modify the current Ordinance 5.2A to deny firearms businesses in homes in any part of Albemarle County, as they have already denied other small businesses (e.g. animal rescue centers, on-site pet grooming, etc.) from home settings. We believe it is **not** the intent and purpose of the Ordinance---which we understand is intended to promote small business opportunities in private homes in rural areas of the County and to "protect and preserve the quality and character of the county's agricultural and residential neighborhoods..."---to allow firearms businesses, when in the past they have denied potters a tile-making business.

	Printed Name	Signature	Address	Phone
1.	Susannah M Hall	S. Hall	3338 Horseshoe Bend Rd Cville	409-4144
2.				
3.	[illegible]			
4.	MARILYN D MARSHALL	Marilyn D. Marshall	5445 Free Union Rd. C'ville 22901	434-973-8880.
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	Printed Name	Signature	Address	Phone	
1.	April Holmes	April Holmes	3210 Fox Mtn Rd, Crozet		7 Mi from home business
2.	TITO MAS BREEDEN	Titus Breeden	3178 FOX MTN ROAD, CROZET		
3.	LOUISE FINGER		PO BX 41 Free Union, VA		
4.	Dana Denbar	Dana Denbar	136 Blackthorn Ln	4349065063	10 Miles
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	Printed Name	Signature	Address	Phone
1.	PRESLEY THACH		2704 SILAS JACKSON CT. CHARLOTTESVILLE VA 22901	434 971-8076
2.	JOCELYN THACH			
3.	BRIAN ROZYCKI		2740 SILAS JACKSON CT. CVILLE	434-321-0005
4.	Diane Rozycki		2740 Silas Jackson Ct Cville	22901 (919) 618-4240
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	Printed Name	Signature	Address	Phone
1.	Ronna Gray		2015 Tasmania Dr. Free Union	Rorina Gray
2.	Debbie Miller		434-978-1031	Debbie Miller
3.	Patty Pendleton		434-973-3835	
4.	MEREDITH BENNETT		FOX MOUNTAIN CROZET	
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	Printed Name	**Signature**	**Phone**
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2.	Beth S. Valmorana		
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	Printed Name	Signature	Phone
1.	Rose Emery	Rose Emery	434-978-4044
2.	Jane-Ashley Skinner	Jane-Ashley Skinner	434.987.9513
3.	Peter G. Skinner		434.987.0096
4.	Ann Horner		434 466 8666
5.			434-293-4467
6.	Jaye Knight	Jaye Knight	434 249-5817
7.	Graham C. Lilly		540 487 9901
8.	Rachel M. Lilly	Rachel M Lilly	540-456-4168
9.	E. M. Neff		434-973-4428
10.	Jean W. Craig		434 973-3874
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POLICY

Where Gun Stores Open, Gun Homicides Increase

More oversight of dealers and investment in impoverished communities are key to reducing violence, experts say

By Jim Daley on November 3, 2021



Credit: Getty Images

Editor's Note (5/25/22): This article is being republished in the wake of a school shooting in Uvalde, Tex., that killed at least 19 children and two teachers. It was the deadliest such attack since the shooting at Sandy Hook Elementary School in Newtown, Conn., in 2012, and occurred less than two weeks after a deadly shooting in Buffalo, N.Y., that killed 10 Black people in an act of domestic terrorism.

When Illinois passed a law in 2014 permitting the concealed carrying of firearms—becoming the last of the 50 states to do so—Sam Rannochio opened Check Your 6, Inc. in the Chicago suburb of Arlington Heights. The store sells handguns and rifles, and also offers concealed-carry classes. "The two kind of go hand-in-hand together," Rannochio says.

Check Your 6 was one of hundreds of gun dealerships that opened across the United

States between 2010 and 2017, notes a preprint study that was published last month on social science research website SSRN and has not yet been peer-reviewed. According to the study, which looked at county-level data nationwide over a 17-year period, when the number of gun dealerships within 100 miles of a given area went up, the number of gun homicides in that area also increased in subsequent years—even as nongun killings declined overall (see graphic). Majority-Black communities bore the brunt of that violence, the study found.

The sharp rises in gun violence seen in some Black communities since 2014 have been widely attributed to the "Ferguson effect." This term was coined by the then-chief of the St. Louis police, who claimed violent crime increases were driven by officers' deteriorating morale following nationwide protests of the 2014 police killing of unarmed Black teenager Michael Brown in the St. Louis suburb of Ferguson, Mo. But the study authors propose these increases are linked to a steep rise in gun dealerships specializing in handgun sales near majority-Black communities shortly before 2014.

Before 2010 there had been "a massive decline in gun dealers," says study co-author David Johnson, an economist at the University of Central Missouri. "Three, four years later, you start seeing declines in homicides—and then they pop right back up again once those gun dealers start reentering the market." It is unclear what might have caused the number of dealerships to drop ahead of 2010, but the rebound in gun sales may have been driven by fears that then-President Barack Obama would enact strict gun-control policies, according to a 2015 study published in the *Journal of Public Economics*.

Gun availability is notoriously difficult to measure, partly because there is no federal registry of firearms. Previous studies have typically relied on gun suicide records, subscriptions to gun magazines, and survey data to estimate how many firearms are

available in a given area. But the new study's authors contend that these metrics are imprecise.

Instead, they used data on federal firearm licenses (which gun dealerships are required to obtain from the Bureau of Alcohol, Tobacco, Firearms and Explosives) as a proxy measure of gun availability. The researchers compared this to FBI data, as well as statistics from the Centers for Disease Control and Prevention and the U.S. Census Bureau, to track homicides for every U.S. county. Their analysis found that when a gun dealership opens, homicides within a surrounding area of 100 square miles increase by as much as 3.9 percent in subsequent years.

More Gun Dealers Linked to More Gun Deaths

Researchers compared the density of firearm dealers in the U.S. from 2003 to 2019 with the rates of all homicides and of nongun homicides alone over the same period. Homicides that include those involving guns appear to be strongly associated with the number of dealers per square mile, whereas non-gun-related ones seem unaffected, having fallen fairly steadily since 2003.





Credit: Amanda Montañez; Source: "Gun Dealer Density and Its Effect on Homicide," by David B. Johnson and Joshua J. Robinson. Preprint posted October 2, 2021, to https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3867782

To help ensure they were not missing other factors that could have driven increases in both gun stores and homicides, the researchers also looked at killings that did not involve a firearm—and found such "nongun homicides" decreased during the study period. "If the effect on homicides was not being driven primarily by the guns themselves, then we would expect nongun homicides to be correlated with gun stores as well, which we show they are not," Johnson says. "The increase in homicides is happening largely through the increase in gun availability."

Daniel Webster, who directs the Johns Hopkins Center for Gun Violence Prevention and Policy and was not involved in the new study, says it raises the question of how to uniformly regulate gun shops. "There's enormous variability from one gun dealer to another in terms of the rate at which the guns they sell end up being used in a crime," he says. "I think that's not a function of chance. It's a function of how people run their businesses." He suspects that tighter regulations on gun shops, along with more oversight of dealerships, would reduce gun crimes.

Illinois has some of the country's strictest gun laws, according to a gun-control advocacy organization called Giffords Law Center, and there are no licensed gun dealers in Chicago. Yet the city remains awash in firearms and is plagued by gun violence. Chicago is less than 100 miles from Wisconsin, Michigan and Indiana (the latter borders the city itself), and all three have far fewer gun restrictions than Illinois.

The SSRN study highlighted Chicago for this very reason, also noting that the city has a surrounding "halo" of Illinois counties where gun dealerships are concentrated. As a result, Chicagoans need not travel far to legally buy a firearm. "Gun dealers introduce more guns into the community," says study co-author Joshua Robinson, an economist at the University of Alabama at Birmingham. And that increased availability is not limited to law-abiding buyers.

"There have been instances where people have come in [to the store] with bad intentions," says Rannochio, the gun shop owner. "You're always going to have someone trying to purchase a firearm for someone else, illegally—what they call 'straw purchasing.'" He adds that state-mandated background checks and his own law-enforcement experience help guard against this (he was a police officer for 20 years in Skokie, an affluent, majority-white village that borders Chicago), and he recalled two instances in which he says he declined to sell a gun to prospective

buyers. As far as he knows, he says, none of the firearms Check Your 6 has transferred or sold wound up being tied to any crime.

Still, firearms bought (or stolen) from other licensed dealerships in the suburbs and surrounding states frequently turn up in Chicago shootings. In one recent high-profile case, a gun allegedly purchased by an Indiana resident in that state's city of Hammond, which borders Chicago, was used in the fatal shooting of a Chicago police officer. In another, a man in Indianapolis allegedly bought a gun that was used to kill a seven-year-old girl on Chicago's West Side.

"That's why you keep hearing about straw purchases," says Wallace "Gator" Bradley, a former enforcer for the Gangster Disciples, a major Chicago street gang. "Individuals that have a right to go buy a gun will go to the gun stores or go to the gun shows and buy the guns. They come right back." He adds that purchasers do not have to cross the state line to do so. "You can go right to one of the suburbs ... and go buy a gun."

Bradley, who was pardoned by Illinois' Republican Governor Jim Thompson in 1990 and has been a peace advocate for decades, says he thinks straw purchasers should be charged with murder in shootings that involve guns they distribute. Rannochio also says he thinks the solution is tougher prosecutions. "It's not the gun dealers that are causing the problems," Rannochio says. "It's the criminals committing crimes with the guns that they're not even supposed to have." In a statement e-mailed to *Scientific American,* Cook County State's Attorney Kim Foxx, a progressive reformer who has overseen prosecutions in Chicago since 2016, says her office is addressing just that. Foxx's office has prosecuted 5,076 gun cases so far this year, with a conviction rate of 73 percent.

"We need to make sure that we're holding gun shops and gun manufacturers

accountable," says Kina Collins, a gun-violence prevention advocate who is primarying Congressman Danny Davis in Illinois' 7th District—which includes some of Chicago's hardest-hit neighborhoods, as well as parts of suburbs where gun dealerships are located. "And we need to make sure we're in communication with other leaders in Midwestern states, because we're seeing a flow of illegal guns continuously cross our state lines," Collins adds. "Grassroots, we need to make sure we're funding violence-interruption programs, because we know they work."

On Monday, Illinois Governor J.B. Pritzker called gun violence a "public health crisis" and announced the formation of a new statewide office for gun violence prevention. Pritzker vowed to earmark $250 million in state and federal funds to address the issue.

GoodKids MadCity, a Chicago youth organization that advocates for noncarceral solutions to gun violence, argues that communities plagued by violence need less aggressive policing and more government investment to undo years of damage wrought by what it calls racist policies. The group has for years promoted a package of proposals collectively called the Peace Book Ordinance, which would divert 2 percent of Chicago's annual police budget of around $1.7 billion to fund services such as mental health and substance abuse treatment.

Webster says such holistic approaches are crucial to mitigating violence. "There are some communities where disinvestment is substantial, and a lot of the systems—schools, transportation, housing, policing—are failing," he says. "By policy and structure, people who are Black are more concentrated in those neighborhoods. And that is intentional. It is a function of public policy over generations."

Bradley says any solution requires entire cities to stand together against gun violence. "No one person, outside of God, can stop it all," he says. "And you know it

like I know it: America is the biggest arms dealer in the world."

ABOUT THE AUTHOR(S)

Jim Daley is a freelance journalist from Chicago. He writes about science and health. Follow Jim Daley on Twitter

Recent Articles by Jim Daley

After Surgery, Black Children Are More Likely to Die Than White Children

Four Success Stories in Gene Therapy

Antibiotic-Producing Mold Announced as Official State Microbe

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Sec. 5.2A - Home occupations in the rural areas zoning district.

Each home occupation authorized in the rural areas zoning district shall be subject to the following:

a. *Purpose and intent*. The purpose for authorizing home occupations in the rural areas zoning district is to encourage limited home-based economic development, balanced with the need to protect and preserve the quality and character of the county's agricultural areas and residential neighborhoods in the rural areas zoning district. The regulations in this section are intended to ensure that authorized home occupations will be compatible with other permitted uses, the agricultural areas, and the residential neighborhoods by regulating the scale, hours, external activities, external appearance and other impacts that may arise from a home occupation.

b. *Location and area occupied by a home occupation*. A home occupation shall be located and sized as follows:

   1. *Major home occupations*. A major home occupation shall be conducted within the dwelling unit or accessory structures, or both, provided that not more than 25 percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the cumulative area used for the home occupation, including the gross floor area within the dwelling unit or any accessory structure and the area used for outdoor storage as provided in section 5.2A(g) , shall not exceed 1,500 square feet. Plants that are planted in the ground that are to be used for a major home occupation do not count toward the 1,500 square feet limitation.

   2. *Minor home occupations*. A minor home occupation shall be conducted entirely within the dwelling unit, provided that not more than 25 percent of the gross floor area of the dwelling unit shall be used for the home occupation and further provided that the gross floor area used for the home occupation shall not exceed 1,500 square feet.

c. *Exterior appearance*. The exterior appearance of a parcel with a home occupation shall be subject to the following:

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

   2.

Minor home occupations. There shall be no change in the exterior appearance of a dwelling unit or other visible evidence of the conduct of a minor home occupation.

d. *Visitors and sales*. Visitors and sales related to a home occupation shall be subject to the following:
    1. *Major home occupations*. Customers, clients and students may visit a major home occupation. The sale of goods by the major home occupation to a customer who comes to the site is prohibited except for goods that are hand-crafted on-site and accessory goods that are directly related to a major home occupation, including but not limited to tools for pottery making and frames for artwork.
    2. *Minor home occupations*. No customers, clients or students may visit a minor home occupation for a purpose related to the home occupation. The sale of goods or the provision of services by the minor home occupation to a customer, client or student at the site is prohibited.

e. *Traffic generated by a major home occupation*. The traffic generated by a major home occupation shall not exceed ten vehicle round trips per day or more than 30 vehicle round trips per week. For the purposes of this section, a "vehicle round trip" means one vehicle entering and exiting the site.

f. *Parking*. All vehicles used in a home occupation and all vehicles of employees, customers, clients or students related to a major home occupation shall be parked on-site.

g. *Outdoor storage*. The storage of goods, products, equipment other than vehicles used in a home occupation, or any materials associated with a home occupation, other than natural landscaping materials such as mulch and plants, outside of an enclosed structure is prohibited.

h. *Days and hours of operation for major home occupations*. Major home occupations may operate up to six days per week and the hours of operation shall be between 7:00 a.m. and 8:00 p.m. for those home occupations that have employees, customers, clients or students visiting the site.

i. *Number of vehicles used in a home occupation*. The number of vehicles that may be used in a home occupation that are parked or stored on-site shall not exceed two motor vehicles and two trailers.

j. *Number of home occupations*. More than one home occupation is permitted on a parcel, provided that the area occupied and the traffic generated by the home occupations shall be considered cumulatively and all requirements of this section shall apply.

k. *Performance standards*. All home occupations shall comply with the performance standards in section 4.14.

l. *Prohibited home occupations.* The following uses are prohibited as home occupations: (1) any use (except landscape contractors) requiring a special use permit under section 10.2.2; (2) animal rescue centers; (3) junkyards; (4) restaurants; (5) storage yards; (6) gun sales, unless the guns are

made on-site by one or more family members residing within the dwelling unit; (7) on-site pet grooming; (8) body shops; (9) equipment, trailers, vehicles or machinery rentals; (10) shooting ranges; (11) commercial stables; (12) rummage or garage sales other than those determined by the zoning administrator to be occasional; (13) veterinary clinics or hospitals; (14) pyrotechnic (fireworks or bomb) device manufacturing or sales; and (15) any other use not expressly listed that is determined by the zoning administrator to be contrary to the purpose and intent of section 5.2A .

m. *Waivers and modifications*. The waiver or modification of any requirement of section 5.2A is prohibited except as provided herein:

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

n. *Zoning clearance required; notice of request*. No home occupation shall commence without a zoning clearance issued under section 31.5. For each zoning clearance requested for a major home occupation, the zoning administrator shall provide written notice that an application for a zoning clearance has been submitted to the owner of each abutting parcel under different ownership than the parcel on which the proposed home occupation would be located. The notice shall identify the proposed home occupation, its size, its location, and whether any waiver or modification is requested. The notice shall invite the recipient to submit any comments before the zoning clearance is acted upon. The notice shall be mailed at least five days prior to the action on the zoning clearance as provided in section 32.4.2.5.

(Ord. 11-18(1) , 1-12-11; Ord. 19-18(3) , 6-5-19; Ord. 20-18(2) , 9-2-20; Ord. 21-18(5) , 12-1-21)

ALBEMARLE COUNTY BOARD OF ZONING APPEALS

IN RE: APPEAL OF HO2023-00002
MARGARET MAUPIN **APPEAL NO. AP2023-00001**

DECISION

At a duly-noticed meeting on June 6, 2023, the Albemarle County Board of Zoning Appeals (the "BZA") heard the appeal for the zoning administrator's approval of a zoning clearance for a Major Home Occupation at 2822 Free Union Road (HO 2023-2) of Appellant Margaret Maupin. After hearing and considering all of the evidence and arguments, and for the reasons stated in the staff report [OR state other grounds for decision], the BZA hereby:

☒ Affirms the administrative determination
☐ Modifies the administrative determination, as follows: _____
☐ Reverses the administrative determination

Dated: 6/6/2023

_____
Marcia Joseph, Chair
Albemarle County Board of Zoning Appeals

This written decision was adopted by the BZA on June 6, 2023 by the following vote:

	Aye	Nay
Mr. Burkhart		
Mr. Carrington		
Mr. Rosenberg		
Mr. Shepherd		
Ms. Joseph		

DRAFT

Information provided by Appellant

- See Attachment E -

Information provided by Owner

Marsha Alley

From: Timothy Wehner <wehnerlaw@gmail.com>
Sent: Thursday, March 23, 2023 11:40 AM
To: Marsha Alley
Cc: Bart Svoboda; Jeffrey Baker
Subject: Re: Notice of Appeal (AP2023-001) to Timothy Wehner

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.

Well, this is unexpected and bizarre. I've never even met Margaret Maupin, and she has never asked me about my business plan. We don't live in a "neighborhood." There are no sidewalks, no schools, parks or other public facilities within walking or cycling distance. I am particularly surprised to see that she has been publicizing a false claim about me, and inviting people to endorse the false claim. I passed the Virginia State Bar exam in 2009. My license is in "Associate" status. At this time, I offer no services, professional or non-professional, nor do I offer any goods for sale. My business activities will be consistent with the limits set by the county.

Information provided by the Public

Marsha Alley

From: Bart Svoboda
Sent: Monday, May 8, 2023 10:41 AM
To: Marsha Alley; Andy Herrick
Subject: FW: 2822 Free Union Road business

From: Albemarle County <albemarleva@enotify.visioninternet.com>
Sent: Saturday, May 6, 2023 11:50 AM
To: Bart Svoboda <bsvoboda@albemarle.org>
Subject: 2822 Free Union Road business

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.

Message submitted from the <Albemarle County, VA> website.

Site Visitor Name: Charles Packard
Site Visitor Email: cpack99@gmail.com

Mr. Svoboda, I recently received an unsolicited letter expressing concern over the recent approval for a home business at 2822 Free Union Road. Apparently this home business has something to do with firearms.

I own property at 1110 and 1098 Woodlands Road - a mere half mile from 2822 Free Union Road. I am writing in SUPPORT of the recent approval. I do not know the individual who received this approval and am not myself a firearms enthusiast. I will never frequent this business. However, I feel strongly that the parties feeling "aggrieved" are expressing an elitist mindset not conducive to the wellbeing of the community as a whole. As the letter stated, having concerns about the "type of people" who might frequent this business is nothing if not elitist. In my view, this mindset expresses more about what is wrong with Albemarle County than it does about what is right with the County.

Thank you for doing your job.

Respectfully,
Charles Packard
Woodlands Farm, LLC

STAFF: Bart Svoboda
PUBLIC HEARING: June 6, 2023

STAFF REPORT: AP2023-00002

APPLICANT/APPELLANT: Jared L. Harwood

Subject Parcel Number:
06900-00-00-006F0 (the "Property")

Location:
The Property is located at 9475 Dick Woods Road (Route 637) on the boundary between Nelson County and Albemarle County (Attachment A). A plat of the Property is provided as Attachment B.

Background:

On February 8, 2023, the property owners, Jared and Allison Harwood, were sent a Notice of Official Determination of Violation, VIO2022-487 (Attachment C), regarding the operation of a homestay business at 9475 Dick Woods Road ("the Cabin") without the required permit. This Notice was not appealed.

The above-referenced Notice led to a series of conversations from February 17, 2023 through March 7, 2023 regarding the requirement that a primary use be located within the jurisdiction of Albemarle County to permit the homestay use of the Cabin as an accessory use.

Determination and Appellant's Appeal:

The Official Determination, dated March 2, 2023, by Lea Brumfield, Senior Planner, Zoning Division (Attachment D), determined that the Cabin was not eligible to be operated as a homestay use because the primary dwelling is located in Nelson County. The lack of a primary use within the jurisdiction of Albemarle County precludes the Cabin from being used as an accessory use of a homestay.

The appellant filed an appeal of the March 2 official determination on March 29, 2023 (Attachment E).

Grounds for Zoning Administrator's Determination:

The Zoning official based her determination on the fact that no primary use exists within Albemarle County's jurisdiction to qualify the cabin as the accessory use of a homestay.

> *Code of Virginia § 15.2-2281. Jurisdiction of localities.*
> *For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.*

Staff's Response to Appeal:

There is no primary use located within Albemarle County that would permit a homestay. The Albemarle County Zoning Ordinance applies only in Albemarle County, and therefore considers only what takes place in Albemarle County, not in other jurisdictions.

The Zoning Administrator offers the following responses to each of the appellant's five arguments:

1. **The Official Determination ignores the plain meaning of the ordinance which governs the approval and operations of homestays in Albemarle County.**

Though the language of the ordinance is not in dispute, the Albemarle County Zoning Ordinance applies only within Albemarle County, not in other jurisdictions. Therefore, the Zoning Administrator can consider only uses that lie within the jurisdiction, not whether a use is primary or accessory in another jurisdiction. The authority of the Albemarle County Zoning Administrator and the interpretation of the Albemarle County Zoning Ordinance applies only within the jurisdiction of Albemarle County.

As noted in Section 4-300 of the Albemarle County Land Use Law Handbook:

> *4-300 The physical reach of the zoning power: territory and airspace*
>
> *"A county has jurisdiction over all the unincorporated territory in the county; a city or town has jurisdiction over all the territory within that municipality. Virginia Code § 15.2-2281; see Board of Supervisors of Loudoun County v. Town of Purcellville, 276 Va. 419, 438, 666 S.E.2d 512, 521 (2008) (although planning processes may be extra-territorial between counties and towns under Virginia Code § 15.2-2231, a locality's zoning authority is limited to its own territory)."*

2. **The Ordinance is not vague in its language regarding accessory homestay uses and the associated primary dwelling.**

Again, the language of the ordinance is not in dispute. The appellant has asked the Albemarle County Zoning Administrator to apply the Albemarle County Zoning Ordinance to another jurisdiction to determine a primary use. As previously noted:

> *Code of Virginia § 15.2-2281. Jurisdiction of localities.*
> *For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.*

The Zoning Administrator has no authority to apply the Albemarle County Zoning Ordinance in Nelson County.

3. **If approved as a homestay, the County would still maintain the ability to regulate the homestay use.**

the Albemarle County Zoning Administrator does have the authority to regulate uses located within the jurisdiction of Albemarle County.

4. **The Official Determination does not cite any authority for its conclusion.**

Again, the determination is based on the following authority:

> *Code of Virginia § 15.2-2281. Jurisdiction of localities.*
> *For the purpose of zoning, the governing body of a county shall have jurisdiction over all the unincorporated territory in the county, and the governing body of a municipality shall have jurisdiction over the incorporated area of the municipality.*

5. **The Official Determination loses sight of the purposes underlying the Ordinance.**

The purpose of the Albemarle County Zoning Ordinance is to promote the health, safety or general welfare of the public within Albemarle County. there is no primary use located within Albemarle County that would permit a homestay.

Summary:

On March 2, 2023, on behalf of the Zoning Administrator, an Official Determination (Attachment D) was issued stating that the Cabin was not eligible for use as a homestay because no primary use was located in Albemarle County.

The fact that there is no primary use located within Albemarle County is not in dispute. The Albemarle County Zoning Ordinance applies only in Albemarle County. The Zoning Ordinance considers only what takes place in Albemarle County, not in other jurisdictions. The Zoning Administrator has no authority to reach beyond the jurisdictional boundaries of Albemarle County.

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

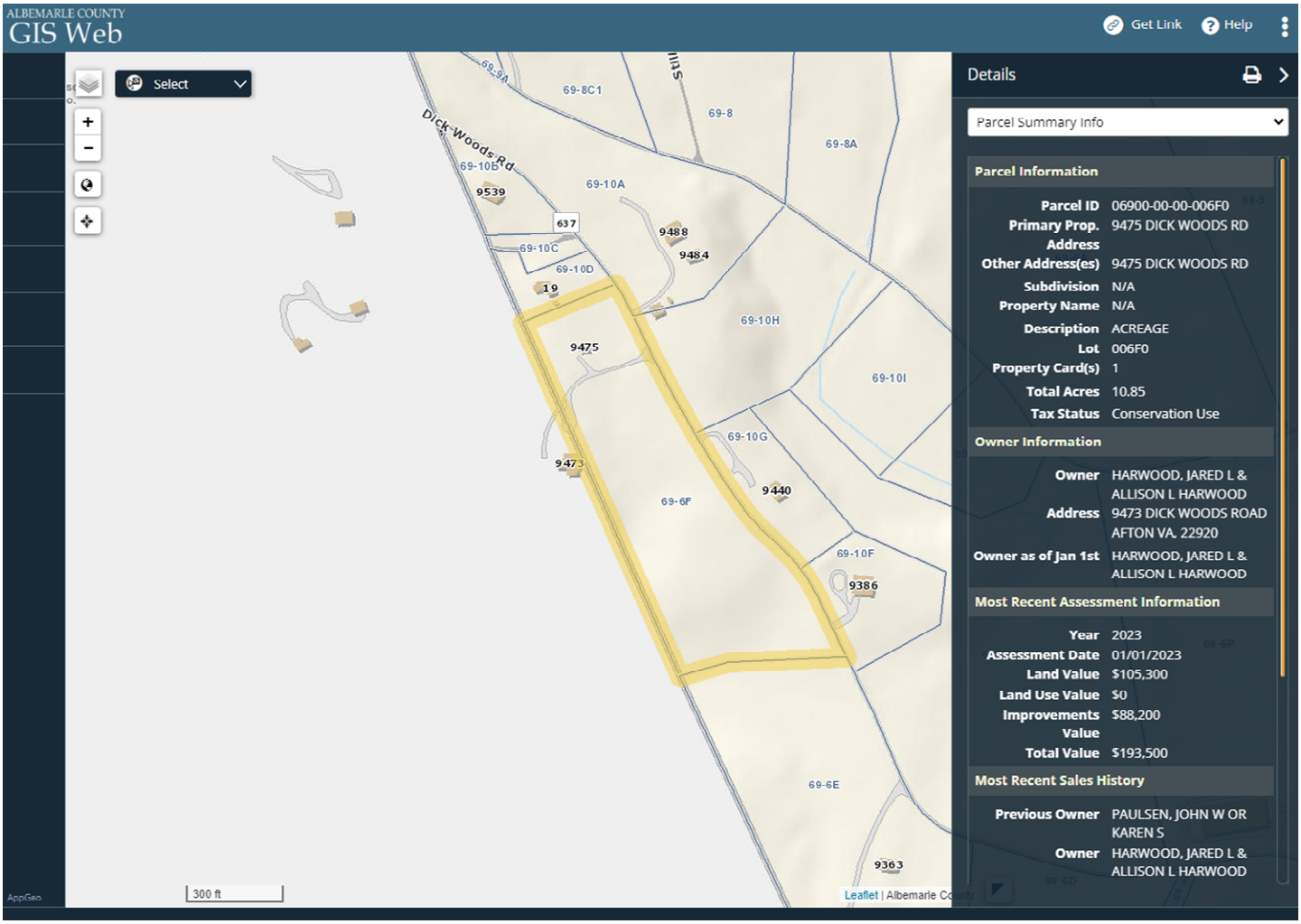
Proposed Motion:

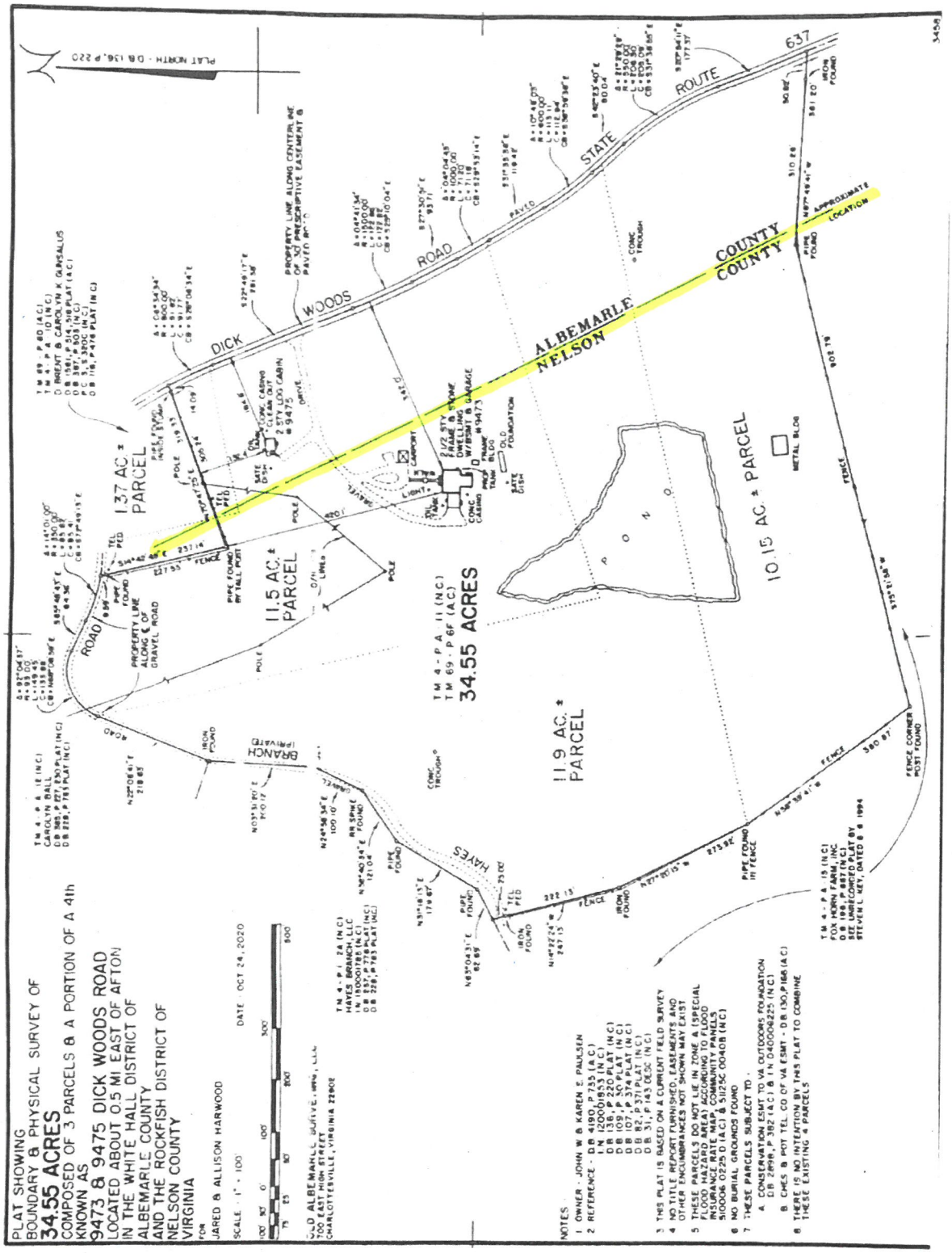
I move that the Board of Zoning Appeals adopt the attached Decision (Attachment F) affirming the official determination, for the reasons stated in the staff report.

Attachments:

Attachment A: Location Map of the Property
Attachment B Plat of Property
Attachment C: Notice of Official Determination of Violation, VIO2022-487, dated February 8, 2023
Attachment D: Official Determination by Lea Brumfield, Senior Planner, Zoning Division, dated March 2, 2023
Attachment E: Appeal (dated March 29, 2023) of the Official Determination (dated March 2, 2023) by Lea Brumfield, Senior Planner, Zoning Division
Attachment F: Draft Decision Order

Attachment A




PLAT SHOWING
BOUNDARY & PHYSICAL SURVEY OF
34.55 ACRES
COMPOSED OF 3 PARCELS & A PORTION OF A 4th
KNOWN AS
9473 & 9475 DICK WOODS ROAD
LOCATED ABOUT 0.5 MI EAST OF AFTON
IN THE WHITE HALL DISTRICT OF
ALBEMARLE COUNTY
AND THE ROCKFISH DISTRICT OF
NELSON COUNTY
VIRGINIA
FOR
JARED & ALLISON HARWOOD
SCALE : 1" = 100'
DATE : OCT 24, 2020
OLD ALBEMARLE SURVEYING, LLC
700 EAST HIGH STREET
CHARLOTTESVILLE, VIRGINIA 22902
NOTES
1 OWNER - JOHN W & KAREN E PAULSEN
2 REFERENCE - D B 4190, P 735 (A C)
I N 120001853 (N C)
D B 136, P 220 PLAT (N C)
D B 109, P 30 PLAT (N C)
D B 107, P 537 PLAT (N C)
D B 31, P 143 DESC (N C)
3 THIS PLAT IS BASED ON A CURRENT FIELD SURVEY
4 NO TITLE REPORT FURNISHED, EASEMENTS AND
OTHER ENCUMBRANCES NOT SHOWN MAY EXIST
5 THESE PARCELS DO NOT LIE IN ZONE A (SPECIAL
FLOOD HAZARD AREA) ACCORDING TO FLOOD
INSURANCE RATE MAP, COMMUNITY PANELS
510006 0225 D (A C) & 51125C 0040B (N C)
6 NO BURIAL GROUNDS FOUND
7 THESE PARCELS SUBJECT TO :
A CONSERVATION ESMT TO VA OUTDOORS FOUNDATION
D B 2898, P 382 (A C) & I N 040006225 (N C)
B CHES & POT TEL CO OF VA ESMT - D B 130, P 186 (A C)
8 THERE IS NO INTENTION BY THIS PLAT TO COMBINE
THESE EXISTING 4 PARCELS
TM 4 - P A 15 (N C)
FOX HORN FARM, INC
D B 4190, P 735
SEE UNRECORDED PLAT BY
STEVEN L KEY, DATED 8 8 1994
TM 4 - P A 11 (N C)
TM 69 - P 6F (A C)
34.55 ACRES
11.5 AC.± PARCEL
11.9 AC.± PARCEL
10.15 AC.± PARCEL
1.37 AC.± PARCEL
DICK WOODS ROAD
STATE ROUTE 637
ALBEMARLE COUNTY
NELSON COUNTY
APPROXIMATE LOCATION
HAYES BRANCH (PRIVATE)
PROPERTY LINE ALONG CENTERLINE OF 30' PRESCRIPTIVE EASEMENT & PAVED RD
PROPERTY LINE ALONG ℄ OF GRAVEL ROAD
2 STY FRAME & STONE DWELLING & GARAGE #9473
2 STY LOG CABIN #9475
METAL BLDG
FENCE CORNER POST FOUND
PLAT NORTH - D B 136, P 220

County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

NOTICE OF OFFICIAL DETERMINATION OF VIOLATION

The Date this Notice of Determination is given is February 8, 2023 No: VIO2022-487
CERTIFIED MAIL# 7021 0350 0000 3827 1889

Jared & Allison Harwood
9475 Dick Woods
Afton, VA 22920

Property: Parcel ID: 06900-00-00-006F0

Same as Above
Owner of Record

Zoning: Rural [RA] Areas District

Dear Jared & Allison Harwood,

This notice is to inform you that the above-described Property is in violation of the Albemarle County Zoning Ordinance. This conclusion is based on the following observations of the above-described Property by a Code Compliance Officer on February 8, 2023:

The Homestay business advertised and in operation on this parcel does not have the required permit.

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

Albemarle County Code § 18-5.1.48 (a) Homestays Zoning Clearance

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

This letter also serves to notify you to stop the activity or use outlined above immediately. Failure to comply with this notice may result in legal action being taken against you and any other owner, tenant, or other responsible party. In addition, you must bring the property into compliance by **March 3, 2023** to avoid court action. Future compliance past this date does not preclude the County from pursuing legal action for existing or past violation(s).

If you are aggrieved by this determination, you have a right to appeal it within thirty (30) days of this notice, in accordance with *Virginia Code* § 15.2-2311; provided, however, that a ten (10) day appeal period applies to appeals of decisions pertaining to temporary or seasonal commercial uses, and such appeals shall be filed within ten (10) days after this decision. If you do not file a timely appeal, this determination shall

be final and unappealable.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with *Albemarle County Code* § 18-34.3, along with a fee of $295.36. This fee includes the $284 application fee and the 4% technology surcharge of $11.36. Additionally, a separate fee of $448 is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at https://www.albemarle.org/home/showpublisheddocument/216/637647102633870000. This form applies to appeals of decisions of the Zoning Administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are outlined in *Albemarle County Code* § 18-34.3, which may be reviewed online at https://library.municode.com/va/albemarle_county/codes/code_of_ordinances?nodeId=CH18ZO_ARTIVPR_S34BOZOAP_S34.3APORREDEDEBOZOAP.

If you have any questions, please contact Ashlee Henshaw, Code Compliance Officer, at 434-296-5832 ext. 3085.

Bart J. Svoboda
Zoning Administrator
County of Albemarle, Virginia

Attachment B

AUTHENTICATION OF RECORD / CERTIFICATE OF MAILING

(Code of Virginia § 8.01-390)
(Notice of Official Determination of Violation)

I, Ashlee Henshaw, hereby certify:

1. That I am a Code Compliance Officer and an employee of the Albemarle County Department of Community Development.
2. That on Feb 8, 2023 I mailed a true copy of the record attached hereto, consisting of a Notice of Official Determination of Violation dated Feb 8, 2023 pertaining to the property identified as Parcel ID Number(s) 0169000000006P0, to the recipient(s) identified thereon at the address(es) specified thereon; and
3. That the copy of such record which his attached hereto is a true copy of the record that was mailed.

Date: 2/10/23 Signed: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE:

The foregoing Authentication of Record/Certificate of Mailing was signed, sworn to and acknowledged before me by Ashlee Henshaw, Albemarle County Code Enforcement Officer, this 10th day of Feb, 2023.

Daniell Summers

Notary Public

My Commission Expires 12/31/26

Notary Registration No. 7968799

DANIELLE MARIE SUMMERS
NOTARY PUBLIC
REG. #7968799
MY COMMISSION EXPIRES
12/31/2026
COMMONWEALTH OF VIRGINIA

County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

NOTICE OF OFFICIAL DETERMINATION OF VIOLATION

The Date this Notice of Determination is given is February 8, 2023 No: VIO2022-487
CERTIFIED MAIL# 7021 0350 0000 3827 1889

Jared & Allison Harwood
9473 Dick Woods
Afton, VA 22920

Property: Parcel ID: 06900-00-00-006F0 Same as Above Owner of Record

Zoning: Rural [RA] Areas District

Dear Jared & Allison Harwood,

This notice is to inform you that the above-described Property is in violation of the Albemarle County Zoning Ordinance. This conclusion is based on the following observations of the above-described Property by a Code Compliance Officer on February 8, 2023:

The Homestay business advertised and in operation on this parcel does not have the required permit.

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If you have any questions, please contact Ashlee Henshaw, Code Compliance Officer, at 434-296-5832 ext. 3085.

Bart J. Svoboda
Zoning Administrator
County of Albemarle, Virginia

Attachment B

AUTHENTICATION OF RECORD / CERTIFICATE OF MAILING

(Code of Virginia § 8.01-390)
(Notice of Official Determination of Violation)

I, Ashlee Henshaw, hereby certify:

1. That I am a Code Compliance Officer and an employee of the Albemarle County Department of Community Development.
2. That on Feb 8, 2023 I mailed a true copy of the record attached hereto, consisting of a Notice of Official Determination of Violation dated Feb. 8, 2023 pertaining to the property identified as Parcel ID Number(s) 06900-00-00-00600, to the recipient(s) identified thereon at the address(es) specified thereon; and
3. That the copy of such record which his attached hereto is a true copy of the record that was mailed.

Date: 2/10/23 Signed: _____

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE:

The foregoing Authentication of Record/Certificate of Mailing was signed, sworn to and acknowledged before me by Ashlee Henshaw, Albemarle County Code Enforcement Officer, this 10th day of Feb, 2023.

Danielle Summers

Notary Public

My Commission Expires 12/31/23

Notary Registration No. 7968799

DANIELLE MARIE SUMMERS NOTARY PUBLIC REG. #7968799 MY COMMISSION EXPIRES 12/31/2026 COMMONWEALTH OF VIRGINIA

Subject: Fwd: 9475 Dick Woods Road Homestay Compliance
Date: 3/7/2023 5:36 PM
From: "Jared Harwood" <jared.harwood@gmail.com>
To: "Blaine, Steven" <Steven.Blaine@wrvblaw.com>

EXTERNAL EMAIL

Steven,

Here is Albemarle's response.

V/R,
Jared

Begin forwarded message:

From: Lea Brumfield <lbrumfield@albemarle.org>
Subject: RE: 9475 Dick Woods Road Homestay Compliance
Date: March 7, 2023 at 16:32:47 CST
To: Jared Harwood <jared.harwood@gmail.com>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>, Ashlee Henshaw <mhenshaw@albemarle.org>, "jillgreenfield1@gmail.com" <jillgreenfield1@gmail.com>, Michael Vanikiotis <michaelvanikiotis@gmail.com>, My Love <allisonlharwood@gmail.com>, Bart Svoboda <bsvoboda@albemarle.org>, Francis MacCall <FMACCALL@albemarle.org>

Jared,

You may have a right to appeal the determination contained in the email below within thirty (30) days of the issuance of the determination, in accordance with Virginia Code § 15.2-2311. The determination shall 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 Albemarle County Code § 18-34.3, along with a fee of $295.36. This fee includes the $284 application fee and the 4% Technology surcharge of $11.36. Additionally, a separate fee of $448 is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Community Development Department office located at 401 McIntire Road, Charlottesville, Virginia 22902, or online at **HERE**. 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 filing an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance and may be reviewed **HERE**.

Please note that our online documents are in PDF format and must be viewed with a PDF reader. A link to download a PDF reader of your choice is available at the bottom of the page **HERE**.

Please let me know if there are additional questions.

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: Jared Harwood <jared.harwood@gmail.com>
Sent: Monday, March 6, 2023 7:24 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw

<mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>; Bart Svoboda <bsvoboda@albemarle.org>; Francis MacCall <FMACCALL@albemarle.org>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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.**

Lea,

This email is my formal notice of appeal in regard to the county's determination last week in regard to our homestay operation.

V/R,
Jared

> On Mar 2, 2023, at 22:08, Jared Harwood <jared.harwood@gmail.com> wrote:
>
> Lea,
>
> We were able to update both our AirBnB and VRBO listings with 30-day rental minimums. We are also working to get the cabin listed on other sites for travelers that need a place to stay 30 days or longer.
>
> V/R,
> Jared
>
> > On Mar 2, 2023, at 17:00, Jared Harwood <jared.harwood@gmail.com> wrote:
> >
> > Lea,
> >
> > Thank you for your prompt response. One more item I had not mentioned is that the entire 35 acre property is a conservation easement that cannot be divided. Does that change anything?
> >
> > For now though, given your determination, we will stop accepting AirBnB and VRBO reservations and transition to longer-term rentals in order to bring The Cabin at Clonmel into compliance. Should we look into getting a safety inspection or registering the cabin given our plans to use it for longer-term rentals?
> >
> > V/R,
> > Jared
> >
> > > On Mar 2, 2023, at 16:07, Lea Brumfield <lbrumfield@albemarle.org> wrote:
> > >
> > > Jared,
> > >
> > > A homestay is 29 days or fewer, while a residential rental is 30 days or more, so a traveling nurse/PT/doctor for 30-90 days would be permitted.
> > >
> > > **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: Jared Harwood <jared.harwood@gmail.com>
Sent: Thursday, March 2, 2023 4:59 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>; Bart Svoboda <bsvoboda@albemarle.org>; Francis MacCall <FMACCALL@albemarle.org>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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.**

Lea,

Ok, we will look into options on our end. How long do rentals need to be to comply? Greater than 30 days? We have found some options available for traveling nurses and doctors that are typically more than a month.

V/R,
Jared

> On Mar 2, 2023, at 15:38, Lea Brumfield <lbrumfield@albemarle.org> wrote:
>
> Jared,
>
> Unfortunately, there is no exception to permit the homestay on that property, and I don't know of any legal avenues for you to pursue. The homestay regulations are very explicit in requiring a homestay to be accessory to a primary use, and the ordinance has no wiggle room to permit a homestay otherwise.
>
> I understand this is frustrating after the investment you made into the cabin, but unfortunately, the use is not permitted.
>
> 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:** Jared Harwood <jared.harwood@gmail.com>
> **Sent:** Thursday, March 2, 2023 4:00 PM
> **To:** Lea Brumfield <lbrumfield@albemarle.org>
> **Cc:** Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>; Bart Svoboda <bsvoboda@albemarle.org>; Francis MacCall <FMACCALL@albemarle.org>

Subject: Re: 9475 Dick Woods Road Homestay Compliance

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.**

Lea,

Given that we cannot technically comply with the county code given our split-county zoning as well as the precedent of Albemarle County considering the property as a Nelson county property in the past for other permit purposes, I would like to request an exception to the code that would allow us to continue to operate the homestay.

If that is not an option, please let us know what legal options we have at our disposal. We need to continue operating the homestay in order to help pay for the extensive development of the parcel including the cabin's renovations. We have explored using the cabin both personally and as a long-term rental. Using it personally is not an option and long-term rental is not an equivalent alternative.

Thank you for your and your team's continued time, expertise, and consideration in getting this matter resolved.

V/R,
Jared

> On Mar 2, 2023, at 14:15, Lea Brumfield <lbrumfield@albemarle.org> wrote:
>
> Hi Jared,
>
> Unfortunately, we've been advised that uses outside of our jurisdiction (i.e. the dwelling located in Nelson County) cannot serve as a primary use for an accessory use within the County (the cabin as a homestay).
>
> In Albemarle County, a homestay can only be accessory to a primary residential use. That means that the accessory use (the homestay) cannot exist without the primary use to be attached to. Since your dwelling at 9473 Dick Woods Road is not in the County, it essentially does not exist for Albemarle County zoning purposes.
>
> In previous cases of split-County zoning, this has worked out in favor of the land owner (allowing a dwelling to be built on the County side of a split-jurisdiction parcel when another dwelling was already built on the side of that parcel in the City of Charlottesville), but unfortunately, it is less advantageous for you.
>
> The cabin is a legal dwelling in the County, and as such, you are able to use it as a full-time residential rental, or for your own personal use in the same way you could use a residential structure on its own stand-alone parcel in

the County.

Please let me know if you have any further 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: Jared Harwood <jared.harwood@gmail.com>
Sent: Wednesday, March 1, 2023 4:12 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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Lea,

Wonderful. Sorry to require the extra consideration... much appreciated. We will standby for the update. Let us know if you need anything in the meantime.

V/R,
Jared

> On Mar 1, 2023, at 15:09, Lea Brumfield <lbrumfield@albemarle.org> wrote:
>
> Hi Jared,
>
> I wanted to give you an update that the County Attorney's office is currently considering your question, and we will send another update once we hear from them, hopefully by the end of this week.
>
> **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: Jared Harwood <jared.harwood@gmail.com>
Sent: Tuesday, February 28, 2023 9:56 AM
To: Keith Bradshaw <kbradshaw@albemarle.org>; Lea Brumfield <lbrumfield@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>
Cc: jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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Dear Albemarle County Code Compliance Team,

I wanted to update you on some additional information we received from our solar project contractor regarding building permits they had to obtain when installing the solar panels for the cabin. They were advised by Albemarle County that in regard to the building permits, since the majority of our property was in Nelson County, that it was considered a Nelson County property and that they needed to obtain the building permits from Nelson County, which they did.

I'm not sure if that is helpful or not, but I did think it was interesting given our unique situation. Please let us know what else we can provide you with. We look forward to hearing from you regarding this issue and how best to comply.

V/R,
Jared

On Feb 17, 2023, at 20:00,
Jared Harwood
<jared.harwood@gmail.com>

wrote:

Dear Albemarle County Code Compliance Team,

My name is Jared Harwood and my wife Allison and I are in receipt of official correspondence from your office regarding our violation of the Homestay Zoning Code. Clonmel is our primary residence and we travel between my job in MN and Virginia at least twice a year to help maintain the property. I have included both Jill and Michael Vanikiotis who are the full-time resident managers on property and live in the main house located at 9473 Dick Woods Road.

The cabin was one of the things that excited us most about the property and shortly after we moved in, we began preparing to restore it given it's having been neglected for quite some time. Our best informed estimate is that it was built between 1790 and 1820. The cabin restoration has taken over 2 years and included major components such as roof, foundation, and complete re-chinking. With our solar grid coming on line in the next couple of weeks, it will finally be completed. The cabin will be fully supplied by solar power, the kind of innovation that supports Albemarle County's initiatives to utilize more renewable energy sources to power it's homes. We contracted local experts to include those who have done work at Monticello for the project and our goal all along was to buy and use local products to preserve the cabin for generations to come. We love the property and love sharing it with our guests.

As new business owners, we registered the business with

the state of Virginia and did not know that we needed a permit from the county. We would very much like to get our property in compliance.

In the spirit of community development, here are local companies who have benefitted from the Cabin at Clonmel restoration and operation:
Salvagewrights Ltd. - Orange, VA
Allow Workshop - Charlottesville, VA
Foster Well - Earlysville, VA
Shreckhise Landscaping - Weyers Cave, VA
Clearwater Systems - Charlottesville, VA
Tiger Solar - Staunton, VA
Queen City Silviculture - Staunton, VA
Gearhart's Fine Chocolates - Charlottesville, VA
Abell Agriculture - Charlottesville, VA

Clonmel Acres has also benefitted from and been the recipient of several public works projects:
Virginia Outdoors Foundation - helped organize the entire 35 acres as a conservation easement
Thomas Jefferson Soil and Water Conservation District - farm improvements
James River Association - 750+ watershed trees planted

Here is a list of the documents I am attaching to this email for your review:
Clonmel 2020 Plat - most recent plat performed as part of our original purchase of the property in 2020
2022 Clonel AS-Built - recent schematic that shows the various farm improvements
Clonmel Cabin Architecture Phase - planning schematic of the cabin restoration
Cabin 9kW Proposal - original proposal for cabin solar, now

complete
Harwood 2022 Appraisal - documents property value increased from $1,125,000 to $1,500,000 from 2020 to 2022, due in part to our property investment and development
The Cabin at Clonmel Pictures - project finish photos

We have tried our best to be great stewards of our property and feel like it is a great representation of the beauty Albemarle County has to offer. We hope to share it with as many people as possible by continuing to operate our homestay at this very unique destination. While it may not fit nicely into any certain category, we would appreciate special consideration of our particular case. Thank you for your time and expertise. Please let us know what else we can provide you with.

Very Respectfully,
Jared Harwood

Jared L. Harwood, MD MBA
Orthopedic Oncologist
Sanford Worthington
jared.harwood@sanfordhealth.org
Office: 507-372-3821
Cell: 614-749-1338

<Clonmel 2020 Plat.pdf>
<2022 Clonmel AS-Built Map.pdf>
<Clonmel Cabin Architecture Phase.pdf>
<Harwood Cabin 9kW Proposal.pdf>
<Harwood 2022 Appraisal.pdf>
<The Cabin at Clonmel Reduced.pdf>

WOODS ROGERS VANDEVENTER BLACK

ATTORNEYS AT LAW

STEVEN W. BLAINE
(434) 220-6831
Steven.Blaine@wrvb.com

March 29, 2023

Via Electronic Mail and Hand Delivery

Albemarle County Board of Zoning Appeals
401 McIntire Road, North Wing
Charlottesville, VA 22902
Attention: Mr. Bart Svoboda
bsvoboda@albemarle.org

Re: Appeal of March 2, 2023 Determination by Lea Brumfield, Senior Planner, Zoning Division ("Official Determination")

Dear Members of the Board of Zoning Appeals:

On behalf of our clients, Dr. and Mrs. Jared Harwood, we respectfully appeal the referenced Zoning Determination regarding the eligibility for a homestay use of a restored, historic log cabin located at 9473-9475 Dick Woods Road, Afton, Virginia (the "Property"). The cabin and the primary dwelling with which it is associated are located on the Property which is a single, 34.55 acre parcel that lies partly in Albemarle County and partly in Nelson County. The 34.55 acre Property is subject to a conservation easement which restricts the Property from being subdivided.

The Official Determination determined that the cabin was not eligible because the primary dwelling is located on the portion of the Property that lies in Nelson County. The Official Determination states that because the primary dwelling is located in Nelson County, "it essentially does not exist for Albemarle County zoning purposes." Therefore, the Official Determination was that the cabin cannot be used for a homestay because it is "without the primary use to be attached to (sic)". A copy the Official Determination is enclosed with this appeal.

The appellants submit that this Official Determination should be overturned for the following reasons:

1. The Official Determination ignores the plain meaning of the ordinance which governs the approval and operations of homestays in Albemarle County.

Section 5.1.48 of the Albemarle County Zoning Ordinance regulates homestays. Section 5.1.48 b. states that each homestay must be accessory to a primary residential use. The appellants' homestay request makes clear that the cabin, which is only approximately 200 feet from the primary dwelling on the Property, will not be used as a primary dwelling. The primary dwelling located on the same parcel of land shall continue to be used as such. Nowhere in the Ordinance does it state that the primary dwelling must be located within the jurisdictional boundaries of the County.

Section 5.1.48 c) contains the parcel-based regulations for homestays. For a parcel of five acres or more in the Rural Areas, any parcel may have up to two homestays. Section 5.1.48 (c)i. The proposal is for only one homestay use on the 34.55 acre parcel. The portion of the Property located in Albemarle (Tax Map Number 069-00-00-006F0) is 10.85 acres.

Homestay uses may be conducted in an accessory structure built before August 7, 2019. Section 5.1.48 (c)ii. The cabin was built circa late-1700s.

A maximum of five guest rooms are permitted with each homestay use. Section 5.1.48 (c)ii. The cabin contains only one guest room.

Each single family dwelling on a parcel in excess of 21 acres must comply with the permitted density. Section 5.1.48 (c)iv.2. The primary dwelling complies with the Nelson County density requirements of the A-1 zoning district. Furthermore, the primary dwelling would also meet the density requirement in Albemarle County of one dwelling per 21 acres, under the RA Zoning District of Albemarle County.

No single-family dwelling may have more than one accessory homestay use. Section 5.1.48 (c)iv.2. There is only one accessory homestay use proposed.

The proposed homestay complies with the screening and parking requirements for abutting parcels as it is more than 125 feet from the boundary of the adjoining parcel. See Section 5.1.48 (c)iv.2.

2. The Ordinance is not vague in its language regarding accessory homestay uses and the associated primary dwelling.

The language from Section 5.1.48 (b)1 is clear and unambiguous. It does not require the interpretation that the primary dwelling must be located in the County of Albemarle – only that

the homestay be accessory to such primary dwelling. The essential element then is whether the homestay is accessory, not that it be within the same jurisdiction. The cabin and primary dwelling may not be subdivided and maintained by separate ownership, according to the Conservation easement which states that the 34.55 acres may only be sold or conveyed as a whole. Therefore, if the cabin is approved for homestay, the primary dwelling cannot be severed for ownership of the dwelling and cabin by a different individual or entity.

3. If approved as a homestay, the County would still maintain the ability to regulate the homestay use.

The County has full authority to regulate the homestay use under this scenario. The fact that the primary dwelling is located in Nelson County does not diminish the County's authority to regulate the homestay use itself. If approved in this case, all of the regulations for homestay would have to be maintained regardless of whether the primary dwelling is located in Albemarle, or in this case, Nelson County. If for some reason, the primary dwelling is razed, converted in use, or discontinued, Albemarle could revoke the approval of the homestay for the cabin.

If approved in this case, Albemarle County would still be able to collect the business license and related taxes associated with the homestay use.

4. The Official Determination does not cite any authority for its conclusion.

The Official Determination references other "split jurisdictional" zoning applications but it is not clear from the reference what the facts were in those cases and how they control in this instance. The Official Determination does not indicate any interpretations under similar circumstance. It may be implied then that the circumstances raised in this case are unprecedented. Given the uniqueness of these facts, it is unlikely that overturning the Official Determination would lead to any widespread application of the precedent.

5. The Official Determination loses sight of the purposes underlying the Ordinance.

The Board of Supervisors, by imposing a primary dwelling and accessory requirement in the homestay ordinance was attempting to promote the monitoring and policing effect of having the homestay use connected with a single family dwelling, or primary use. With this requirement, it was expected that limiting the homestay to within a family dwelling or immediately accessory thereto could reduce, or eliminate disruptive or injurious behavior impacting neighbors. Under

the proposal, these same characteristics exist. There is no less influence, management or control effect if the primary dwelling is in Nelson County as opposed to Albemarle County.

For the reasons state above, we respectfully request that the Official Determination be reversed.

WOODS ROGERS VANDEVENTER BLACK PLC

Steven W. Blaine

Steven W. Blaine

cc: Dr. Jared Harwood

Attachments: Official Determination, dated March 2, 2023
Conservation Easement, dated December 24, 2004
Plat, dated October 24, 2020
Cabin Description

FOR OFFICE USE ONLY AP # _____ SIGN # _____

ZONING ORDINANCE SECTION: _____

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

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?): Steven W. Blaine, Esq.

Address 123 East Main Street, 5th Fl. 22902 City Charlottesville, VA 22902 State VA Zip 22902

Daytime Phone (434) 220-6831 Fax # (___) _____ E-mail sblaine@woodsrogers.com

Owner of Record Jared L. Harwood, MD and Allison L. Harwood

Address 9473 Dick Woods Road City Afton State VA Zip 22920

Daytime Phone (507) 372-3821 Fax # (___) _____ E-mail jared.harwood@gmail.com

Applicant (Who is the Contact person representing?): Jared L. Harwood, MD

Address See Above City _____ State _____ Zip _____

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

Project Name: Homestay Request

Tax map and parcel: 06900-00-00-006F0 **Zoning:** RA

Physical Street Address (if assigned):
9475 Dick Woods Road, Afton, Virginia 22920

Location of property (landmarks, intersections, or other):
Dick Woods Road, Afton Virginia

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

03/28/2023
Date

Jared L Harwood
Print Name

614-749-1338
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

Subject: Fwd: 9475 Dick Woods Road Homestay Compliance
Date: 3/7/2023 5:36 PM
From: "Jared Harwood" <jared.harwood@gmail.com>
To: "Blaine, Steven" <Steven.Blaine@wrvblaw.com>

EXTERNAL EMAIL

Steven,

Here is Albemarle's response.

V/R,
Jared

Begin forwarded message:

From: Lea Brumfield <lbrumfield@albemarle.org>
Subject: RE: 9475 Dick Woods Road Homestay Compliance
Date: March 7, 2023 at 16:32:47 CST
To: Jared Harwood <jared.harwood@gmail.com>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>, Ashlee Henshaw <mhenshaw@albemarle.org>, "jillgreenfield1@gmail.com" <jillgreenfield1@gmail.com>, Michael Vanikiotis <michaelvanikiotis@gmail.com>, My Love <allisonlharwood@gmail.com>, Bart Svoboda <bsvoboda@albemarle.org>, Francis MacCall <FMACCALL@albemarle.org>

Jared,

You may have a right to appeal the determination contained in the email below within thirty (30) days of the issuance of the determination, in accordance with Virginia Code § 15.2-2311. The determination shall 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 Albemarle County Code § 18-34.3, along with a fee of $295.36. This fee includes the $284 application fee and the 4% Technology surcharge of $11.36. Additionally, a separate fee of $448 is required for the cost of providing notice and advertising of the appeal for a public hearing.

Applications for Appeal of the Zoning Administrator's Determination are available at the Community Development Department office located at 401 McIntire Road, Charlottesville, Virginia 22902, or online at **HERE**. 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 filing an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance and may be reviewed **HERE**.

Please note that our online documents are in PDF format and must be viewed with a PDF reader. A link to download a PDF reader of your choice is available at the bottom of the page **HERE**.

Please let me know if there are additional questions.

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: Jared Harwood <jared.harwood@gmail.com>
Sent: Monday, March 6, 2023 7:24 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw

<mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>; Bart Svoboda <bsvoboda@albemarle.org>; Francis MacCall <FMACCALL@albemarle.org>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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Lea,

This email is my formal notice of appeal in regard to the county's determination last week in regard to our homestay operation.

V/R,
Jared

> On Mar 2, 2023, at 22:08, Jared Harwood <jared.harwood@gmail.com> wrote:
>
> Lea,
>
> We were able to update both our AirBnB and VRBO listings with 30-day rental minimums. We are also working to get the cabin listed on other sites for travelers that need a place to stay 30 days or longer.
>
> V/R,
> Jared
>
> > On Mar 2, 2023, at 17:00, Jared Harwood <jared.harwood@gmail.com> wrote:
> >
> > Lea,
> >
> > Thank you for your prompt response. One more item I had not mentioned is that the entire 35 acre property is a conservation easement that cannot be divided. Does that change anything?
> >
> > For now though, given your determination, we will stop accepting AirBnB and VRBO reservations and transition to longer-term rentals in order to bring The Cabin at Clonmel into compliance. Should we look into getting a safety inspection or registering the cabin given our plans to use it for longer-term rentals?
> >
> > V/R,
> > Jared
> >
> > > On Mar 2, 2023, at 16:07, Lea Brumfield <lbrumfield@albemarle.org> wrote:
> > >
> > > Jared,
> > >
> > > A homestay is 29 days or fewer, while a residential rental is 30 days or more, so a traveling nurse/PT/doctor for 30-90 days would be permitted.
> > >
> > > **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: Jared Harwood <jared.harwood@gmail.com>
Sent: Thursday, March 2, 2023 4:59 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>; Bart Svoboda <bsvoboda@albemarle.org>; Francis MacCall <FMACCALL@albemarle.org>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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Lea,

Ok, we will look into options on our end. How long do rentals need to be to comply? Greater than 30 days? We have found some options available for traveling nurses and doctors that are typically more than a month.

V/R,
Jared

> On Mar 2, 2023, at 15:38, Lea Brumfield <lbrumfield@albemarle.org> wrote:
>
> Jared,
>
> Unfortunately, there is no exception to permit the homestay on that property, and I don't know of any legal avenues for you to pursue. The homestay regulations are very explicit in requiring a homestay to be accessory to a primary use, and the ordinance has no wiggle room to permit a homestay otherwise.
>
> I understand this is frustrating after the investment you made into the cabin, but unfortunately, the use is not permitted.
>
> 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:** Jared Harwood <jared.harwood@gmail.com>
> **Sent:** Thursday, March 2, 2023 4:00 PM
> **To:** Lea Brumfield <lbrumfield@albemarle.org>
> **Cc:** Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>; Bart Svoboda <bsvoboda@albemarle.org>; Francis MacCall <FMACCALL@albemarle.org>

Subject: Re: 9475 Dick Woods Road Homestay Compliance

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Lea,

Given that we cannot technically comply with the county code given our split-county zoning as well as the precedent of Albemarle County considering the property as a Nelson county property in the past for other permit purposes, I would like to request an exception to the code that would allow us to continue to operate the homestay.

If that is not an option, please let us know what legal options we have at our disposal. We need to continue operating the homestay in order to help pay for the extensive development of the parcel including the cabin's renovations. We have explored using the cabin both personally and as a long-term rental. Using it personally is not an option and long-term rental is not an equivalent alternative.

Thank you for your and your team's continued time, expertise, and consideration in getting this matter resolved.

V/R,
Jared

> On Mar 2, 2023, at 14:15, Lea Brumfield <lbrumfield@albemarle.org> wrote:
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> In previous cases of split-County zoning, this has worked out in favor of the land owner (allowing a dwelling to be built on the County side of a split-jurisdiction parcel when another dwelling was already built on the side of that parcel in the City of Charlottesville), but unfortunately, it is less advantageous for you.
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> The cabin is a legal dwelling in the County, and as such, you are able to use it as a full-time residential rental, or for your own personal use in the same way you could use a residential structure on its own stand-alone parcel in

the County.

Please let me know if you have any further 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: Jared Harwood <jared.harwood@gmail.com>
Sent: Wednesday, March 1, 2023 4:12 PM
To: Lea Brumfield <lbrumfield@albemarle.org>
Cc: Keith Bradshaw <kbradshaw@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>; jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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Lea,

Wonderful. Sorry to require the extra consideration... much appreciated. We will standby for the update. Let us know if you need anything in the meantime.

V/R,
Jared

> On Mar 1, 2023, at 15:09, Lea Brumfield <lbrumfield@albemarle.org> wrote:
>
> Hi Jared,
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> I wanted to give you an update that the County Attorney's office is currently considering your question, and we will send another update once we hear from them, hopefully by the end of this week.
>
> **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: Jared Harwood <jared.harwood@gmail.com>
Sent: Tuesday, February 28, 2023 9:56 AM
To: Keith Bradshaw <kbradshaw@albemarle.org>; Lea Brumfield <lbrumfield@albemarle.org>; Ashlee Henshaw <mhenshaw@albemarle.org>
Cc: jillgreenfield1@gmail.com; Michael Vanikiotis <michaelvanikiotis@gmail.com>; My Love <allisonlharwood@gmail.com>
Subject: Re: 9475 Dick Woods Road Homestay Compliance

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.**

Dear Albemarle County Code Compliance Team,

I wanted to update you on some additional information we received from our solar project contractor regarding building permits they had to obtain when installing the solar panels for the cabin. They were advised by Albemarle County that in regard to the building permits, since the majority of our property was in Nelson County, that it was considered a Nelson County property and that they needed to obtain the building permits from Nelson County, which they did.

I'm not sure if that is helpful or not, but I did think it was interesting given our unique situation. Please let us know what else we can provide you with. We look forward to hearing from you regarding this issue and how best to comply.

V/R,
Jared

On Feb 17, 2023, at 20:00,
Jared Harwood
<jared.harwood@gmail.com>

wrote:

Dear Albemarle County Code Compliance Team,

My name is Jared Harwood and my wife Allison and I are in receipt of official correspondence from your office regarding our violation of the Homestay Zoning Code. Clonmel is our primary residence and we travel between my job in MN and Virginia at least twice a year to help maintain the property. I have included both Jill and Michael Vanikiotis who are the full-time resident managers on property and live in the main house located at 9473 Dick Woods Road.

The cabin was one of the things that excited us most about the property and shortly after we moved in, we began preparing to restore it given it's having been neglected for quite some time. Our best informed estimate is that it was built between 1790 and 1820. The cabin restoration has taken over 2 years and included major components such as roof, foundation, and complete re-chinking. With our solar grid coming on line in the next couple of weeks, it will finally be completed. The cabin will be fully supplied by solar power, the kind of innovation that supports Albemarle County's initiatives to utilize more renewable energy sources to power it's homes. We contracted local experts to include those who have done work at Monticello for the project and our goal all along was to buy and use local products to preserve the cabin for generations to come. We love the property and love sharing it with our guests.

As new business owners, we registered the business with

the state of Virginia and did not know that we needed a permit from the county. We would very much like to get our property in compliance.

In the spirit of community development, here are local companies who have benefitted from the Cabin at Clonmel restoration and operation:
Salvagewrights Ltd. - Orange, VA
Allow Workshop - Charlottesville, VA
Foster Well - Earlysville, VA
Shreckhise Landscaping - Weyers Cave, VA
Clearwater Systems - Charlottesville, VA
Tiger Solar - Staunton, VA
Queen City Silviculture - Staunton, VA
Gearhart's Fine Chocolates - Charlottesville, VA
Abell Agriculture - Charlottesville, VA

Clonmel Acres has also benefitted from and been the recipient of several public works projects:
Virginia Outdoors Foundation - helped organize the entire 35 acres as a conservation easement
Thomas Jefferson Soil and Water Conservation District - farm improvements
James River Association - 750+ watershed trees planted

Here is a list of the documents I am attaching to this email for your review:
Clonmel 2020 Plat - most recent plat performed as part of our original purchase of the property in 2020
2022 Clonel AS-Built - recent schematic that shows the various farm improvements
Clonmel Cabin Architecture Phase - planning schematic of the cabin restoration
Cabin 9kW Proposal - original proposal for cabin solar, now

complete
Harwood 2022 Appraisal - documents property value increased from $1,125,000 to $1,500,000 from 2020 to 2022, due in part to our property investment and development
The Cabin at Clonmel Pictures - project finish photos

We have tried our best to be great stewards of our property and feel like it is a great representation of the beauty Albemarle County has to offer. We hope to share it with as many people as possible by continuing to operate our homestay at this very unique destination. While it may not fit nicely into any certain category, we would appreciate special consideration of our particular case. Thank you for your time and expertise. Please let us know what else we can provide you with.

Very Respectfully,
Jared Harwood

Jared L. Harwood, MD MBA
Orthopedic Oncologist
Sanford Worthington
jared.harwood@sanfordhealth.org
Office: 507-372-3821
Cell: 614-749-1338

<Clonmel 2020 Plat.pdf>
<2022 Clonmel AS-Built Map.pdf>
<Clonmel Cabin Architecture Phase.pdf>
<Harwood Cabin 9kW Proposal.pdf>
<Harwood 2022 Appraisal.pdf>
<The Cabin at Clonmel Reduced.pdf>

VIRGINIA OUTDOORS FOUNDATION
EASEMENT DOCUMENTATION REPORT
BEATTY ~ CLONMEL
ALBEMARLE & NELSON COUNTIES
APRIL 2005
33.551 ACRES

Virginia Outdoors Foundation Easement Proposal Sheet
Board Meeting: December 2004 – UNDER 50 ACRES

OWNER NAME/PROPERTY NAME: CHESTER M. BEATTY, JR. - CLONMEL

County: Nelson and Albemarle **Acres:** 33.551

Location of Property: Fronts on Rt. 637 (Dick Woods Road) east of Afton.

Property Features: Scenic views of open fields, a pond, an historic house and cabin.

Statement of Public Benefit/Conservation Value: This is a picturesque farm with an 1800s house and old log cabin, rolling fields, and a pond all visible from the Blue Ridge Parkway, Rt. 250 and I-64.

Virginia Statutory Purpose		Additional Information	Yes	No
Natural Resources	☐	Riparian Buffer Zones	☐	☒
Scenic Resources	☒	Cell Tower Provision	☐	☒
Historic Resources	☐	Possible Conflict with VDOT 6 Year Plan	☐	☒
Recreational Resources	☐	IRS Conservation Purpose: Open Space		
Open Space	☒			

☒ **CONSENT:** ☐A) Meets density and building Guidelines.
☒B) Meets Guidelines with compensatory conservation restrictions.
☐ **NON-CONSENT:** Does not meet Guidelines or includes provisions that warrant deliberation.

Easement Terms: No division; existing single family dwelling built in 1868; existing log cabin – late 1700s; 1 additional secondary dwelling < 2000 sq. ft. and 1000 sq. ft. per story and to be located in area b/t existing dwelling and RT. 637; no additional farm buildings > 500 sq. ft. except replacement of existing metal barn located on dam < 2500 sq. ft.; any additional farm buildings must be sited so as not to impair setting of Clonmel house.

Further Discussion (explanation of non-consent if applicable, other issues):

Zoning/Comprehensive Plan Conformance/Subdvsn Rights Extinguished (if under 50 acres): Nelson County Comp Plan "recognize that the natural environment is an important facet of our quality of life and efforts should be made to support and enhance that environment" "protect natural resources, including prime soils for agricultural use, groundwater, air and wetlands, and forest resources"; extinguishing 30 +/- development rights.

Staff Recommendation: Recommends approval.

Initial Site Visit (Date/Staff): May 2004 Sherry Buttrick

Tax Map/Parcel: Nelson County TM 4-A-11 (24.122 acres) and Albemarle County TM 69-6F (10.848 acres)

Maps in File: ☒ **Topo** ☒ **Tax** ☒**Survey/Plat** ☒**Aerial**

Lienholder: None

Owner Address:	Phone / Fax / Email:	Additional Contact Info:
Mr. Chester M. Beatty, Jr. (Chet) Clonmel 9473 Dick Woods Road Afton, VA 22920	434-456-8293	

EASEMENT DOCUMENTATION REPORT
ACKNOWLEDGEMENT

The attached Easement Documentation Report documents the area, character, and condition of the property known as Clonmel, in Nelson and Albemarle Counties, placed under open-space easement granted to Virginia Outdoors Foundation in the Deed of Gift of Easement recorded in the Nelson County Clerks Office as instrument #040006225 page 93 and in the Albemarle County Clerk's Office as Instrument # 200400028293 on 12/30/2004. This report constitutes the baseline documentation to serve as a future reference in monitoring the Easement as required by Section 170(h) of the Internal Revenue Code and Section 1.170A-14 of the Treasury Regulations.

Easement Documentation Report includes:

Copy of the Deed of Easement
Easement Proposal Sheet
USGS Topographic Map
Aerial Photograph
County Tax Map
Photos of property

The Grantor and Grantee acknowledge that this Report accurately reflects the condition of the Property subject to the Easement referenced above as of the date of conveyance of the Easement.

VIRGINIA OUTDOORS FOUNDATION, Grantee

By: Charlotte D. Buttrick
Charlotte D. Buttrick, Regional Director

Date: 12 Apr 05

GRANTOR:

Chester M. Beatty, Jr.

Date: May 23, 2005

Revised April 19, 2002

Important Information about Conservation Easements

Virginia Outdoors Foundation

Donation of an easement is an act of stewardship which will permanently affect how your land may be used. Donation of an easement is completely voluntary and the property owner may change his or her mind at any time until the easement is signed. All restrictions on the use of the property are contained in the easement document.

Please note that "prohibited buildings or structures" on standard VOF easements include freestanding wireless communications facilities and commercial windmills. If you wish to retain the right for yourself, your assigns and successors to build cellular communications towers, or any other non-farm commercial structures, your easement must specifically include that right.

After the easement is signed and recorded, these restrictions on the use of your property will become permanent and binding on you and all subsequent owners of the property. The easement and other information related to the donation that you provide to the Virginia Outdoors Foundation will become a matter of pubic record.

The Virginia Outdoors Foundation recommends that you consult with your advisors on real estate and tax matters and that you have your attorney review the terms of the easement. This is particularly important as the easement could affect your estate planning. The Virginia Outdoors Foundation does not provide legal advice.

For those easement donors advised by an attorney:

I acknowledge that I have been advised by an attorney concerning the donation of an easement on my property. His/her name and address are listed below.

Attorney's name and address:

Eggleston & Thelen, PC
Lovingston, VA 22949

Donor's signature Chester M. Beatty, J

For those easement donors not advised by an attorney:

Please confirm by your signature below that you understand the foregoing and the terms of your easement and that you have decided not to consult legal counsel in the execution of this easement.

Donor's signature _____

040006225

000093

Prepared by: Eggleston and Thelen, P.C.

TAX MAP NO.: 4-A-11

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT, made this 29th day of December, 2004, between Chester M. BEATTY, Jr., herein called the "Grantor", and the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, the ("Grantee"), whose address is 203 Governor Street, Suite 302, Richmond, Virginia 23219,

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly, (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 through 10.1-1804, as amended) declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, the Grantor is the owner in fee simple of the real property hereinafter described (the "Property"); and

WHEREAS, the Property contains scenic views of open fields, a pond and an historic house and log cabin and possesses significant natural, scenic, historic, open-space values the preservation of which will benefit the citizens of the Commonwealth; and

returned to:
STON & THELEN, P.C.
TORNEYS-AT-LAW
NGSTON, VA 22949
434) 263-4871

WHEREAS, the Property lies within the view of the Blue Ridge Parkway, U.S. Rt. 250 and Interstate 64, and fronts on St. Rt. 637 (Dick Woods Rd.) and, in its open space condition contributes to the scenic and rural quality of the area; and

Whereas, the Property contains a manor house known as Clonmel, built in 1868, and a log cabin built in the late 1700's; and

WHEREAS, the Comprehensive Plan of Nelson County adopted October 8, 2002 contains the following principles reflecting the Goal to "Recognize that the natural environment is an important facet of our quality of life and efforts should be made to support and enhance that environment:

Principle: Recognize the importance of ground water and surface water to the county by supporting guidelines for the protection of these resources . . .;

Principle: Protect natural resources, including prime soils for agricultural use, groundwater, air and wetlands, and forest resources;" and

WHEREAS, a portion of the Property lies within Albemarle County, Virginia and the Comprehensive Plan of Albemarle County contains the following goals and objectives that are furthered by the protection of the Property in its open-space state: "Promote the continuation of a viable agricultural and forestal industry ad resource base" and to place priority on "preservation of agricultural and forestall activities" in the Rural Areas, and is consistent with its strategy to "actively promote and support voluntary techniques such as . . . conservation easements;" and

WHEREAS, the Property has long been used as open pasture land and is well suited for agricultural use, which is supported by the Comprehensive Plan for the County of Albemarle as stated above; and

WHEREAS, the Albemarle County Comprehensive Plan states a goal to "Protect the County's historic and cultural resources" by promoting "voluntary measures and techniques such as historic and conservation easements which serve to protect historic resources and their settings;" and

WHEREAS, the Property has been accorded land use tax assessment taxation by Nelson County as permitted by Section 58.1-3231 of the Code of Virginia in order to promote agricultural property uses; and

WHEREAS, the Grantor and the Grantee desire to protect in perpetuity the open-space values herein specified; and

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth; and

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the "Restrictions") will preserve and protect in perpetuity the open-space values (the

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"Open Space Values") of the Property, which values are reflected in the preceding paragraphs, the Grantee's evaluation, and the documentation of the condition of the Property as contained in its files and records; and

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open-Space Values of the Property; and

WHEREAS the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open Space Values of the Property, the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this easement.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby give, grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of 33.551 acres described in *EXHIBIT "A"*, located in Rockfish Magisterial District, Nelson County, Virginia, and White Hall Magisterial District, Albemarle County Virginia near Afton, fronting on Dick Woods Road, and hereinafter referred to as the "Property:"

> The above-described tracts consist of three parcels, an 11.5 acre parcel, an 11.9 acre parcel and a 10.151 acre parcel, designated as Tax Parcel 4-A-11 among the land records of Nelson County and totalling 33.551 acres in the aggregate. The Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole.

> AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated there under.

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Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above. The acts that the Grantor covenants to do and not to do upon the Property,

and the Restrictions that the Grantee is hereby entitled to enforce, are and shall be as follows:

1. **TRASH.** Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property, as long as such practices are conducted in accordance with applicable laws and regulations.

2. **SIGNS.** Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to state the name and/or address of the owners or Property, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a permitted use of the Property, to provide notice necessary for the protection of the Property or to give directions to visitors. No such sign shall exceed nine square feet in size.

3. **DIVISION.** Division or subdivision of the Property in any manner is prohibited. The Property may not be sold or conveyed except as a whole.

4. **MANAGEMENT OF FOREST.** Commercial timber harvesting shall be in accord with a forest stewardship plan approved by the Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when commercial forestry activity is undertaken. A pre-harvest plan consistent with the forest stewardship plan shall be submitted to VOF at least 30 days prior to beginning such commercial timber harvesting.

5. **GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds, or as required in the construction of permitted buildings, structures, connecting private roads, and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the Open-Space Values of the Property. Mining on the Property by surface mining or any other method is prohibited.

6. **BUILDINGS AND STRUCTURES.** No permanent or temporary building or structure may be built or maintained on the Property other than:

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(i) the existing single family dwelling, which may be repaired or renovated, but which shall not be willfully demolished without the prior written approval of Grantee, and non-residential outbuildings or structures commonly and appropriately incidental thereto,

(ii) the existing log cabin;

(iii) one additional secondary dwelling not to exceed 2000 square feet of livable space with no more than 1000 square feet per story and no more than two stories, and non-residential outbuildings commonly and appropriately incidental thereto. This dwelling may only be constructed in the area between the existing residence and St. Rt. 637, and

(iv) there is an existing metal barn located below the farm pond dam. No additional farm buildings larger than 500 square feet may be constructed on the Property; however, this restriction does not prohibit removal of the existing metal barn and construction of a replacement barn of no more than 2,500 square feet in ground area in the same location. Any additional farm buildings must be sited so that they do not impair the setting of the historic Clonmel house;

(v) private roads and utilities that serve permitted buildings or structures may be constructed.

7. **INDUSTRIAL OR COMMERCIAL ACTIVITIES.** Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation values herein protected, (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing.

8. **ENFORCEMENT.** Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this easement as existed on the date of the gift of the easement except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any

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prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

9. **NOTICES TO GRANTEE.** The Grantor shall notify the Grantee in writing within 60 days following any *inter vivos* transfer or sale of the Property or any part thereof. The Property may not be conveyed by deed unless this deed of easement is referenced by Deed Book and page number or other appropriate reference.

10. **EXTINGUISHMENT.** The Grantor and the Grantee intend that this easement be perpetual and not be extinguished, and extinguishment of this easement is not permitted under the Open-Space Land Act, Virginia Code Section 10.1-1700 *et seq.* Restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act. No part of the Property may be converted or diverted from open-space uses as herein defined except in accordance with Virginia Code Section 10.1-1704.

11. **DOCUMENTATION**: Documentation retained in the offices of the Grantee describes the condition and character of the Property at the time of the gift. The Documentation may be used to determine compliance with and enforcement of the terms of the easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination.

12. **SUCCESSORS IN INTEREST:** The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

If any provision of this deed or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this easement shall not be affected thereby.

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Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.

The parties hereto agree and understand that any value of this easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits that might be transferable. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this easement from being a qualified conservation contribution. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

Acceptance of this conveyance by the Grantee is authorized by section 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Executive Director hereto.

WITNESS the following signatures and seals.

Chester M. Beatty, Jr.

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: Tamara A. Vance

Tamara A. Vance, Executive Director

STON & THELEN, P.C.
TORNEYS-AT-LAW
NGSTON, VA 22949
434) 263-4071

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Nelson, TO WIT:

I, Sam D. Eggleston III, a Notary Public for the Commonwealth aforesaid, hereby certify that Chester M. Beatty, Jr., Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 29th day of December, 2004.

Sam D. Eggleston III
Notary Public

My commission expires: 5/31/05 (SEAL)

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Montgomery, TO WIT:

I, Anna G. Chisholm, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance, Executive Director of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this 29th day of December, 2004.

Notary Public

My commission expires: 31 Oct 2007 (SEAL)

ANNA G. CHISHOLM NOTARY PUBLIC COMMONWEALTH OF VIRGINIA

LESTON & THELEN, P.C
ATTORNEYS-AT-LAW
WINGSTON, VA 22949
(434) 263-4871

000101

EXHIBIT A

All those three parcels of land together with appurtenances, lying in the Rockfish Magisterial District of Nelson County, Virginia and the White Hall Magisterial District of Albemarle County, Virginia, on the west side of Rt. 637 approximately 1 mile north of its intersection with Rt. 151, and more particularly described as follows:

Parcel One: All that tract of land containing 11.5 acres designated as Lot Number One on a plat by T. W. Saunders, Surveyor dated February 21, 1966, entitled "Plat Showing Two Lots of Land in Nelson County, near Afton," a copy of which is recorded in the Nelson County Circuit Court Clerk's Office in Deed Book 107, page 374.

Parcel Two: All that tract of land containing 11.9 acres adjoining Parcel One described above, and being more particularly described on a plat by T. W. Saunders, Surveyor, dated September 6, 1966, entitled "Plat Showing 11.9 acres of land in Nelson County near Afton surveyed Sept. 6, 1966 for S. P. Goodloe," a copy of which is recorded in the Nelson County Circuit Court Clerk's Office in Deed Book 109, page 30.

Parcel Three: All that tract of land containing 10.151 acres of land adjoining Parcel Two described above, and being more particularly described on a plat by Higgs and Shumate, Certified Land Surveyors, dated January 18, 1974, a copy of which is recorded in Deed Book 136, page 218.

All three parcels are a portion of the property acquired by Chester M. Beatty, Jr. and Leonard S. Pitts, by deed dated June 8, 1978, recorded in the Nelson County Circuit Court Clerk's Office in Deed Book 163, page 131. On the death of Leonard S. Pitts, the property passed to Chester M. Beatty, Jr. by the survivorship provisions of the deed.

Deed Fee 036	$ —
State Tax 039	$ —
County Tax 213	$ —
Transfer Fee 212	$ 1.00
VSLF 145	$ 1.50
Clerk's Fee 301	$ 14.50
Plats	$ —
State Tax 038	$ —
County Tax 220	$ —
VOF (OSP) 035	$ 1.00
TTF 106	$ 5.00
TOTAL	$ 23.00

VIRGINIA: In the Clerk's Office of the Circuit Court of Nelson County December 30 **__ 20** 04**, This writing was admitted to record at** 3:02 **P M. and the tax imposed by Sec. 58.1-802 of the Code in the amount of $_____ has been paid.**

TESTE: Judy Stevens Smythers **Clerk**
By Catherine G. Watkins **, Deputy Clerk**

RECORDED IN CLERKS OFFICE OF
ALBEMARLE ON
December 30,2004 AT 4:03:32 PM
$0.00 GRANTOR TAX PD
AS REQUIRED BY VA CODE §58.1-802
STATE: $0.00 LOCAL: $0.00
ALBEMARLE COUNTY, VA
SHELBY MARSHALL CLERK CIRCUIT COURT

Instrument Control Number

023953

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

[ILS VLR Cover Sheet Agent 1.0.66]

Doc ID: 000017130010 Type: DEE
Recorded: 12/30/2004 at 04:03:32 PM
Fee Amt: $0.00 Page 1 of 10
Albemarle County, VA
Shelby Marshall Clerk Circuit Court
File# 2004-00023963
BK 2898 PG 382-391

TAX EXEMPT [ ] CORP [ ]

Date of Instrument: [12/30/04]
Instrument Type: [DG]

Number of Parcels [1]
Number of Pages [9]

City [ ] County [x] [Albemarle County]

(Box for Deed Stamp Only)

First and Second Grantors

Last Name	First Name	Middle Name or Initial	Suffix
[Beatty]	[Chester]	[M]	[Jr]
[ ]	[ ]	[ ]	[ ]

First and Second Grantees

Last Name	First Name	Middle Name or Initial	Suffix
[x] [Virginia Outdoors Found]	[ ]	[ ]	[ ]
[ ] [ ]	[ ]	[ ]	[ ]

Grantee Address (Name) [Virginia Outdoors Foundation]
(Address 1) [203 Govenor Street]
(Address 2) [Suite 302]
(City, State, Zip) [Richmond] [VA] [23219]

Consideration [0.00] Existing Debt [0.00] Assumption Balance [0.00]

Prior Instr. Recorded at: City [ ] County [ ] [ ] Percent. In this Juris. [100]
Book [ ] Page [ ] Instr. No [ ]
Parcel Identification No (PIN) [ ]
Tax Map Num. (if different than PIN) [ ]
Short Property Description [3 parcels of land lying in the Rockfish Magisterial District]
[parcel 1 11.5 acres, parcel 2 11.9 acres, parcel 3 10.151 acres]
Current Property Address (Address 1) [ ]
(Address 2) [ ]
(City, State, Zip) [Afton] [VA] [22949]

Instrument Prepared by [Eggleston & Thelen, PC]
Recording Paid for by [Eggleston & Thelen, PC]
Return Recording to (Name) [Eggleston & Thelen, PC]
(Address 1) [PO Box 317]
(Address 2) [ ]
(City, State, Zip) [Lovingston] [VA] [22949]
Customer Case ID [ ] [ ] [ ]

Cover Sheet Page # 1 of 1

Virginia Outdoors Foundation

☐ 203 Governor Street, Suite 317, Richmond, VA 23219
(804) 225-2147 FAX (804) 371-4810

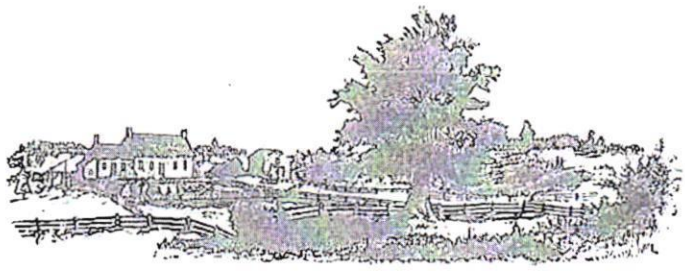
☑ 1010 Harris Street, Suite 4, Charlottesville, VA 22903
(434) 293-3423 FAX (434) 293-3859

☐ Post Office Box 322, Aldie, VA 20105
(703) 327-6118 FAX (703) 327-6444
Aldie Mill: (703) 327-9777 FAX (703) 327-0082

☐ 11 East Beverly Street, Staunton, VA 24401
(540) 886-2460 FAX (540) 886-2464

☐ Blacksburg Office
(540) 951-2822 FAX (540) 951-2695

www.virginiaoutdoorsfoundation.org



Encouraging the preservation of open space

Chester M. Beatty, Jr.
Clonmel
9473 Dick Woods Road
Afton, VA 22920

April 12, 2005

Dear Mr. Beatty,

Thank you very much for your donation of a conservation easement on your property in 2004. We are pleased to report that VOF has received easements on over 280,000 acres statewide and about 6000 acres in Nelson County and over 40,500 acres in Albemarle County. Your gift makes an important contribution to the conservation of the rural lands in Virginia and adds significant protection of Nelson and Albemarle Counties.

Enclosed is the copy of the baseline documentation VOF has compiled to document the property you have placed under easement with us. This documentation we call the "Easement Documentation Report." Please review the material and confirm to us that the area and condition of the property is accurately described. This report serves to document the property at the time that the easement was granted and serves as a reference for the future. Please sign the enclosed form if all is in order, or indicate any correction needed and return to us in the envelope provided. Should you decide to build additional buildings or harvest timber, please contact us. Every few years we will contact you for permission to visit the property.

Please retain this letter for your tax records. No goods or services were exchanged in consideration for this contribution. If you are planning on taking a tax deduction, the IRS will require a copy of their 8283 form signed by VOF to accompany your return. The purpose of VOF's signature is to acknowledge receipt of the gift of easement. We are glad to sign the form for you as soon as your appraiser or accountant has it ready. Please allow a minimum of a week for us to get it back to you.

Again, thank you for your contribution to open-space preservation in Virginia. If we can be of any help to you, please do not hesitate to call.

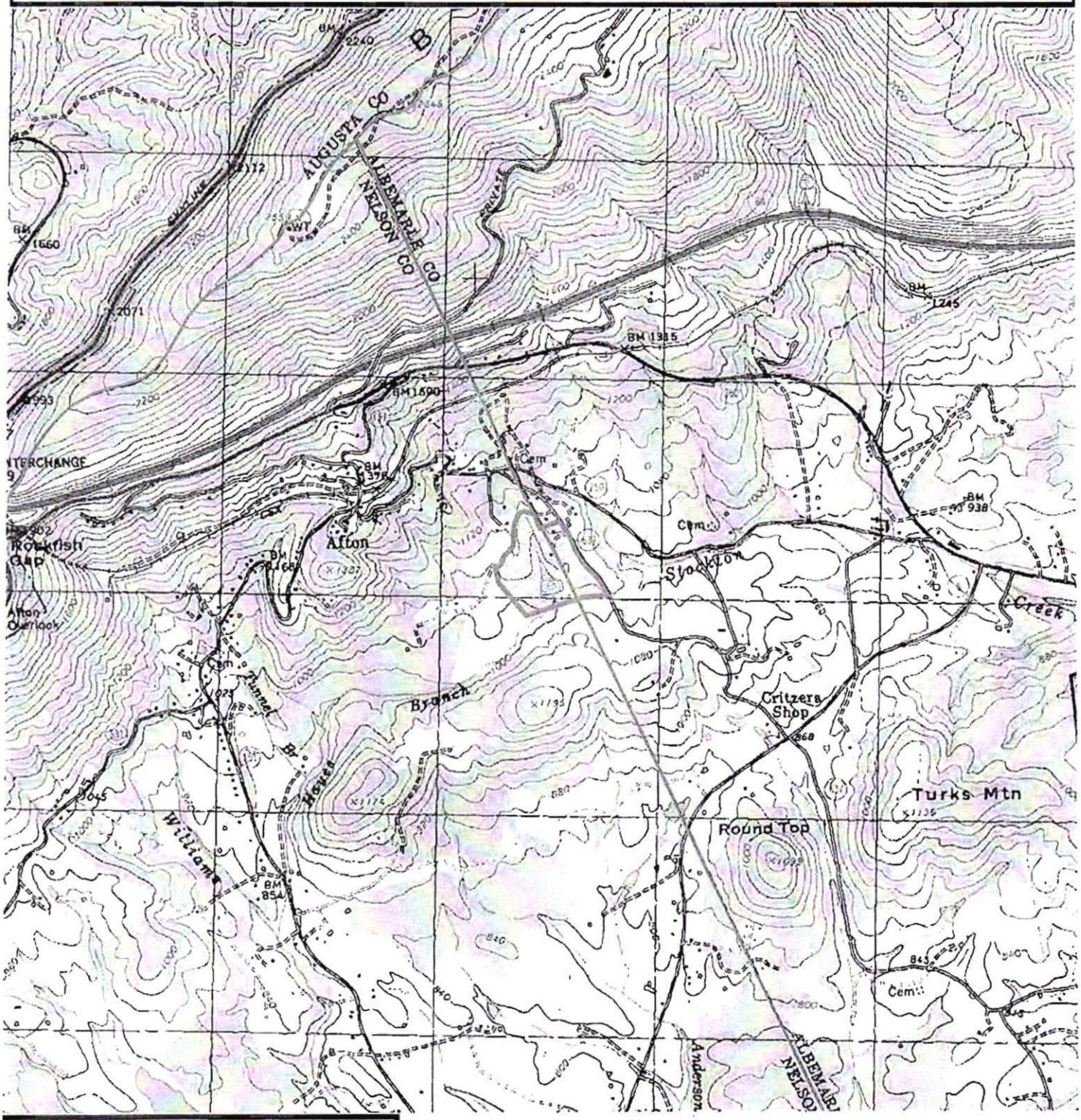
Sincerely,

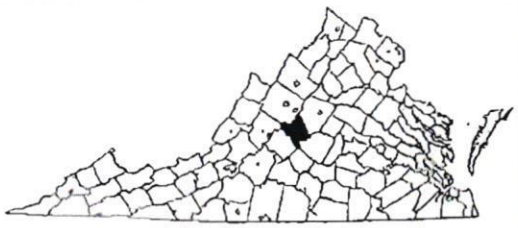
Anna Clayton Logan

Anna Clayton Logan

Trustees: Frank Kilgore, *Chairman, Russell/Wise*; M. Rupert Cutler, *Roanoke*; Jill K. Holtzman, *Fauquier*; Katherine L. Imhoff, *Albemarle*; Charles K. Rowley, *Fairfax*; Charles H. Seilheimer, Jr., *Orange*; Paul G. Zilioa, *Loudoun*

Beatty ~ 33.551 acres





NELSON COUNTY LOCATOR

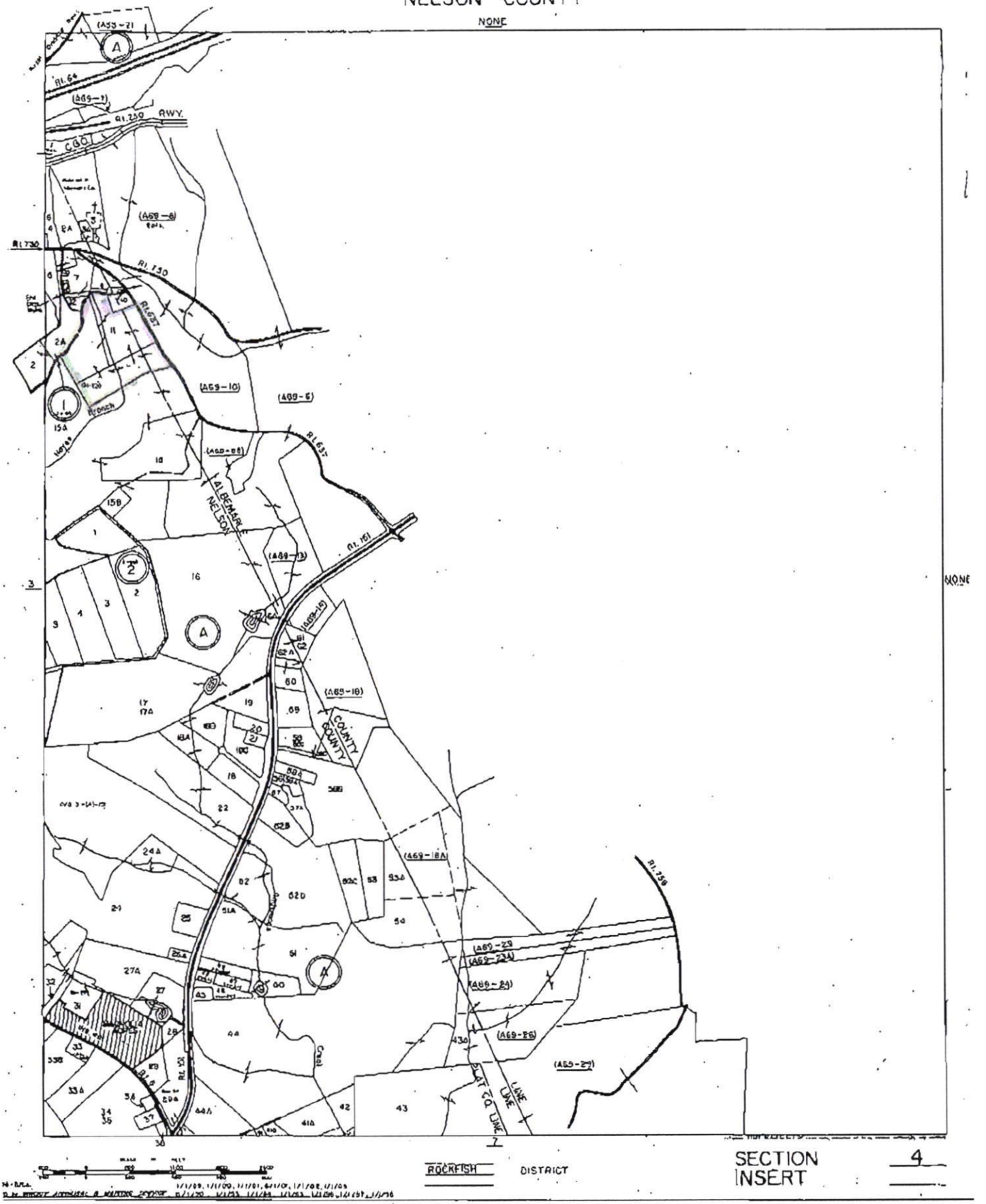
1:24,000 or 1 inch = 2000 feet

County Boundary
Beatty Property
Existing VOF Easements

N

Meeting Date: December 2004

NELSON COUNTY




052
053
054
068
070
083
084
69-2
69-3
69-3D
69-3E
69-5C
69-5B
69-5A
69-3A
69-5
69-A
69-51E
69-52B
69B
69A
69-52
69-51C
69-3C
69-51
69-8
69-8A
69-8C
69-8F
69-10E
69-8E
69-6
69-6B
69-6D
69-50B
69-50
69-50A
69-49A
69-49
69-54
69-62A
69-18A7
69-50C
70-14B
69-12
69-11
69-13
69-15
69-14
69-14A
69-14B1
69-18B1
69-18B
69-20A
69-20A3
69-20A2
69-20C
69-18A8
69-20
69-20B1
69-18C
69-21B
69-20B
69-18
69-21C
69-21A
69-18A
69-21
69-22
69-23
69-24
69-25
69-26
69-27
69-28
69-29
69-30
69-36
69-39
69-38A
69-47
69-47C
69-47B
69-47A1
69-49D
69-48C
69-48C2
69-48C5
69-48C6
69-48C4
69-48C3
69-48C1
69-48B
69-48
69-49
750
803
637
758
796
690
692
250
151
NELSON CO
STOCKTON CREEK
OLD FURNACE RD
BROOKSVILLE RD
ROCKY BRANCH TRL
DICK WOODS RD
SMITH RD
Scale
0
800
1,600
2,400
Feet
Note: This map is for display purposes only and shows parcels as of 12/31/2004.
See Map Book Introduction for additional details.
Albemarle County
Tax Map:
069

Beatty ~ 33.551 acres



VIRGINIA OUTDOORS
FOUNDATION

March 22, 2011

Chester M. Beatty Jr.
Clonmel
9473 Dick Woods Road
Afton, VA 22920

Re: ALB / NEL-VOF-1609A & B

Dear Mr. Beatty,

On behalf of the Virginia Outdoors Foundation, I would like to thank you for allowing me to visit your property on March 18, 2011. Enclosed please find a copy of the Stewardship Field Report, a printout of any photographs that were taken during my site visit, and updated maps of the property. We are pleased to report that VOF has received conservation easements on over 605,000 acres statewide and on approximately 8,600 acres in Nelson County where a majority of your property is located. As a result of these efforts, portions of the Virginia landscape will be preserved for future generations. We continue to work with interested landowners and hope that the preservation of your property will serve as an example to other area landowners. As a reminder, please notify me of any changes to your easement property in the future including: timber operations, building construction, divisions or property sales. Documenting such changes to the property will eliminate potential issues in the future.

If you have any questions or if you are interested in obtaining a free "***This property is forever protected by a conservation easement***" sign to post on your property, please contact me at (434) 293-9433 or by e-mail at jkuhn@vofonline.org. Also, please contact me if you believe that any of the enclosed information is incorrect.

Thank you for your commitment to the preservation of open space.

Sincerely,

Joseph Kuhn
Stewardship Specialist

VIRGINIA OUTDOORS FOUNDATION

STEWARDSHIP FIELD REPORT

I. ADMINISTRATIVE INFORMATION

VOF Control Number: **NEL-VOF-1609 A &B** Site visit date: **3/18/2011** Conducted by: **J Kuhn**

Previous Documentation: ☒ **BDR** (Year Completed: **2005**) ☐ **PCR** (Year Completed:) Previous Site Visit: **8/5/2009**

II. LANDOWNER & PROPERTY INFORMATION

Landowner name: Chester M. Beatty Jr.

Mailing address: Clonmel; 9473 Dick Woods Road; Afton, VA 22920

Home phone: (434) 456-8293 Work Phone: ( ) - Cell: ( ) -

E-mail address: Fax: ( ) -

Property location, parcel #, acreage: Same as Mailing Address; TM: 4-A-11 (Nelson); 69-6F (Albemarle); 34.97 acres

III. LANDOWNER INTERACTION

Permission to visit given by: Letter Sent Date of conversation: 3/11/2011

Have any changes occurred since the previous site visit (forest management, building construction, subdivision, other activity)?
No ☒ Yes ☐ If yes, explain?

Does the landowner have any future plans for changes (forest management, building construction, subdivision, other activity)?
No ☒ Yes ☐ If yes, explain?

Any other landowner comments: NA

IV. SITE VISIT

Extent of Site Visit (Areas inspected or not inspected, anyone staff met or accompanied during site visit):

the entire site is visible from Dick Woods Road

Observations (Description of property including features affected by easement terms, changes since previous visit, etc.):

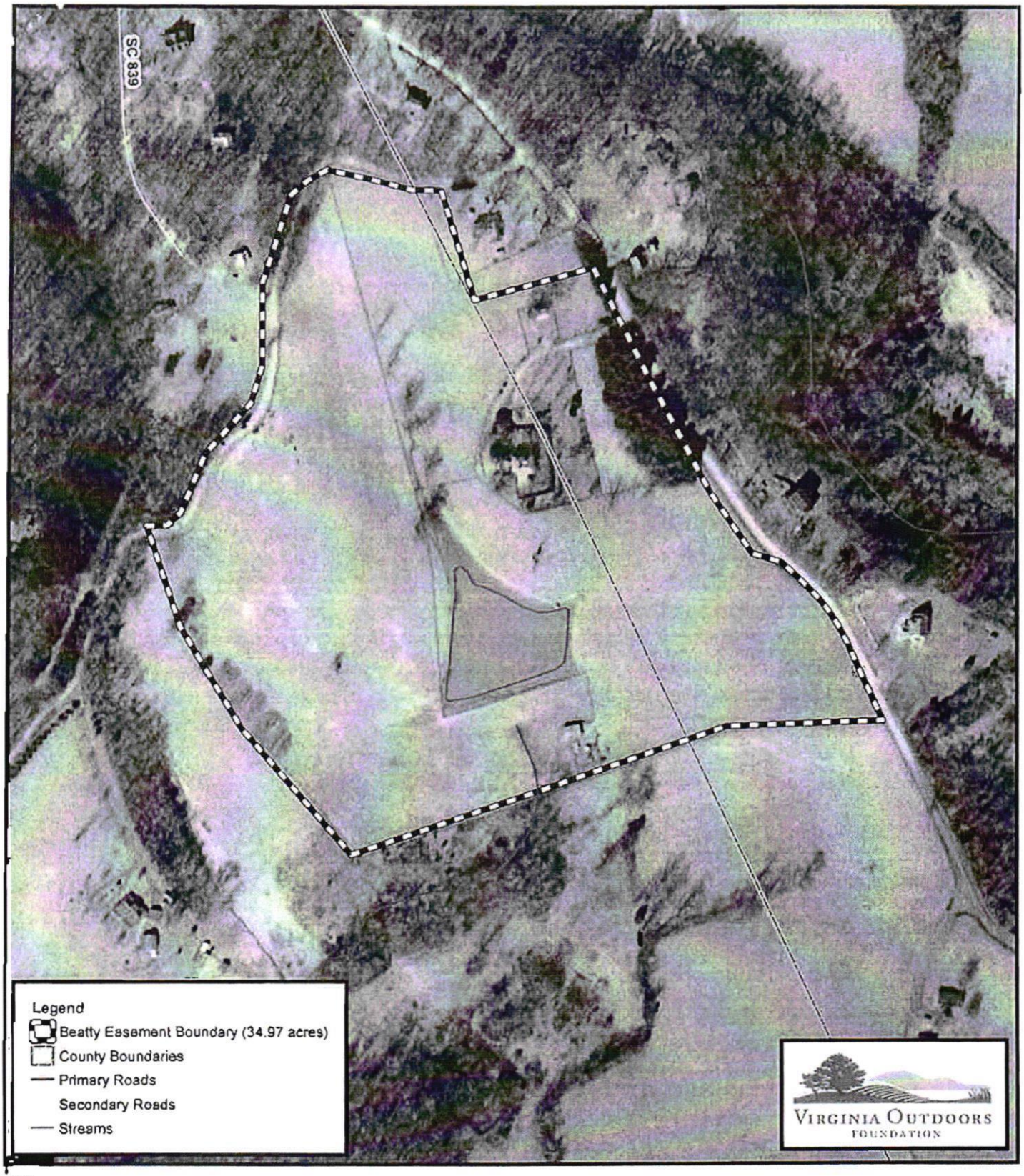
The property is used for residential use. All structures are well kept, and no changes were noted on the property.

V. CERTIFICATION

This report and any attached photos/documents accurately describe, to the best of my ability, the condition of the property on the day of the site visit.

Joseph Kuhn, M.S., *Stewardship Specialist*

3/22/11
Date Report Prepared



78°50'0"W

Projection: Lambert Conformal Conic
GCS North America 1983
Datum: D North America 1983

Map created 03/22/2011 by Joseph Kuhn.
Source data provided by VOF, VBMP, DCR
Aerial Imagery © Commonwealth of Virginia
This map is for general reference and display purposes only.

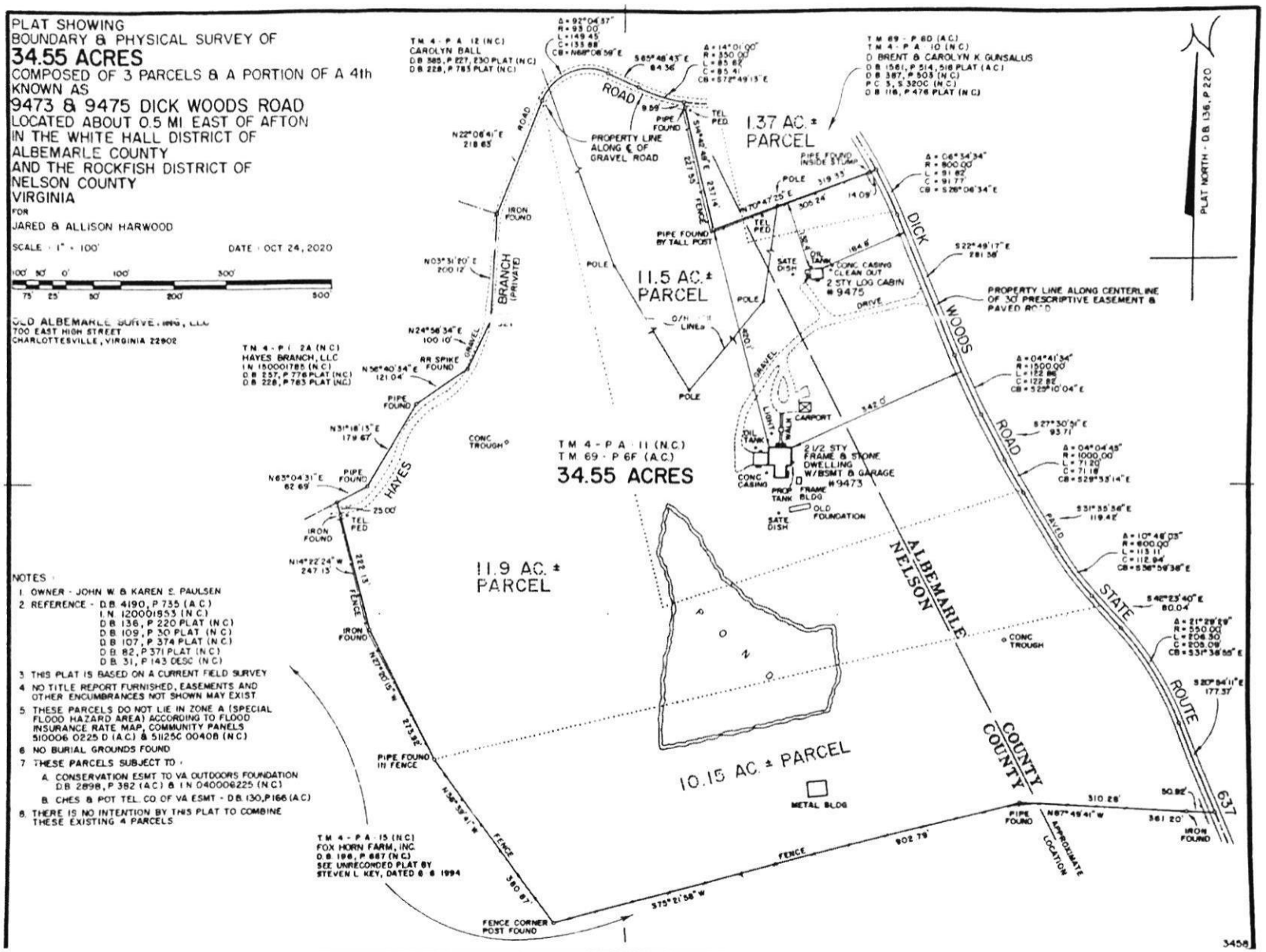
Aerial Map

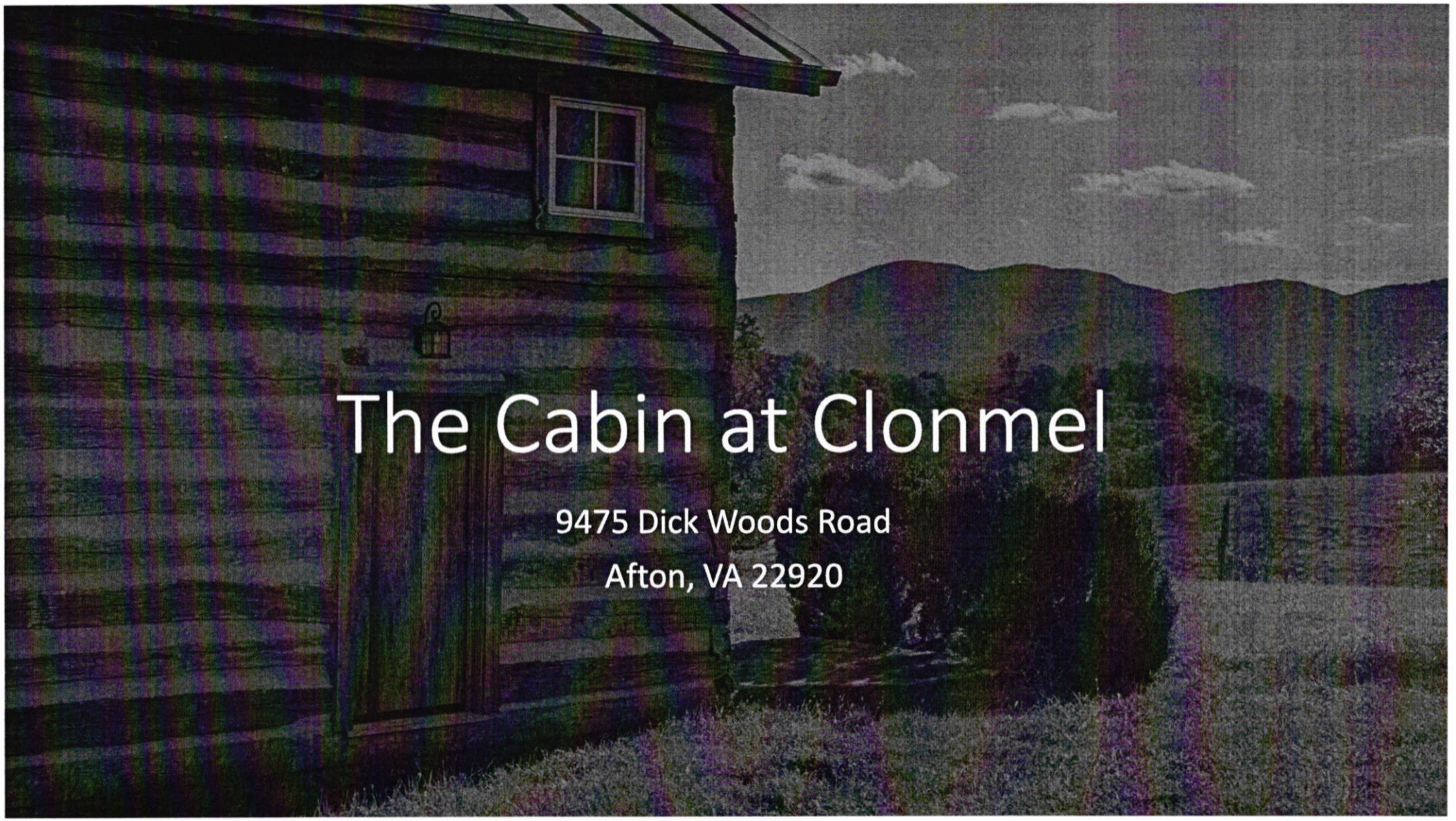
Landowner: Beatty
Control #: NEL-VOF-1609 (A & B)
34.97 acres
Site Visit Date: 03/18/2011

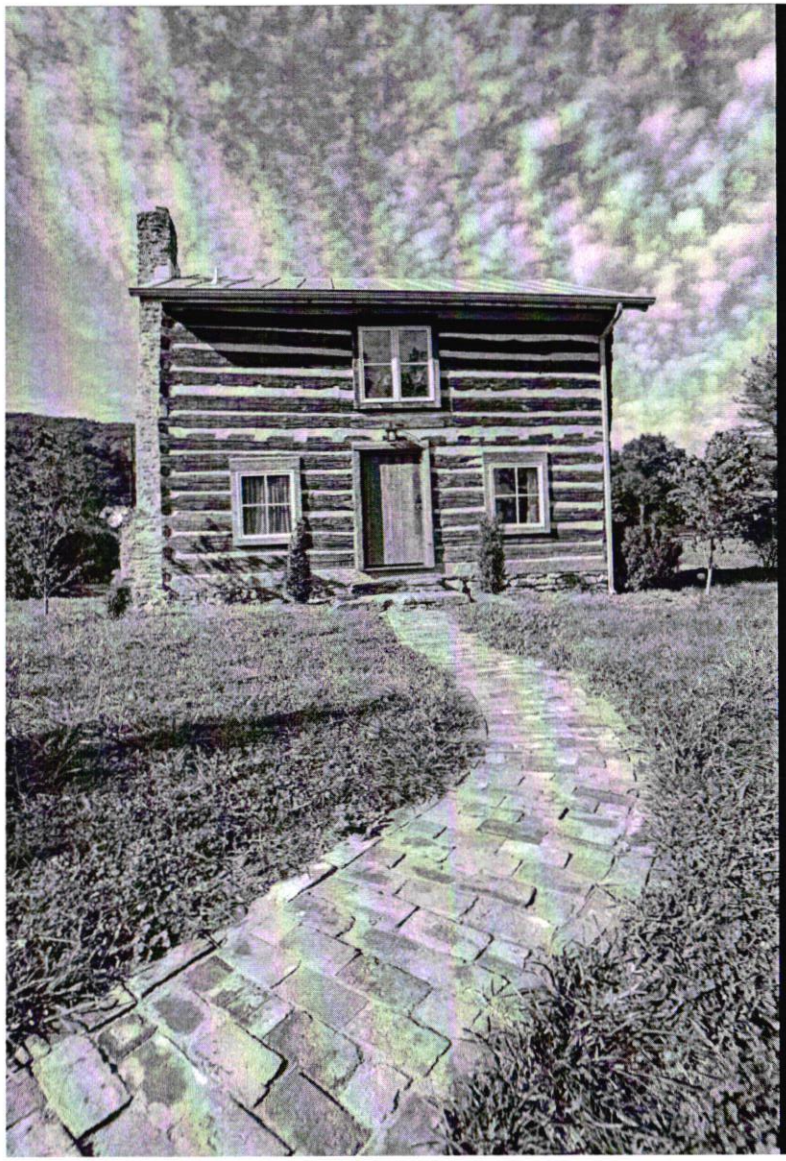
Feet
0 150 300

1:3,600

N


PLAT SHOWING
BOUNDARY & PHYSICAL SURVEY OF
34.55 ACRES
COMPOSED OF 3 PARCELS & A PORTION OF A 4th
KNOWN AS
9473 & 9475 DICK WOODS ROAD
LOCATED ABOUT 0.5 MI EAST OF AFTON
IN THE WHITE HALL DISTRICT OF
ALBEMARLE COUNTY
AND THE ROCKFISH DISTRICT OF
NELSON COUNTY
VIRGINIA
FOR
JARED & ALLISON HARWOOD
SCALE - 1" = 100'
DATE - OCT 24, 2020
OLD ALBEMARLE SURVEYING, LLC
700 EAST HIGH STREET
CHARLOTTESVILLE, VIRGINIA 22902
TM 4 - P A 12 (N.C.)
CAROLYN BALL
D.B. 385, P. 227, 230 PLAT (N.C.)
D.B. 228, P. 785 PLAT (N.C.)
TM 4 - P A 12A (N.C.)
HAYES BRANCH, LLC
I.N. 150001788 (N.C.)
D.B. 237, P. 776 PLAT (N.C.)
D.B. 228, P. 783 PLAT (N.C.)
TM 69 - P 6D (A.C.)
TM 4 - P A 10 (N.C.)
D. BRENT & CAROLYN K. GUNSALUS
D.B. 1561, P. 514, 516 PLAT (A.C.)
D.B. 387, P. 503 (N.C.)
P.C. 5, S. 320C (N.C.)
D.B. 116, P. 476 PLAT (N.C.)
1.37 AC. ±
PARCEL
11.5 AC. ±
PARCEL
11.9 AC. ±
PARCEL
10.15 AC. ± PARCEL
TM 4 - P A 11 (N.C.)
TM 69 - P 6F (A.C.)
34.55 ACRES
PROPERTY LINE ALONG ℄ OF GRAVEL ROAD
PROPERTY LINE ALONG CENTERLINE OF 30' PRESCRIPTIVE EASEMENT & PAVED ROAD
2 STY LOG CABIN #9475
2 1/2 STY FRAME & STONE DWELLING W/BSMT & GARAGE #9473
CARPORT
METAL BLDG
OLD FOUNDATION
DICK WOODS ROAD
ALBEMARLE COUNTY ROUTE 637
HAYES BRANCH (PRIVATE)
PLAT NORTH - D.B. 136, P. 220
NOTES:
1. OWNER - JOHN W. & KAREN S. PAULSEN
2. REFERENCE - D.B. 4190, P. 735 (A.C.)
I.N. 120001853 (N.C.)
D.B. 136, P. 220 PLAT (N.C.)
D.B. 109, P. 30 PLAT (N.C.)
D.B. 107, P. 374 PLAT (N.C.)
D.B. 82, P. 371 PLAT (N.C.)
D.B. 31, P. 143 DESC (N.C.)
3. THIS PLAT IS BASED ON A CURRENT FIELD SURVEY
4. NO TITLE REPORT FURNISHED, EASEMENTS AND OTHER ENCUMBRANCES NOT SHOWN MAY EXIST
5. THESE PARCELS DO NOT LIE IN ZONE A (SPECIAL FLOOD HAZARD AREA) ACCORDING TO FLOOD INSURANCE RATE MAP, COMMUNITY PANELS 510006 0225 D (A.C.) & 51125C 0040B (N.C.)
6. NO BURIAL GROUNDS FOUND
7. THESE PARCELS SUBJECT TO -
A. CONSERVATION ESMT TO VA OUTDOORS FOUNDATION D.B. 2898, P. 382 (A.C.) & I.N. 040006225 (N.C.)
B. CHES & POT TEL. CO OF VA ESMT - D.B. 130, P. 166 (A.C.)
8. THERE IS NO INTENTION BY THIS PLAT TO COMBINE THESE EXISTING 4 PARCELS
TM 4 - P A 15 (N.C.)
FOX HORN FARM, INC.
D.B. 196, P. 687 (N.C.)
SEE UNRECORDED PLAT BY STEVEN L. KEY, DATED 8 & 1994
3458


The Cabin at Clonmel
9475 Dick Woods Road
Afton, VA 22920



Cabin Improvements

Craig Jacobs: $62,000
- Demolition
- Restoration
- Foundation

Alloy Workshop: $296,100
- Architecture
- Renovation
  - Bathroom
  - Plumbing
  - Electrical
  - Kitchen
  - Loft
  - Roof
  - Rafters
  - Windows
  - Ceiling
  - Railing
  - HVAC
  - Interior trim
  - Spigots

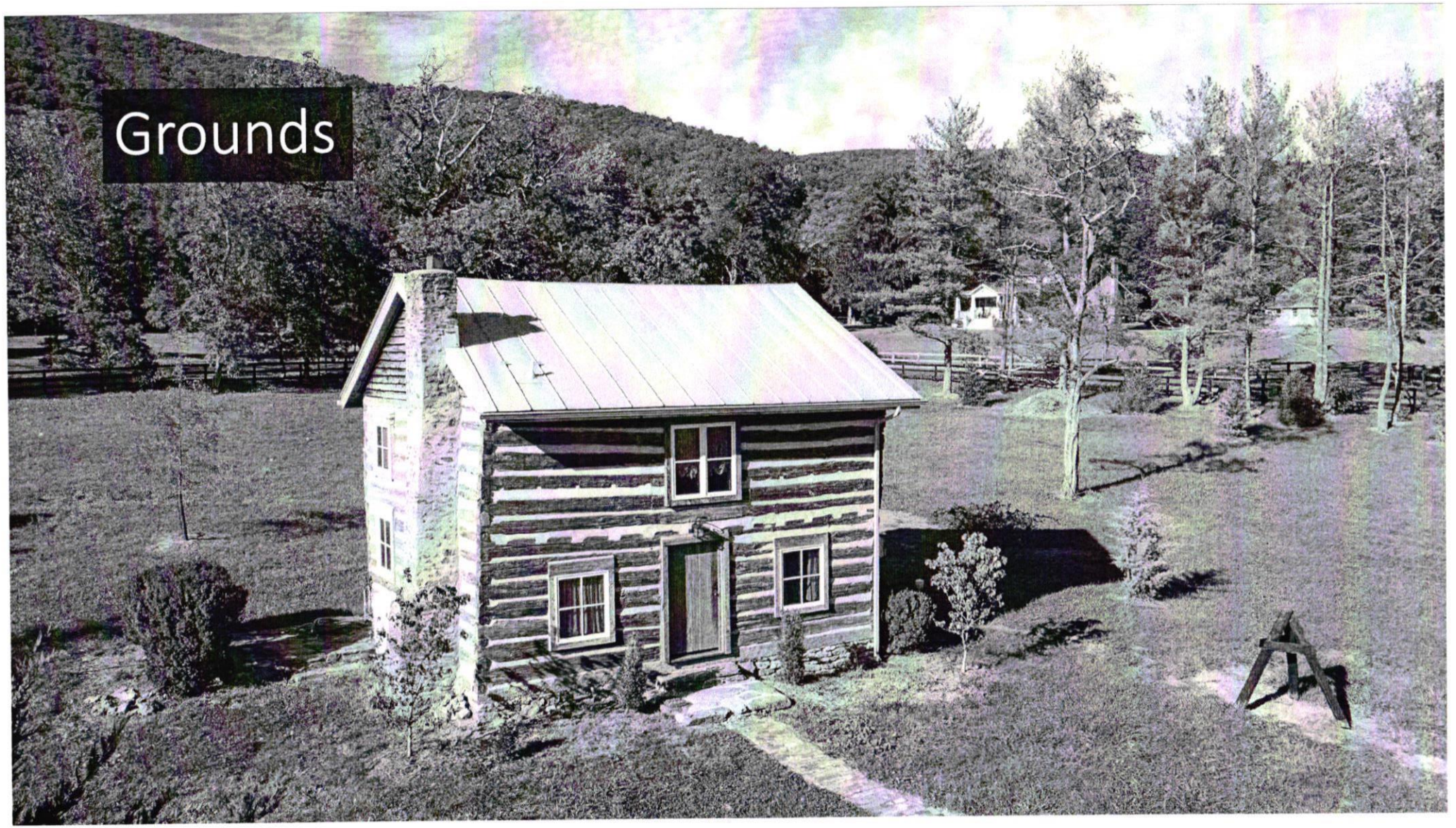
Cabin well improvements: $11,000

Kinetico: $8,500
- Water softener and purification

Tiger Solar: $82,300
- Solar array
- Storage shed

The Cabin at Clonmel: $750
- Fire pit

<u>Cabin Total: $460,650</u>

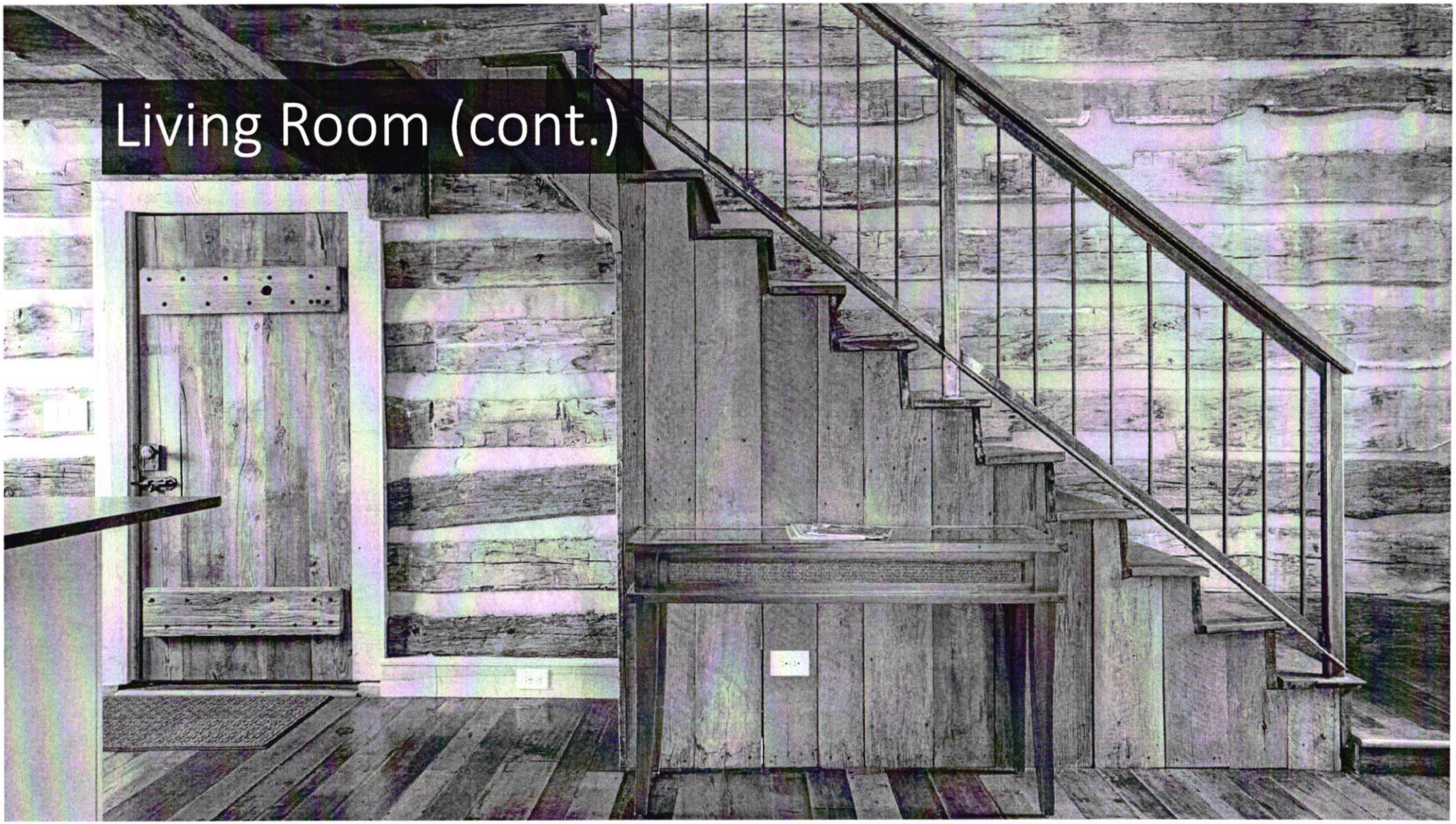

Grounds

Grounds (cont.)




Front

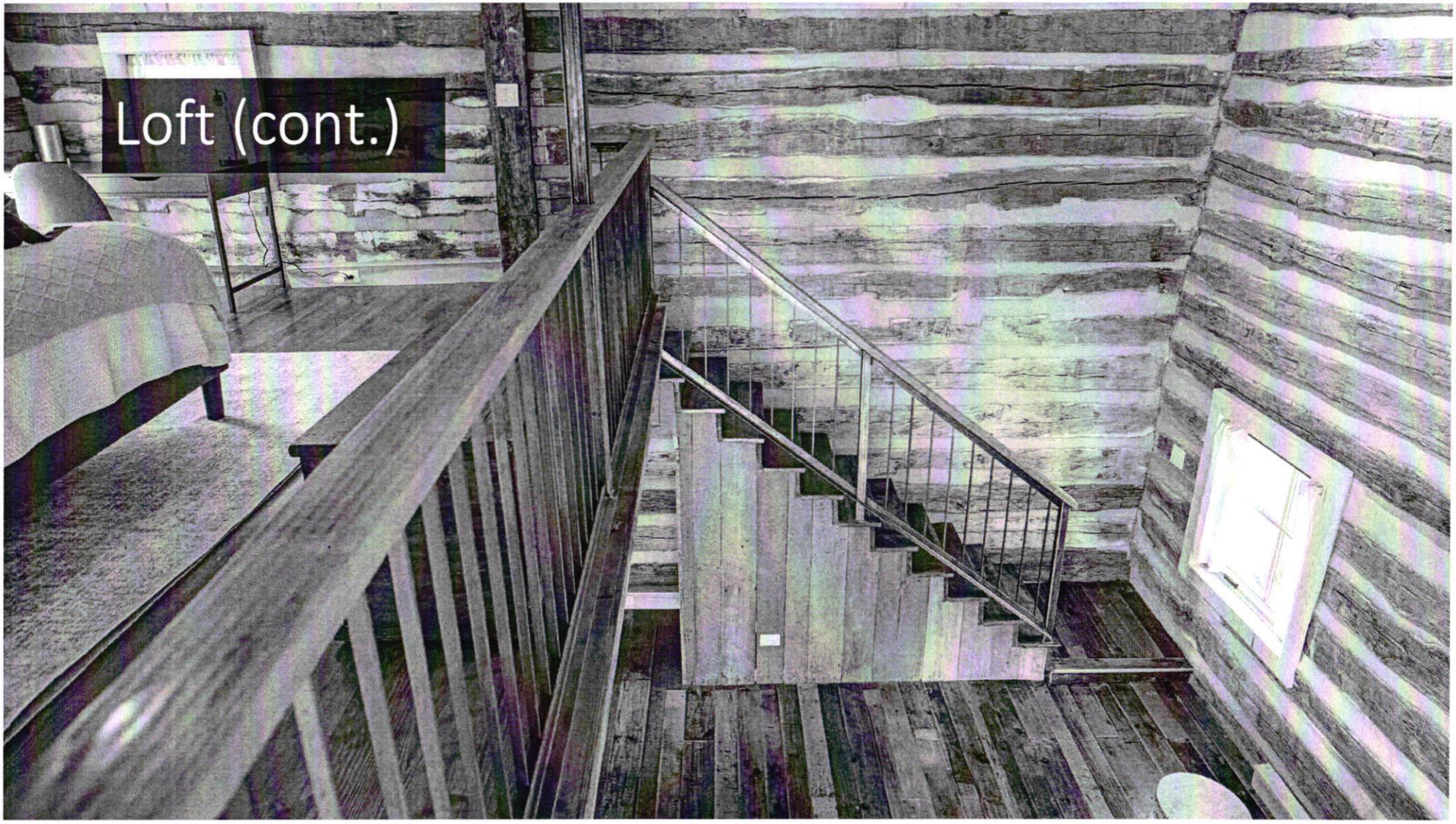

Living Room


Living Room (cont.)


Kitchen

Kitchen (cont.)


Loft


Loft (cont.)


Loft (cont.)


Bathroom

ALBEMARLE COUNTY BOARD OF ZONING APPEALS

IN RE: APPEAL OF LETTER OF DETERMINATION
JARED HARWOOD **APPEAL NO. AP2023-00002**

DECISION

At a duly-noticed meeting on June 6, 2023, the Albemarle County Board of Zoning Appeals (the "BZA") heard the appeal of the zoning determination that a cabin on the Subject Property cannot support an accessory homestay use without an accompanying primary use in the County of Appellant Jared Harwood. After hearing and considering all of the evidence and arguments, and for the reasons stated in the staff report [OR state other grounds for decision], the BZA hereby:

☒ Affirms the administrative determination
☐ Modifies the administrative determination, as follows: _____
☐ Reverses the administrative determination

Dated: 6/6/2023

_____
Marcia Joseph, Chair
Albemarle County Board of Zoning Appeals

This written decision was adopted by the BZA on June 6, 2023 by the following vote:

	Aye	Nay
Mr. Burkhart		
Mr. Carrington		
Mr. Rosenberg		
Mr. Shepherd		
Ms. Joseph		

DRAFT

Information provided by Appellant
- See Attachment E -

ALBEMARLE COUNTY BOARD OF ZONING APPEALS

REGULAR MEETING

TUESDAY, MAY 2, 2023—2:00 P.M.

Board Members:	John Shepherd Marcia Joseph Edward (Bo) Carrington Kurt Burkhart Ronald Rosenberg – arrived later in the meeting
Staff Members:	Bart Svoboda, Director of Zoning Francis MacCall, Deputy Zoning Administrator Marsha Alley, BZA Recording Clerk
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 Marcia Joseph

2. Establish a Quorum

Ms. Joseph established a quorum and recognized that the BZA members present at the dais were John Shepherd, Kurt Burkhart, and Edward Carrington, and herself. She stated that the agenda would be revised to move Old Business ahead of the Approval of the Minutes.

She stated that also present were Andy Herrick, James Bowling, IV, Francis MacCall, Marsha Alley, and Bart Svoboda.

3. Old Business

A. Recognition of Service for Edgar Robb

Ms. Joseph recognized Mr. Edgar Robb for his service on the Albemarle County Board of Zoning Appeals. She commented on his service history and his value to the BZA. She presented a certificate of appreciation to Mr. Robb. Other members shared well wishes and thanked him for his service.

Mr. Robb offered comments of gratitude and encouragement.

4. Approval of Minutes

A. January 3, 2023

Mr. Burkhart brought up a discussion about the length of the meeting minutes and suggested that they be condensed.

Ms. Alley explained that while minutes are not taken during the meeting, a recording is sent to the transcriptionsist contracted by the county. She said that she could pass along any feedback or requests to the transcriptionist regarding the BZA's preference as to how the meetings are transcribed.

Mr. Shepherd requested a review of his statement on page 7, line 43 and 44 in the minutes, noting that he believed the statement as transcribed was the opposite of his intent and would like it corrected if so, but he noted he may have misspoken. He also requested a reconsideration of how Board-submitted materials

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were included in the minutes. He noted that he had submitted a statement to serve as a template for his own comments, but he did not intend for the document to be included in the minutes as Attachment A or in such an official capacity. He suggested that future documents could be included in the agenda packet, but not as part of the minutes.

Ms. Joseph asked for clarification as to whether documents submitted to the Clerk became part of the public record.

Mr. Herrick responded that the documents became part of the public record, but they did not need to be included in the minutes. He suggested that in Mr. Shepherd's instance, an alternative option would be to take extended excerpts from his prepared comments and have those inserted into the minutes directly.

Ms. Alley clarified that Mr. Shepherd's notes were included because the Chair made a specific reference in the motion, so they were included as part of the motion. She said that the minutes could be revised to the Board's requests, and they could be reviewed for approval at the next meeting.

Mr. Svoboda stated that staff was charged with amending the minutes and noted for clarification that part of the documents included with the minutes, in this case Attachment A, should be included with the case file and not the minutes.

Mr. Bowling stated that the Board operated in a quasi-judicial fashion, so when the Board issued opinions which differed from the staff recommendation, staff and legal counsel were required to defend the decision during potential appeals. He said that the BZA should ensure that the reasons for their decisions were included in the record.

Mr. Shepherd stated that after the discussion, he understood why the notes were included with the minutes, and he supported keeping the format as it was.

MOTION: Mr. Burkhart moved to approve the minutes with the proposed verification of Mr. Shepherd's statement on page 7, line 43. Mr. Shepherd seconded the motion, which carried unanimously (4-0). (Mr. Rosenberg was absent)

5. New Business

A. Review and discuss:

- **i. Documenting official decisions made by the BZA and the information to be included in the official decision of the BZA**
- **ii. Information included in the meeting materials provided to the BZAs**

Ms. Joseph asked for clarification from Mr. Bowling regarding what would be an adequate finding of fact for motions.

Mr. Bowling said that the Board could move to approve the staff recommendations because staff typically presented the facts which supported the recommendation. He continued that if the Board differed from the staff recommendation, then they would have to make findings of fact based on the particular circumstances of the petition.

There was discussion regarding the role of the BZA in hearing both sides being presented and making a decision based on the facts that they find applicable to the issue. They referred to previous cases and how they arrived at those decisions.

DRAFT

Ms. Joseph noted that the Zoning Ordinance is currently under review and asked whether it would be condensed and clarified during the review and update.

Mr. Herrick responded that staff had prepared a draft order template. He noted that the Chair had suggested a live-edit session, and he stated he agreed with the suggestion. He said that the staff was always looking for ways to improve the process. He said that the template would provide the Board a format to make determinations of fact and document its decisions. He said that the format would allow the Secretary to record the Board's motions so that they were well documented for future proceedings.

There was discussion regarding live-editing of the order with Mr. Bowling pointing out that it would likely not be appropriate for the BZA to request staff to compose a motion for the BZA that is in disagreement with staff's recommendation. Mr. Herrick agreed and added that the Recording Secretary could document the words of the BZA.

Mr. Shepherd said he agreed that the template was a good starting point. He suggested that the motions should be able to be live-edited during the meetings to account for any changes or amendments. He said that it would be helpful to have the most up-to-date draft of the motion in writing before the Board when they made their decisions.

Mr. Herrick said that he recalled that to be technically possible and that staff could look to implement live-editing of the motions at future meetings.

Mr. Svoboda noted that the task of scribing the BZA's justifications for appeals is a different task than scribing the conditions for variances and special permits. He noted that the justification is not a part of the motion for an appeal unless there is a modification. He said that staff would likely be able to live-edit motions, but it may be difficult for staff during the meetings as they tried to account for all of the debate and suggestions. He noted that the justification and reasoning for some items was not included in the motions because they were not salient to the decision.

Mr. Shepherd said that live-editing would help provide clarification on the motion once the Board had gained consensus, and it would allow staff to clarify ambiguities and correct errors.

It was agreed that the burden to compose a motion would be on the BZA with the motion being the most important point for live-editing. It was also noted that the BZA should be prepared to cite findings of facts.

Mr. Svoboda introduced Ronald Rosenberg as the newest member of the BZA. He arrived at approximately 3:00 p.m. and apologized for his tardiness. Mr. Rosenberg said that a coherent and clear record of the proceedings was helpful if the decision of the Board was challenged.

Mr. Herrick said that if staff were to provide a template, it would still be up to the Board to make findings of fact and to state those findings when making the motion. He said that staff would not paraphrase the Board's intent while drafting the Board's decision.

Mr. Svoboda informed the BZA that there are currently three (3) appeals scheduled for June.

Mr. Rosenberg asked if there had been a consideration to move the meeting time to later in the day to enable people who worked fulltime to attend the meetings.

Mr. Svoboda said that they had not received feedback on requests for the Board to meet later in the day.

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Mr. Shepherd said that it would be difficult to change the meeting time due to scheduling of the chambers.

Ms. Joseph noted that staff would notify the Board if there were complaints.

Mr. Burkhart asked when the materials packet for the upcoming appeals would be distributed to the Board members.

Ms. Alley said that the materials could be distributed as early as May 18th, although they would likely be distributed the following Tuesday.

7. Adjournment

MOTION: Mr. Carrington moved to adjourn the meeting. Mr. Shepherd seconded the motion, which carried unanimously (5-0).

The meeting adjourned at 3:25 p.m.

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

Respectfully Submitted,

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John Shepherd, Secretary Board of Zoning Appeals

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