County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

401 McIntire Road, North Wing
Charlottesville, VA 22902-4579
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WWW.ALBEMARLE.ORG

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
AGENDA
TUESDAY, JULY 11, 2023 at 2:00 P.M
LANE AUDITORIUM

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   A. AP2023-00003 Appeal of VIO2023-109 {Sign #18}
      Appellant: Dominique Kostelac
      Property Owner(s): Koste Lake, LLC/Dominique Kostelac, Manager
      Tax Map Parcel ID: 079C0-00-00-00100
      Staff: Bart Svoboda

4. Approval of Minutes
   A. June 6, 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.

RESOURCE MATERIALS:

1. EX PARTE INFORMATION: See attached

2. MOTIONS:

NOTE: During deliberation discussions, be sure to state the basis of your position prior to the motion being made.

SAMPLES OF MOTIONS:

1. I move to affirm the zoning administrator's determination (VIO-2023-109), dated March 3, 2023, being appealed as AP2023-00003 Koste Lake, LLC.

2. I move to reverse the zoning administrator's determination (VIO-2023-109), dated March 3, 2023, being appealed as AP2023-00003 Koste Lake, LLC.

3. I move to modify the zoning administrator's determination (VIO-2023-109), dated March 3, 2023, being appealed as AP2023-00003 Koste Lake, LLC. The modifications are as follows:

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

§ 15.2-2308.1. Boards of zoning appeals, ex parte communications, proceedings

A. The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent or attorney are all invited.

B. Any materials relating to a particular case, including a staff recommendation or report furnished to a member of the board, shall be made available without cost to such applicant, appellant or other person aggrieved under § 15.2-2314, as soon as practicable thereafter, but in no event more than three business days of providing such materials to a member of the board. If the applicant, appellant or other person aggrieved under § 15.2-2314 requests additional documents or materials be provided by the locality other than those materials provided to the board, such request shall be made pursuant to § 2.2-3704. Any such materials furnished to a member of the board shall also be made available for public inspection pursuant to subsection F of § 2.2-3707.

C. For the purposes of this section, "non-legal staff of the governing body" means any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to § 15.2-1542. Nothing in this section shall preclude the board from having ex parte communications with any attorney or staff of any attorney where such communication is protected by the attorney-client privilege or other similar privilege or protection of confidentiality.

D. This section shall not apply to cases where an application for a special exception has been filed pursuant to subdivision 6 of § 15.2-2309.

2015, c. 597.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Appeal - AP2023-003
Koste Lake, LLC

STAFF: Bart Svoboda
PUBLIC HEARING: July 11, 2023

STAFF REPORT: AP2023-00003

APPLICANT/APPELLANT: Dominique Kostelac

Subject Parcel Number:
079C0-00-00-00100 (the "Property")

Location:
The Property is located at the southwest end of Shadwell Road (Route 709) in eastern Albemarle County (Attachment A). The Property is approximately 39 acres, is zoned Planned Residential Development (PRD) (Attachment B), and is owned by Koste Lake LLC.

Background:
The Property was rezoned from Agriculture (A-1) to Planned Residential Neighborhood/A-1 (PRN/A-1) on January 18, 1978. (Attachment C)

The PRN/A-1 district in the 1979 Zoning Ordinance listed agriculture as a permitted use. (Attachment D)

In December 1980, the Board of Supervisors amended the zoning ordinance to revise the PRN/A-1 district, re-establishing it as the Planned Residential Development (PRD) district, which removed agriculture as a use permitted either by right or by special use permit. (Attachment E)

In December 2014, the Virginia Land Company placed a perpetual open space easement (Attachment F) on the Property. On page 9 of the deed, Section 2 provides:

> *"**Uses and Activities.** In order to accomplish the purpose of the open space land act, all uses and activities on the Property shall conform to all applicable provisions of the Albemarle County Comprehensive Plan and comply with all applicable requirements of the Albemarle County Zoning Ordinance (Albemarle County code, chapter 18)."*

In July 2015, Virginia Land Trust submitted, and the County approved, a boundary line adjustment between Parcel 07900-00-00-00230 and the Property (Attachment G). The plat specifically noted the applicable zoning district (PRD), the deed of easement, and that the Property is not located in an agricultural forestal district.

On July 14, 2022, the Albemarle Conservation Easement Authority, holder of the open space easement, approved a pre-harvest plan for timbering on the Property (Attachment H).

On July 29, 2022, the Property was purchased by Koste Lake LLC (current owner) from Virginia Land Trust/Charles W. Hurt.

On February 20, 2023, the County received a complaint regarding the cutting of trees in a PRD district at the end of Shadwell Road. An investigation began, and an onsite inspection was performed. Trees that were not dead and greater than six (6) inches in diameter were being cut. Additionally, there was an accumulation of tires and parts, and structures were placed on the Property without the applicable approvals or permits.

On March 3, 2023, an Official Determination of Violation, VIO2023-00109, was sent (Attachment I).

On April 3, 2023, Mr. Kostelac filed an appeal of the Official Determination of Violation. (Attachment J)

Grounds for Zoning Administrator's Determination:
The Zoning official based the determination (Attachment I) on the observations of the Property by a Code Compliance Officer on March 3, 2023.

Summary of Relevant Zoning Regulations (Attachment K)**:**
Albemarle County Code § 18-4.3 regulates the cutting of trees. It provides that in districts other than Rural Areas (RA), cutting of trees is limited to dead trees and trees of less than six inches in diameter measured at six inches above ground; except that trees may be cleared as an incident to the preparation of land for the establishment of some other use permitted in the district, provided all applicable regulations are met. For example, cutting trees to establish a *detached single-family home* is permitted by right in the PRD zoning district. However, because *silviculture* (timber harvesting) is not permitted in the PRD zoning district, cutting trees there is prohibited.

Albemarle County Code § 18-19.3 lists the permitted uses in the Planned Residential Development (PRD) zoning district. Neither agriculture nor silviculture is a use permitted by-right or special use permit.

Albemarle County Code § 18-5.6 (Manufactured Homes on individual lots) applies to manufactured homes located outside of mobile home parks. This section requires that manufactured homes only be (i) used as primary residences and (ii) located on a foundation approved pursuant to the Uniform Statewide Building Code.

Staff's Response to Appeal:
The question before the Board of Zoning Appeals is whether the findings identified in the Zoning official's determination are correct. The appellant disputes all four (4) violations:

1. Trees that are not dead and that are greater than six (6) inches in diameter are being cut on this parcel without a site development plan to establish a use.
2. The storage of structures on this parcel is not a permitted use.
3. The accumulation of tires and car parts on this parcel constitutes a junkyard and is not a permitted use.
4. The manufactured homes stored on this parcel are not on a foundation as required by the building code and are not being used as a primary residence.

The last page of the appellant's rebuttal (Attachment J) confirms that trees are being cut and that manufactured homes (wheeled equipment) and tires and parts (needed parts) are on the Property.

The issues before the Board are not the owner's intention or what the Ordinance *should* state. The issues are whether the cutting of trees, the placement of manufactured homes or structures, and the placement of tires and parts are allowed without the applicable approvals, according to the Albemarle County Zoning Ordinance. As noted, this determination is consistent with the Zoning Ordinance and with consistent administrative practice.

The Zoning Administrator offers the following responses to the appellant's four (4) arguments:

1. **The appellant's first argument is an attempt to invoke a vested right on a use that is no longer permitted in the PRD zoning district.**

   Vested rights protect only a specific project that may have been approved under a previous zoning designation. In this case, the Property has been rezoned several times, and several zoning text amendments have occurred. All of these occurred before Koste Lake LLC took ownership of the

Property. No specific project was approved that could have been vested. By the applicant's admission, he merely relies on a previous zoning classification that no longer exists. There is no vested right for a landowner for a use that is no longer permitted under the current zoning classification.

As noted in Section 19-300 of the Albemarle County Land Use Law Handbook:
The purpose of Virginia Code § 15.2-2307(A) is to provide a landowner with protection from a subsequent amendment to a zoning ordinance when the landowner has already received approval for and made substantial efforts to undertake a use of the Property permitted under the prior version of the Ordinance. Goyonaga v. Board of Zoning Appeals for the City of Falls Church, 275 Va. 232, 657 S.E.2d 153 (2008). In other words, vested rights under Virginia Code § 15.2-2307(A) only protect a landowner's right to develop a specific project under the then-existing zoning regulations and allow the continuation of what becomes, in essence, a nonconforming use when the zoning regulations are amended. Hale v. Board of Zoning Appeals for the Town of Blacksburg, 277 Va. 250, 673 S.E.2d 170 (2009); Board of Supervisors of Culpeper County v. Greengael, LLC, 271 Va. 266, 626 S.E.2d 357 (2006).

Again, in this case, there was no prior approval of a specific project affected by an amendment to the zoning ordinance. In short, there is no prior project to be developed under the previous zoning classification.

2. The appellant's second argument claims a vested right associated with the open space easement that encumbers the use of the Property.

There is no disagreement that an open space easement limits uses on the Property and that timber harvesting is a silvicultural activity. There is also no disagreement that the Albemarle County Conservation Easement Authority approved a proposed pre-harvest timbering plan that complies with the open space easement conditions.

However, an easement cannot grant permission for a landowner to override the applicable zoning district to allow uses that are not permitted. If an easement states that conducting an agricultural or silvicultural activity is allowed under the easement agreement, this does not exempt the landowner from meeting all applicable regulations, including zoning. The PRD zoning district does not permit agriculture or silviculture. Though tree cutting may be permitted in the RA zoning district,an easement agreement cannot grant a rezoning. Under Virginia law, only the governing body (the Board of Supervisors) can rezone property or amend the zoning ordinance.

Code of Virginia § 15.2-2280. Zoning ordinances generally.
Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. *The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;*
2. *The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;*
3. *The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or*
4. *The excavation or mining of soil or other natural resources.*

3. **The appellant's third argument is that "mobile tools such as tractors, hay wagons, 2 trucks, and harvesting equipment" are the same as a manufactured building or structure and are accessory to agricultural use.**

Agriculture and silviculture are not permitted in the PRD and there can be no accessory use without a lawful primary use. Additionally, buildings or structures must meet applicable zoning and building code regulations. Merely claiming that they are not a building does not exempt them from regulation.

Photographs from March 3, 2023, onsite (for additional photos, see Attachment L):




4. **The appellant's final argument is that the Zoning Administrator was in error classifying tires and car parts as junk and that these items are required parts for the mobile agricultural devices located on the Property.**

Again, the PRD zoning does not permit agriculture or silviculture. There can be no accessory use related to agriculture because agriculture is not a permitted use.

Photographs from March 3, 2023, onsite (for additional photos, see Attachment L):




Summary of Facts:

- The Property is zoned PRD.
- Agriculture or silviculture is not permitted by right or special permit in the PRD zoning district.
- Photographic evidence and the appellant's own rebuttal confirm that the cutting of trees has taken place, and that there are structures, tires, and parts on the Property.
- An open space easement does not rezone property or add uses to a zoning district.
- The proper permit approvals have not been obtained.

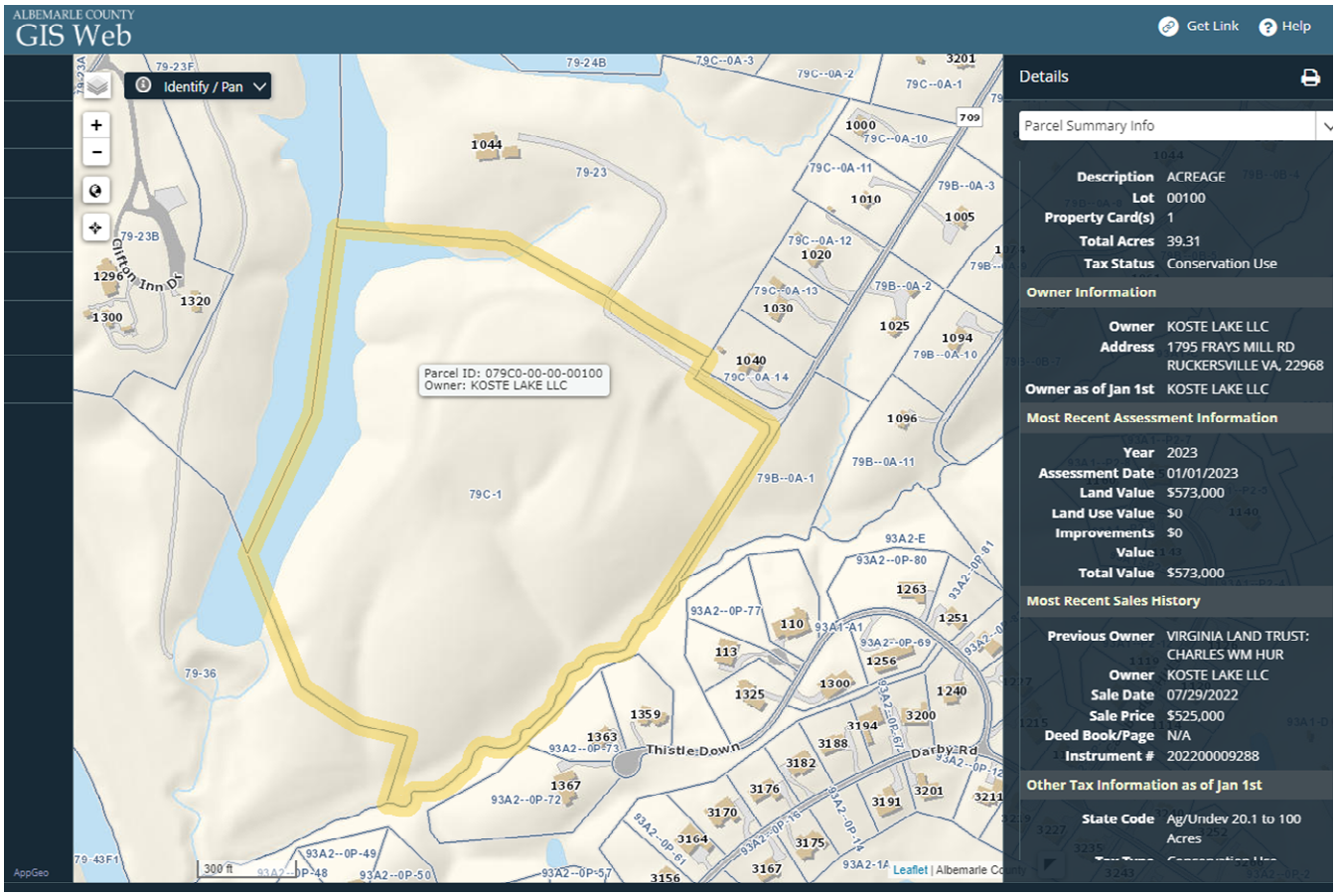
Conclusion:
Though the appellant may feel that agriculture or silviculture should be allowed on a parcel with an open space easement, the Property is not zoned for agricultural and silvicultural uses. By the appellant's admission and with photographic evidence, the cutting of trees has taken place, and there are structures, tires, and parts on the Property.The activity on this Property at the time of the Notice of Violation was not a permitted use by right in the PRD zoning district.

Because the Zoning official's determination was and is correct, the Zoning Administrator requests that the Board of Zoning Appeals affirm the determination.

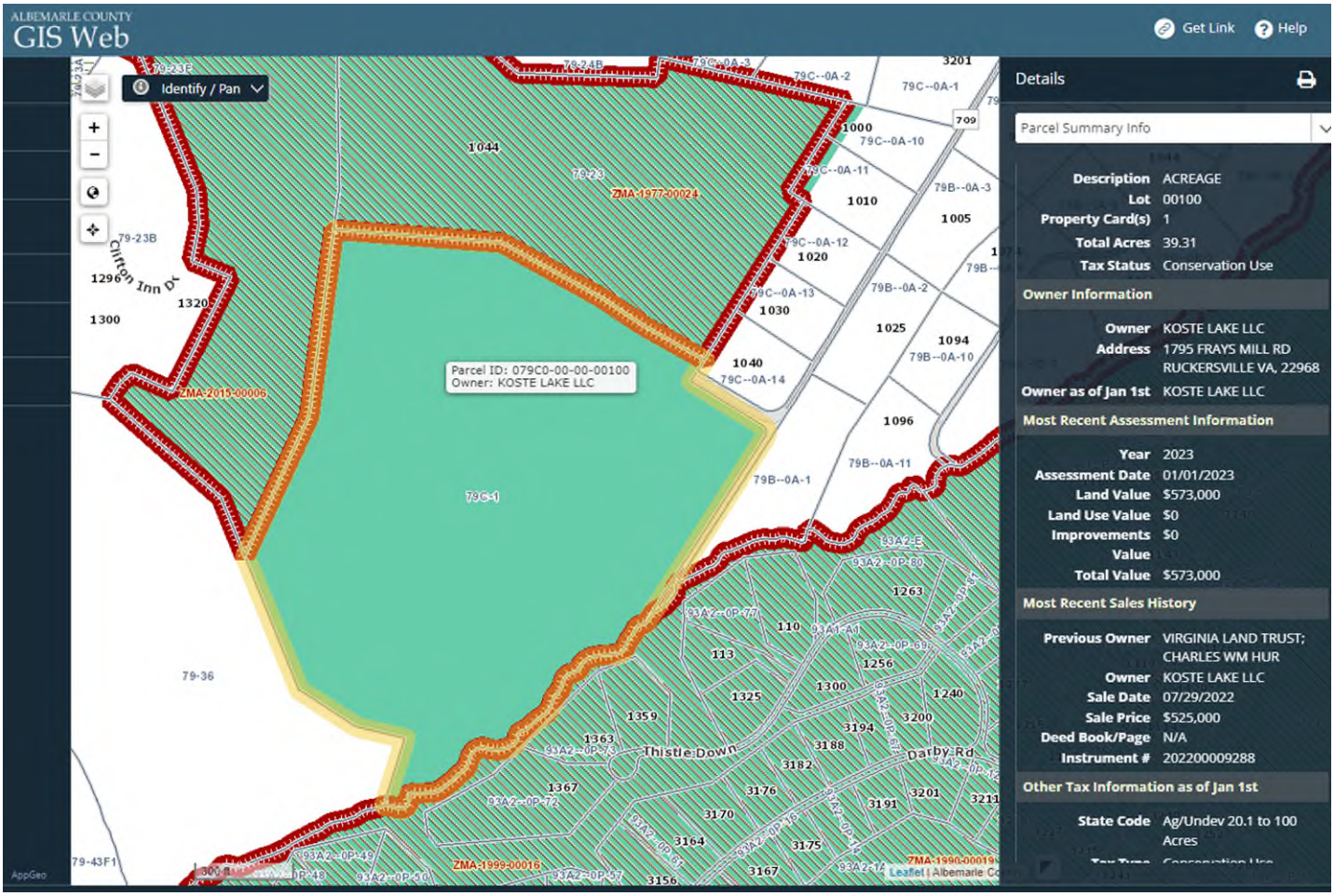
Proposed Motion:
I move that the Board of Zoning Appeals adopt the attached Decision Order (Attachment M) affirming the Zoning official's determination.

Attachments:
Attachment A: Location Map of the Property
Attachment B: Zoning Map
Attachment C: ZMA1977-024 Shadwell Estates Approval Letter
Attachment D: 1979 Zoning Ordinance
Attachment E: 1980 Zoning Ordinance
Attachment F: Open Space Deed of Easement
Attachment G: Boundary Line Adjustment Plat
Attachment H: ACEA Draft Minutes, August 11, 2022
Attachment I: Official Determination of Violation, VIO2023-109
Attachment J: Appeal of the Official Determination of Violation
Attachment K: Relevant Zoning Regulations
Attachment L: Photographs from March 3, 2023 onsite inspection
Attachment M: Draft Decision Order for AP2023-003

Location Map



Zoning Map


ALBEMARLE COUNTY
GIS Web
Get Link
Help
Identify / Pan
Details
Parcel Summary Info
Description ACREAGE
Lot 00100
Property Card(s) 1
Total Acres 39.31
Tax Status Conservation Use
Owner Information
Owner KOSTE LAKE LLC
Address 1795 FRAYS MILL RD RUCKERSVILLE VA, 22968
Owner as of Jan 1st KOSTE LAKE LLC
Most Recent Assessment Information
Year 2023
Assessment Date 01/01/2023
Land Value $573,000
Land Use Value $0
Improvements $0
Value
Total Value $573,000
Most Recent Sales History
Previous Owner VIRGINIA LAND TRUST; CHARLES WM HUR
Owner KOSTE LAKE LLC
Sale Date 07/29/2022
Sale Price $525,000
Deed Book/Page N/A
Instrument # 202200009288
Other Tax Information as of Jan 1st
State Code Ag/Undev 20.1 to 100 Acres
Parcel ID: 079C0-00-00-00100
Owner: KOSTE LAKE LLC
ZMA-1977-00024
ZMA-2015-00006
ZMA-1999-00016
Clifton Inn Dr
Thistle Down
Darby Rd
79C-1
79-36
79-23
Leaflet | Albemarle Co
AppGeo

COUNTY OF ALBEMARLE

Planning Department

804/296-5823
414 EAST MARKET STREET
CHARLOTTESVILLE, VIRGINIA 22901

ROBERT W. TUCKER, JR.
DIRECTOR OF PLANNING

RONALD E. KEELER
ASSISTANT DIRECTOR OF PLANNING

MARY JOY SCALA
SENIOR PLANNER

CARLOS M. MONTENEGRO
PLANNER

January 25, 1978

Dr. Charles W. Hurt
1290 Seminole Trail
Charlottesville, Virginia

Re: BOARD OF SUPERVISORS ACTION
Request for ZMA-77-24

Dear Dr. Hurt:

This is to advise you that the Board of Supervisors at its meeting January 18, 1978, approved your request to rezone 92 acres from A-1 to A-1/RPN (County Tax Map 79, Parcel 23, part thereof; and County Tax Map 79C, Parcel 1) subject to the following conditions:

1. Written Health Department approval;
2. Virginia Department of Highways and Transportation approval of entrance facilities;
3. Albemarle County Engineering Department approval of all internal roads and private drives with adequate turnaround space at the end of each;
4. Virginia Department of Highways and Transportation approval of internal state roads;
5. No dwelling units nor spetic fields to be built on slopes in excess of 25%;
6. No dwelling units nor septic fields to be built within 50 feet of the lake water's edge at mean level to be determined by the Virginia Department of Health;
7. The applicant will have a certified engineer test the existing dam and certify that it is safe to the satisfaction of the County Engineer;
8. A maintenance agreement for the maintenance of all common areas, recreational facilities, private drives, and the dam to be approved by the County Attorney's Office and recorded;
9. Final subdivision approval will be subject to the County Engineer's Office approval of central water systems;
10. A grading permit will be required prior to subdivision approval;
11. All lots are to have access to common open space;
12. An approved secondary drainfield location must be provided for each lot;
13. That the Virginia Department of Highways and Transportation review the intersection of Route 250 East and Route 709 in order to determine whether signs or warning lights are necessary; if it is determined that controls are warranted, they shall be installed at the developer's expense;
14. County Engineering Department approval of right-of-way widths;

15. The number of lots in the development is limited to 39, with the reduction from the number of lots shown on plan presented to the Board of Supervisors meeting of January 18, 1978, to be made along Route 729 on the west side of the lake;
16. The developer is to install a road across the dam (non-dedicated) to provide access to Route 729;
17. Setback from Route 729 shall be 100 feet from the centerline of the road.

Sincerely,

Jane Gloeckner

Jane Gloeckner
Planning Department

jg/
cc: file

ARTICLE 19, RESIDENTIAL PLANNED NEIGHBORHOOD, RPN
(Adopted December 18, 1975)

19-1 PURPOSE AND INTENT

The Residential Planned Neighborhood District is intended to encourage and provide for a variety and flexibility in land development for residential purposes, and uses ancillary thereto, that are necessary to meet those changes in technology and demand which will be consistent with the best interest of the County and the area in which it is located. It is also the intent of this district to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious physical development, creative design and a better environment.

19-2 APPLICATION OF ARTICLE

The Board of Supervisors may authorize the development of residential planned neighborhoods within the Agricultural A-1, Residential Suburban RS-1, and Limited Residential R-1, R-2, and R-3 Districts created by this Ordinance, after notice and hearing as required by Section 15.1-431 of the Code of Virginia. Such authorization shall be given only to land having a minimum acreage of ten (10) acres under common ownership or control.

19-2-2 Additional land area may subsequently be added to an approved residential planned neighborhood if it adjoins or forms a logical addition to the existing planned neighborhood. The procedure for an addition shall be the same as if an original application were filed, and all requirements of this section shall apply except the minimum acreage requirement as specified above.

19-2-3 The applicant shall file an application for rezoning with the Zoning Administrator and shall furnish with his application twelve (12) copies of a preliminary plan showing:

A. Summary of total number of dwelling units by type and area;

B. Summary of land uses by type and area;

C. Land uses to be color coded, indicating their location on the plan with the acreage and units desired;

D. Gross density and net residential densities;

E. General road alignments with proposed right-of-way widths including adjacent or internal roads;

F. Method of access from roads to proposed areas of development;

G. General alignment of sidewalks, bikes and pedestrian ways;

H. A general water layout plan indicating the size and location of lines and the location of fire hydrants;

I. A general sanitary sewer layout indicating the size and location of lines, location of pump stations and manholes;

J. A general storm sewer layout indicating the location and size of lines or culverts; and

K. A general plan showing the location of the active and passive recreation spaces, parks, schools and other public or community uses.

19-2-4 The Staff of the County shall review the application for rezoning and the preliminary plan as submitted by the applicant and evaluate the proposed project and present its recommendations for necessary utilities and other facilities to protect other uses within the area. No approval shall be given of any such rezoning and preliminary plan until the recommendations of the staff have been considered by the Planning Commission after studying the characteristics of the area in which the proposed planned neighborhood is to be located.

19-2-5 Following the recommendations of the Planning Commission and the approval of the Board of Supervisors of the rezoning and preliminary plan, the applicant shall submit a final site development plan in keeping with the approved preliminary plan in conformance with Article 17 of this Ordinance and with the Albemarle County Land Subdivision and Development Ordinance. The minimum area to be shown on any final site plan or subdivision plat shall be not less than two (2) acres of the land originally submitted on the preliminary plan. Thereafter, no modification may be made in the final plan except by an amended final plan submitted for approval.

19-2-6 Notwithstanding any provision of law to the contrary, Article 17 of this Ordinance and the Albemarle County Land Subdivision and Development Ordinance shall apply to any residential neighborhood developed pursuant to this Article.

19-3 USES PERMITTED

19-3-1 There shall be no special exceptions permitted in the RPN Districts. The following uses shall be permitted by right.

A. Dwelling units in detached, semi-detached, attached and multi-storied structures, or any combination thereof;

B. Churches (Amended 2/15/78)

C. Food stores; laundromats/dry cleaning; barber shop/beauty parlors; drug store/pharmacy; all of which are physically oriented, designed, and intended to serve primarily the residents of the RPN District, subject to 19-4-3 of this ordinance. (Amended 2/15/78)

D. Educational institutions;

E. Fire and rescue stations;

F. Public utilities: poles, lines, transformers, pipes, meters, and related or similar facilities; water, sewer, and gas distribution lines;

G. Day care centers;

H. Home occupation, Class A;

I. Community centers;

J. Parks and recreation facilities;

K. Accessory uses and buildings;

L. Life-care centers or geriatric health care facilities which may include varied types of dwelling units for the residents; housekeeping and laundry services; nursing and hospital facilities reasonably necessary to serve the residents; retail stores and shops, professional offices, restaurants, cafeterias and other food services, all of which are designed and intended primarily to serve the residents of the RPN district subject to Section 19-4-3 of this ordinance; and common areas where residents may engage in recreational, educational and cultural activities. (Adopted 10/19/77)

M. Agriculture. (Adopted 2/21/79)

19-4 DENSITY PERMITTED

19-4-1 Except as otherwise provided by law, the maximum residential density shall not exceed the following number of units per gross acre for each type of RPN District:

A. RPN-A-1: 0.5 dwelling unit per gross acre;

B. RPN-RS1: 1.0 dwelling unit per gross acre;

C. RPN-R1: 5.3 dwelling units per gross acre;

D. RPN-R2: 8.4 dwelling units per gross acre;

E. RPN-R3: 34.3 dwelling units per gross acre.

19-4-2 Nothing herein shall be construed to supersede or impair the application of any provision of the Albemarle County Land Subdivision and Development Ordinance.

19-4-3 Commercial uses, including parking shall be permitted in developments greater than fifty (50) acres and shall be limited to 1.5% of the gross area of development. It is the intent that commercial areas not be larger than required by the development.

19-4-4 For purposes of this section, the term "gross acre" shall be construed to include the entire area within the residential planned neighborhood, whether or not the same shall be developed in any particular manner.

19-5 AREA REGULATIONS

19-5-1 Not more than seventy-five (75) percent of the site shall be developed with lots, buildings, streets and off-street parking. The remainder of the site shall remain open space and shall be reserved for the benefit of the residents of the development, except as hereinafter expressly provided. In the case of any such open space which is not to be so reserved, the developer shall record appropriate instruments, satisfactory to the county attorney, effectuating the reservation as aforesaid and providing for the use, ownership and maintenance of such open space. (Amended 2-21-79)

19-5-2 The foregoing notwithstanding, the entire site may be developed with lots, buildings, streets and off-street parking; provided that at least one such lot shall be devoted solely to agriculture. Such lot shall be so designated on the approved preliminary plan and on all plats of subdivision of which such lot is a part. Such lot shall, in no event, contain less than one hundred (100) acres of contiguous land. For purposes of this section only, the term "devoted solely to agriculture" shall be deemed to include the establishment of not more than one dwelling unit which shall be included in the determination of residential density for the entire RPN. (Adopted 2-21-79)

19-6 SETBACK, YARD, AND ACCESSORY STRUCTURE REGULATION

19-6-1 There shall be no minimum setback or yard requirement within the RPN District; except that all structures to be located on the outer perimeter of such district shall conform to the setback and yard regulations of the adjoining district; and provided further that setbacks from roads, streets or highways, either existing or proposed, shall be determined by the planning commission. (Amended 3-29-78)

19-6-2 The location of all structures shall be shown on the final plans.

19-6-3 Accessory buildings to the overall development and their aggregate area shall not exceed twenty-five (25) percent of the area designated as open space.

19-7 HEIGHT REGULATIONS

19-7-1 No building shall exceed thirty-five (35) feet in height; provided, that the Board of Supervisors may permit one (1) or more buildings within any district established hereunder to exceed thirty-five (35) feet, but not more than sixty-five (65) feet, upon a finding by the Board that such additional height will be compatible with the public health, safety, and general welfare and with the character and development of the neighborhood. (Amended 9-15-76)

19-8 CORNER LOT REGULATIONS

19-8-1 The yard on the side facing the side street shall be thirty (30) feet or more from the street right-of-way for both main and accessory structures.

19-9 MINIMUM OFF-STREET PARKING REGULATIONS

19-9-1 Minimum off-street parking reguirements shall be as set forth in Article 11-7 of this Ordinance.

19-10 SIGN REGULATIONS

19-10-1 Sign regulations shall be as set forth in Article 15A of this Ordinance.

zoning ordinance

Attachment E

albemarle county, virginia



adopted december 10, 1980

2.3 CONFLICTING ORDINANCES

Whenever provisions within this ordinance conflict with any local, state or federal statute or regulation with respect to requirements or standards, the most severe or stringent requirement or standard shall prevail.

For purposes of this section, any proffer heretofore accepted by the Board of Supervisors in accordance with Section 15.1-491.1, et seq., of the code shall be continued in effect and shall be construed to be a "local regulation" until amended or varied by the Board of Supervisors in accordance with law, regardless of the repealer of any previous zoning ordinance.

2.4 INTENT OF BONUS FACTOR PROVISIONS

The provision of bonus factors is intended to encourage development which reflects the goals and objectives of the comprehensive plan. To this end, bonus factors are based on development standards as recommended by the comprehensive plan.

2.4.1 APPLICATION OF BONUS FACTORS

Bonus factors shall be applied to the gross density-standard level in accordance with the regulations of the applicable district.

Unless otherwise specifically provided, bonus factors shall not be permitted for any improvement or design feature required by this ordinance, chapter 18 of the Code of Albemarle, or any other applicable law or regulation. Where permitted, bonus factors shall be applied in toto only.

2.4.2 PROCEDURES--GENERALLY

Bonus factors may be applied at the time of subdivision or site plan approval, whichever is applicable. The applicant shall submit preliminary plats or site development plans which shall be of sufficient detail to permit preliminary determinations of probable bonus factors by the staff.

19.0 PLANNED RESIDENTIAL DEVELOPMENT: PRD

19.1 INTENT, WHERE PERMITTED

PRD districts may hereafter be established by amendments to the zoning map in accordance with the provisions set forth generally for PD districts in section 8 and section 33, and with densities and in locations in accordance with the comprehensive plan.

The PRD is intended to encourage sensitivity toward the natural characteristics of the site and toward impact on the surrounding area in land development. More specifically, the PRD is intended to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious physical development, and creative design consistent with the best interest of the county and the area in which it is located.

To these ends, the PRD provides for flexibility and variety of development for residential purposes and uses ancillary thereto. Open space may serve such varied uses as recreation, protection of areas sensitive to development, buffering between dissimilar uses, and preservation of agricultural activity.

In recognition that development at such densities generally requires careful planning with respect to impact, it is also intended that the PRD be employed in areas where the comprehensive plan recommends densities in excess of twenty (20) dwelling units per acre.

19.2 APPLICATION

Nothwithstanding the requirements and provisions of section 8.0 - planned development districts generally, where certain PC or RPN districts have been established . prior to the adoption of this ordinance such districts shall be considered to have been established as PRD districts under this ordinance and shall be so designated on the zoning map.

19.3 PERMITTED USES

19.3.1 BY RIGHT

The following uses shall be permitted subject to the requirements and limitations of this ordinance:

1. Detached single-family dwellings;
2. Semi-detached and attached single-family dwellings such as duplexes, triplexes, quadraplexes, townhouses, atrium houses, and patio houses provided that density is maintained and provided further that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall;
3. Multiple-family dwellings;
4. Churches;
5. Parks, playgrounds, community centers, and non-commercial recreational and cultural facilities such as tennis courts, swimming pools, game rooms, libraries and the like;

6. Electric, gas, oil and communication facilities, excluding multi-legged tower structures and including poles, lines, transformers, pipes, meters, and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations, and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 10 of the Code of Albemarle and all other applicable law;
7. Public uses and buildings such as schools, offices, parks, playgrounds, and roads funded, owned, or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations, and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12);
8. Temporary construction uses (reference 5.1.18);
9. Accessory uses and structures including Home Occupation: Class A (reference 5.2) and storage buildings;
10. Homes for developmentally disabled persons (reference 5.1.7).

19.3.2 BY SPECIAL USE PERMIT

The following uses shall be permitted only by special use permit; provided that no separate application shall be required for any such use as shall be included in the original PRD rezoning petition:

1. Day care, child care, or nursery facility (reference 5.1.6);
2. Fire and rescue squads (reference 5.1.9);
3. Rest home, nursing home, convalescent home, orphanage, or similar institution (reference 5.1.13);
4. Electrical power substations, transmission lines and related towers; gas or oil transmission lines, pumping stations, and appurtenances; unmanned telephone exchange centers; micro-wave and radio-wave transmission and relay towers, substations, and appurtenances (reference 5.1.12).
5. Home Occupation Class B (reference 5.2)

19.4 RESIDENTIAL DENSITIES

The gross and net residential densities permitted in any PRD district shall be shown on the approved Application Plan therefor, which shall be binding upon its approval. The overall gross density so approved shall be determined by the Board of Supervisors with reference to the Comprehensive Plan, but shall, in no event, exceed 35 dwelling units per acre. In addition, the bonus and cluster provisions of this ordinance shall be inapplicable to any PRD except as herein otherwise expressly provided.

19.5 MINIMUM AREA REQUIRED FOR ESTABLISHMENT OF DISTRICT

19.5.1 Minimum area required for the establishment of a PRD district shall be three acres.

19.5.2 Additional area may be added to an established PRD district if it adjoins and forms a logical addition to the approved development. The procedure for an addition shall be the same as if an original application were filed, and all requirements shall apply except the minimum acreage requirement of Section 19.5.1.

19.6 MINIMUM AREA REQUIREMENTS FOR OPEN SPACE AND RECREATIONAL USES

19.6.1 Not less than 25% of the area of any PRD shall be in open space, except as hereinafter expressly provided.

19.6.2 RECREATIONAL AREA REQUIREMENTS

For any development of thirty (30) dwelling units or more, exceeding four (4) dwelling units per acre in gross density, a minimum of fifty (50) square feet per dwelling unit of recreational area shall be provided on the property. Not more than twenty-five (25) percent of such area shall be provided within buildings. Unless otherwise specifically permitted due to the peculiar nature of a particular development, such area shall be developed proportionately with facilities appropriate to pre-school and elementary school aged children. The commission shall consider the appropriateness of such area for the intended usage in terms of such factors as location, shape, topographic characteristics, compatibility to adjoining uses, accessibility to residents and ease of supervision.

19.6.3 In the case of any proposed PRD having a total gross area of not less than 300 acres and a gross residential density of not more than 2 dwelling units per acre, the Board of Supervisors may waive the provision of common open space and recreation area as hereinabove required; provided that not less than 35% of the gross area of such proposed PRD shall be devoted solely to agriculture. For purposes of this section only, the term "devoted solely to agriculture" shall be deemed to include not more than one dwelling unit, which shall be included in the determination of the gross density of the PRD.

19.7 HEIGHT REGULATIONS

Unless otherwise provided at time of establishment of a PRD district, structures may be erected to a height of sixty-five (65) feet; provided, that any structure exceeding thirty-five (35) feet in height shall be setback from any street right-of-way or single-family residential or agricultural district, in addition to minimum yard requirements, a distance of not less than two (2) feet for each one (1) foot of height in excess of thirty-five (35) feet. Chimneys, flues, cooling towers, flag poles, radio or communication towers or their accessory facilities are excluded from the height limitation contained herein; the setback requirement of thirty-five (35) feet shall apply. Parapet walls are permitted up to four (4) feet above the limited height of the structure on which the walls rest; the setback requirements herein shall apply to parapet walls.

19.8 BUILDING SEPERATION

There shall be a minimum of twenty (20) feet between structures; provided that this provision shall not apply to structures built to a common wall.

19.9 SETBACK AND YARD REGULATIONS

19.9.1 Structures to be located on the outer perimeter of a PRD district shall conform to the setback and yard regulations of the adjoining district.

19.9.2 Within the PRD district, the Board of Supervisors shall establish minimum setback and yard requirements at time of establishment of such district.

19.10 MINIMUM OFF-STREET PARKING REGULATIONS

Off-street parking and loading space requirements shall be in accordance with Section 4.12, provided that the Board of Supervisors may vary or waive such requirements at time of establishment of a PRD district.

19.11 SIGN REGULATIONS

Sign regulations shall be as prescribed in Section 4.15.

Attachment F

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A

[ILS VLR Cover Sheet Agent 1.0.66]

Doc ID: 033027920023 Type: DEE
Recorded: 12/05/2014 at 10:40:47 AM
Fee Amt: $0.00 Page 1 of 23
Albemarle County, VA
Debra M. Shipp Ciruit Clerk
File# 2014-00011814
BK 4562 PG 497-519

TAX EXEMPT ☐ CORP ☐

Date of Instrument: [12/3/2014]
Instrument Type: [DE]

Number of Parcels [1]
Number of Pages [20]

City ☐ County ☒ [Albemarle County]

(Box for Deed Stamp Only)

First and Second Grantors

Last Name	First Name	Middle Name or Initial	Suffix
[HURT TR	][CHARLES	][WM	][ ]
[FISHER TR	][SHIRLEY	][L	][ ]

First and Second Grantees

Last Name	First Name	Middle Name or Initial	Suffix
☒ [ALBEMARLE COUNTY	][	][	][ ]
☐ [	][	][	][ ]

Grantee Address (Name) [ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES]
(Address 1) [401 McIntire Road]
(Address 2) [ ]
(City, State, Zip) [Charlottesville] [VA] [22902]

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) [079C0-00-00-00100 & 07900-00-00-02300]
Tax Map Num. (if different than PIN) [same]
Short Property Description [64.527 acres, more or less, Clifton Lake/Shadwell]
[ ]
Current Property Address (Address 1) [ ]
(Address 2) [ ]
(City, State, Zip) [ ][ ][ ]

Instrument Prepared by [Richard G Rasmussen III]
Recording Paid for by [McCallum & Kudravetz PC]
Return Recording to (Name) [McCallum & Kudravetz PC.]
(Address 1) [250 East High Street]
(Address 2) [ ]
(City, State, Zip) [Charlottesville] [VA] [22902]
Customer Case ID [02000.1839] [ ][ ]

Cover Sheet Page # 1 of 2

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Continuation Cover Sheet
Form B

[ILS VLR Cover Sheet Agent 1.0.66]

Date of Instrument: [12/3/2014]
Instrument Type: [DE]

Number of Parcels [1]
Number of Pages [20]

City ☐ County ☒ [Albemarle County]

(Box for Deed Stamp Only)

Grantors/Grantees/Parcel Continuation Form B

TAX EXEMPT	GRANTOR	GRANTEE	CORP	Last Name	First Name	Middle Name or Initial	Suffix
☐	☒	☐	☐	[VIRGINIA LAND TRUST]	[ ]	[ ]	[ ]
☐	☒	☐	☐	[SIMEON INVESTMENT]	[ ]	[ ]	[ ]
☐	☒	☐	☐	[KUDRAVETZ TR]	[DAVID]	[W]	[ ]
☐	☒	☐	☐	[WILLIAMS TR]	[ROGER]	[D]	[ ]
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Prior Instr. Recorded at: City ☐ County ☐ [ ] Percent. in this Juris. [ ]
Book [ ] Page [ ] Instr. No [ ]
Parcel Identification No (PIN) [ ]
Tax Map Num. (if different than PIN) [ ]
Short Property Description [ ]
[ ]
Current Property Address (Address 1) [ ]
(Address 2) [ ]
(City, State, Zip) [ ][ ][ ]

Cover Sheet Page # 2 of 2

PREPARED BY:
RICHARD G. RASMUSSEN, III
VSB# 40694
MCCALLUM & KUDRAVETZ, P.C.
250 East High Street
Charlottesville, VA 22902
(434) 293-8191

Parcel ID Numbers 079C0-00-00-00100 and 07900-00-00-02300

This deed is exempt from taxation under *Virginia Code* § 58.1-811(A)(3) and 58.1-811(C)(4) and from Clerk's fees under *Virginia Code* § 17.1-266.

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this 3rd day of December, 2014, between **CHARLES Wm. HURT** and **SHIRLEY L. FISHER, TRUSTEES** for the **VIRGINIA LAND TRUST**, pursuant to the terms of a certain Land Trust Agreement dated May 18, 1984, as amended, hereinafter referred to as the "Grantor," and the **ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY**, a political subdivision of the Commonwealth of Virginia established pursuant to *Virginia Code* § 15.2-5600 *et seq.*, hereinafter referred to as the "Grantee"; and **SIMEON INVESTMENTS, LLC**, a Virginia limited liability company ("Simeon"); and **DAVID W. KUDRAVETZ**, TRUSTEE and **ROGER D. WILLIAMS, TRUSTEE** (hereinafter the "Trustees" or "Trustee"), under the Deed of Trust dated February 15, 2011, recorded in the Clerk's Office, Circuit Court, County of Albemarle in Deed Book 4001, Page 415, and the consolidated Deed of Trust as set forth in the Modification Agreement dated December 2, 2011, recorded in the aforesaid Clerk's Office in Deed Book 4105, Page 430 (collectively referred to as the "Deeds of Trust").

WITNESSETH

WHEREAS, the Grantor is the owner in fee simple of the real property located in Albemarle County that is described below and hereinafter referred to as the "Property;"

WHEREAS, the Property contains, in the aggregate, 64.527 acres, more or less;

WHEREAS, the Grantor has voluntarily offered and agreed to have the Property be subject to the terms of this open-space easement (hereinafter, the "Easement");

WHEREAS, the Grantee is a political subdivision of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States

Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the "IRC") and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual conservation and open-space easement over the Property as herein set forth;

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), provides "that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas, and to conserve land and other natural resources" and authorizes any public body to acquire interests in real property, including easements in gross, as a means of preserving open-space land;

WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction and commercial and industrial uses contained in Section 2 ensures that the Property will remain perpetually available for forest or open-space use, all as more particularly set forth below;

WHEREAS, as required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Albemarle Comprehensive Plan adopted on March 2, 2005, and the Property is designated as rural area on the county's future land use map;

WHEREAS, this Easement is intended to constitute (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended);

WHEREAS, this Easement is intended to be a grant "exclusively for conservation purposes" under IRC Section 170(h)(1)(C) because it effects "the preservation of open space (including farmland and forest land)" under IRC Section 170(h)(4)(A)(iii); specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit;

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use which may be made of the Property, and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces and forest resources; and,

(ii) Land use policies of the County of Albemarle as delineated in its Comprehensive Plan, specifically the Rural Areas Plan adopted on March 2, 2005, and the Natural Resources & Cultural Assets section adopted on March 3, 1999, as follows:

a. The Rural Areas Plan of the Albemarle County Comprehensive Plan adopted on March 2, 2005, states in its Introduction that: "Agricultural and forestal resources have been identified as the most critical County resources and the desired primary land use in the Rural Areas. Such uses play an important and long-standing role in the environment, heritage, and economy of the County. Loss of these resources to development is irreversible and irreplaceable. Stewardship of these resources also provides an opportunity to conserve and efficiently use other resources such as: (1) water resources (with use of property conservation techniques); (2) natural, scenic, and historic resources with the maintenance of pasture land, farmland, and forested areas; and (3) fiscal resources by limiting development and lessening the need to provide public services to wide areas of the County.";

b. This Rural Areas Plan in its section titled "Guiding Principles For The Rural Areas" states the following "defining principles":

"i) Agriculture - Protect Albemarle County's agricultural lands as a resource base for its agricultural industries and for

related benefits they contribute towards the County's rural character, scenic quality, natural environment, and fiscal health.

ii) Forestry resources - Protect Albemarle County's forests as a resource base for its forestry industries and watershed protection.

iii) Land Preservation - Permanently preserve and protect Albemarle County's rural land as an essential and finite resource through public ownership or through conservation easements.

iv) Land Conservation - Protect Albemarle County's rural land through planned management of open spaces to prevent exploitation, destruction, or neglect.

v) Water supply resources - Protect the quality and supply of surface water and groundwater resources.

vi) Natural resources - Preserve and manage the Rural Areas' natural resources in order to protect the environment and conserve resources for future use.

vii) Scenic resources - Preserve the County's rural scenic resources as being essential to the County's character, economic vitality, and quality of life.

viii) Historical, archeological and cultural resources - Protect the Rural Areas' historic, archeological and cultural resources.";

c. This Rural Areas Plan states among its goals the following: "Protect Albemarle County's rural land through planned management to prevent exploitation, destruction, or neglect, and permanently preserve rural land as an essential and finite resource."; "Protect critical natural resources identified in the Comprehensive Plan from the impacts of residential development."; and "Reduce the level and rate of residential development in the Rural Areas, and minimize the impacts of permitted development.";

d. The conveyance of this Easement on the Property will further these principles and goals of the Albemarle County Comprehensive Plan and that Plan's strategies to: (i) "Encourage the protection of prime agricultural soils and working farms from non-agricultural development through ... conservation easements, ...", (ii) "Encourage protection of prime

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forestal soils from non-forestal development through ... conservation easements, ..." and (iii) "Continue to actively promote conservation easements.";

WHEREAS, the Property possesses natural, scenic, and open space characteristics of great importance to the Grantor, the people of Albemarle County, Virginia, and the people of the Commonwealth of Virginia, and these characteristics are described in greater detail herein;

WHEREAS, the Property is composed of two parcels of record, combined containing a total of 64.527 acres, more or less, and, was approved by the Albemarle County Board of Supervisors on January 18, 1978 in response to a re-zoning request (ZMA-77-24) for a maximum of 30 lots; and, at the time of granting this Easement, the Property contains zero (0) dwelling units and zero (0) improvements;

WHEREAS, the Property possesses the significant conservation values of protecting the natural or open-space values of the Property, including but not limited to those for the scenic enjoyment of the general public; protecting natural resources, including but not limited to water resources and environmentally sensitive lands; and maintaining or enhancing air or water quality, including those to conserve and protect biodiversity and wildlife and aquatic habitat;

WHEREAS, there is development pressure in the Rural Areas (RA) of Albemarle County, as evidenced by the abundance of small lot developments surrounding the Property. As a result, this Property is susceptible to development because development can be accomplished as a matter of right;

WHEREAS, the Property is within the Chesapeake Bay watershed, and contributes in its undeveloped state to the water quality of the Chesapeake Bay and its watershed and contributes to the federal strategy defined in Executive Order 13508 (5/12/09) to protect the Chesapeake Bay watershed; and

WHEREAS, in the Chesapeake 2000 Agreement, the Governor of the Commonwealth of Virginia and the Administrator of the United States Environmental Protection Agency acknowledged "that future development will be sustainable only if we protect our natural and rural resource land, limit impervious surfaces and concentrate new growth in existing population centers" and a goal of the Chesapeake 2000 Agreement is to "expand the use of voluntary and market-based mechanisms such as easements...to protect and preserve natural resource lands"; and,

WHEREAS, the entire property has soils rated highly for pine production and the flatter, higher portions of the property have soils rated Prime or Locally Important for agriculture in the Albemarle County Comprehensive Plan;

WHEREAS, the protection of the Property by this Easement will yield significant public benefits because of: the public's ability to enjoy the scenic values of the Property; and the prevention of natural-resource degradation, including forest-cover loss, that would be caused by residential development of the Property;

WHEREAS, the Grantor desires to establish an open space easement on the Property for the purpose of preserving such lands as open space in perpetuity in order to protect the values described herein; and

WHEREAS, this conveyance is with the full consent of the Grantor and is therefore deemed to be voluntary.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants, conveys, covenants and agrees as follows:

1. **GRANT AND CONVEYANCE OF EASEMENT; IN PERPETUITY.** The Grantor hereby grants and conveys to the Grantee and its successors and assigns, with SPECIAL WARRANTY OF TITLE, an open space easement (the "Easement") in gross over the Property described below, restricting in perpetuity the use of the Property in the manner set forth herein:

PARCEL ONE (TMP 079C0-00-00-00100):

All that certain tract or parcel of land situated in the County of Albemarle, Virginia, adjoining Shadwell Estates Subdivision, containing 29.417 acres, more or less, shown as Parcel 1 on Albemarle County Tax Map Sheet 79C.

PARCEL TWO (TMP 07900-00-00-02300):

All that certain tract or parcel of land situated in the County of Albemarle, Virginia, east of but not adjoining 729, containing 35.11 acres, more or less, shown as parcel 23 on Albemarle County Tax Map Sheet 79.

Parcel One and Parcel Two being a portion of property conveyed by Charles Wm. Hurt to the Charles Wm. Hurt and Shirley L. Fisher, as Trustees for the Virginia Land Trust, pursuant to the terms and conditions of a certain land trust agreement dated May 18, 1984, as amended by deed dated May 18, 1984, recorded in the

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Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book 799, Page 433.

2. USES AND ACTIVITIES. In order to accomplish the purposes of the Open-Space Land Act, all uses and activities on the Property shall conform to all applicable provisions of the Albemarle County Comprehensive Plan and comply with the applicable requirements of the Albemarle County Zoning Ordinance (*Albemarle County Code*, Chapter 18). The Grantor covenants and agrees that no acts or uses shall be permitted on the Property which are: (i) inconsistent with the conservation purposes of this Easement as provided in Treasury Regulation Section 1.170A-14(g)(1); or (ii) consistent with the conservation purposes, but are destructive of other significant conservation interests as provided in Treasury Regulation Section 1.170A-14(e)(2) unless such acts or uses are necessary for the protection of the conservation purposes as provided in Treasury Regulation Section 1.170A-14(e)(3). The acts and uses that the Grantor covenants and agrees to do and not to do upon the Property, and the terms and conditions that the Grantee is hereby entitled to enforce, are and shall be as follows:

A. Division of the Property and boundary line adjustments. The Property may not be divided and its boundary lines may be adjusted only as provided herein:

1. Division. The Property is currently composed of two (2) tax parcels. For all purposes of this Easement, the Property shall be considered to be one (1) parcel. The Property may be divided or subdivided into a maximum of two separate parcels, and it may be sold or conveyed as one (1) whole or two (2) separate parcels. If the Property is divided or subdivided, then it is permissible to recombine the Property into one parcel.

2. Boundary line adjustments. The exterior boundary lines of the Property shall not be adjusted unless the abutting parcel sharing the same boundary line is subject to a substantially equivalent conservation easement and the adjustment is approved in writing by the Grantee. Boundary line adjustments within the Property shall be approved if the adjustment is consistent with the Easement.

B. Construction, installation, location, placement of structures and improvements. There shall be no construction, placement or maintenance of any structure or improvements on the Property unless the structure or improvements are either on the Property as of the date of this Easement or are authorized as follows:

1. Location of structures. There are currently no dwellings located on the Property. No new dwelling, building or other structure (other than fences) shall be located within the buffer area as shown on the map attached hereto as "**Attachment A**" and made a part hereof.

2. Types of structures. No permanent or temporary building or structure shall be built or maintained on the Property other than:

(a) Two single-family dwellings, provided that such dwellings shall not individually exceed 5,000 square feet of above-ground enclosed living area without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height and siting of the proposed dwelling(s) on the scenic and other conservation values of the Property; and if the Property is divided into two parcels, then each parcel shall only have one single-family dwelling subject to the terms and conditions of this Paragraph;

(b) accessory non-residential structures for the Property that are customarily incidental and subordinate to a single-family residential use, that are located within three hundred feet (300') of the dwelling unit to which they are accessory, and that are neither designed, equipped nor furnished for sleeping or cooking, such as outbuildings, swimming pools, decking detached from the single-family dwelling units, gazebos, garages, and tool sheds; and,

(c) farm buildings or structures, which shall not exceed a structural footprint of one thousand five hundred (1,500) square feet unless prior written permission for a greater footprint is obtained from the Grantee.

3. Repair, Reconstruction, or Replacement of Structures. Any structure permitted hereunder may be repaired, reconstructed, or replaced in a manner that is consistent with the Easement if it is damaged, destroyed or demolished; provided that the repair, reconstruction or replacement of the structure is permitted by and complies with all applicable regulations.

4. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Easement: (a) driveways and other improvements and facilities customary and related to the use of a single parcel; and (b) improvements and facilities related to a land division including, but not limited to, public streets or private roads, and drainage and other utility facilities required by the County.

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5. Alternative energy structures. Alternative energy structures scaled to provide electrical energy or pump water for permitted structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment, including, but not limited to, solar panels, wind turbines, and micro-hydro installations.

6. Small-scale miscellaneous buildings or structures. Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, boardwalks, or structures for crossing of streams or wetlands.

7. Critical slopes. No structure or improvement nor earth disturbing activity to establish such structure or improvement shall be located on slopes of twenty-five (25) percent or greater except as otherwise permitted herein.

C. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. No industrial or commercial uses shall be conducted on the Property; provided, however, that the following uses are not deemed to be commercial or industrial uses for purposes of this Easement and are expressly permitted:

1. *De minimis* commercial recreational uses.

2. Agricultural uses including, but not limited to, establishing, re-establishing, maintaining or using cultivated fields, vineyards, orchards or pastures [including clearing woodland areas for conversion to such agricultural use(s)] in accordance with generally accepted agricultural practices, including horticultural specialties; livestock, including all domestic and domesticated animals; aquaculture; and livestock products. The processing of agricultural products is not an agricultural use, except as an accessory use. Clearing for agriculture is not permitted in the buffer area, as described in Paragraph (2)(I) below.

3. Forestal uses consisting of reforestation, site preparation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a forestal use, except as an accessory use. All forestal uses shall be in accordance with Section 2.F. below. Also, all forestal uses shall not be permitted within the buffer area, as described in Paragraph (2)(I) below

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4. Temporary or seasonal activities that do not permanently alter the physical appearance of the Property and are otherwise consistent with this Easement including, but not limited to, the sale of agricultural products grown or raised on the Property, and the granting of licenses to enter and use the Property for hunting or fishing.

5. Activities that can be and in fact are conducted within permitted buildings, without material alteration to the external appearance thereof.

6. Uses subordinate and customarily incidental to a primary use of the Property that are not expressly prohibited by and are otherwise consistent with this Easement.

7. Uses or activities not expressly excepted herein, but which are determined by the Grantee in writing not to be a commercial or industrial use, to be consistent with all other terms and conditions of this Easement, and to not interfere with the essential resources of the Property to be protected by this Easement. In making these determinations, the Grantee may consider, among other things, whether the scope of a use or activity excepted herein has evolved over time as a result of changes in the law or customary practices.

D. Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Property, except to: (1) state solely the name of the Grantor, the name of the farm, and/or the address of the Property; (2) advertise the sale or lease of the Property; (3) advertise the sale of goods or services produced as permitted by this easement; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed nine (9) square feet.

E. Grading, blasting, earth removal and mining. Grading, blasting, earth removal, and mining on the Property are prohibited; provided that minor grading with appropriate post-harvest replanting shall be allowed for (a) providing access for forest health management, subject to the pre-harvest plan described in Section 2.F.1. below; (b) construction of permitted structures; and/or (c) construction and maintenance of equestrian and foot trails on the Property.

F. Management of Forest.

1. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest (other than those in the following paragraph) activity is undertaken. All material timber harvest activities on the Property shall be guided by a Forest Stewardship Management Plan. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to

Grantee for approval no earlier than one year nor later than 30 days before beginning any material timber harvest, which approval shall be limited to determination of whether or not the pre-harvest plan is in compliance with the Forest Stewardship Management Plan and is consistent with the purposes and restrictions of this Easement.

2. Neither a Forest Stewardship Management Plan nor a pre-harvest plan shall be required for the following permitted non-commercial activities: (i) cutting of trees for the construction of permitted utilities or structures, (ii) cutting of trees for trail clearing, (iii) cutting of trees for firewood, or for other domestic uses of Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or property, or (v) removal of invasive species.

G. Use of best management practices for all construction and agricultural activities. The applicable Best Management Practices, as established by a responsible state agency, shall be undertaken in all construction and agricultural activities to control erosion and protect water quality.

H. Accumulation of waste material. There shall be no accumulation or dumping of trash, refuse or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost or manure piles, or the routine and customary short-term accumulation of household trash.

I. Riparian/Pond Buffers. A two-hundred (200) foot wide permanently wooded buffer shall be maintained along the sides of the pond and stream, as shown on the map attached hereto as "**Attachment A**". The buffers shall be measured from the top of the stream or pond bank and shall include both sides of the waterway where a wooded buffer exists at the time this Easement was granted. In order to maintain the ecological values of the buffers, indigenous vegetation shall be preserved, or be allowed to evolve by natural succession where it does not exist to the maximum extent possible. The target vegetative cover within the riparian forest buffers shall be indigenous herbaceous, shrub and tree canopy layers. Within the buffers, the Grantor may remove or control, as appropriate: (1) vegetation to control insect and disease infestations and to prevent personal injury to property damage; (2) dead, diseased and dying trees or other vegetation; (3) vegetation that is determined to be an "invasive species", as such species shall be determined by reference to the appropriate federal or state agency list available at the

time of removal or control; (4) fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, where stream bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem. Prior to removing any indigenous vegetation, the Grantor shall confer with the Grantee to agree on the extent and method of vegetation removal. The grantee may require mitigation of the removal of indigenous vegetation not authorized by this section with the planting of comparable indigenous vegetation. The Grantor shall not plant any non-indigenous species of ground covers, shrubs or trees. Any new trails must be constructed so as to minimize erosion. Trails existing at the time of the granting of this Easement may remain, provided that they are maintained so as to minimize erosion. The purpose of this paragraph is not to require the establishment or creation of new wooded buffers where they do not currently exist but rather to maintain wooded buffers that already exist at the time this Easement is recorded.

3. MISCELLANEOUS PROVISIONS

A. No public right of access to Property. This Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as the Grantor may otherwise allow.

B. Easement applies to the whole Property and runs with the land. This Easement shall apply to the Property as a whole rather than to individual parcels, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

C. Enforcement. The parties shall have the following rights and obligations regarding the monitoring of the Property and the enforcement of this Easement:

1. Monitoring. Representatives of the Grantee may enter the Property from time to time for the purpose of inspection and enforcement of the terms of this Easement after permission from or reasonable notice to the Grantor or the Grantor's representative.

2. Restoration. Upon any breach of any term of this Easement by the Grantor, the Grantee may require by written demand to the Grantor that the Property be restored promptly to its condition at the time the Easement was granted.

3. Baseline report. A copy of the Baseline Report is retained in the offices of the Grantee that describes the condition and character of the Property at the time this Easement

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was granted. This documentation may be used to determine compliance with and enforcement of the terms of this Easement. However, neither the Grantor nor the Grantee is precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the Baseline Documentation Report contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation 1.170A-14(g)(5)(i).

4. Legal proceedings. The Grantee may enforce the terms of this Easement by appropriate legal proceedings, including but not limited to, the right to require the restoration of the Property to its condition at the time this Easement was granted. In addition, it is conclusively presumed that an action at law seeking a monetary remedy is an inadequate remedy for any breach or violation, or any attempted breach or violation, of any term of this Easement.

5. Failure to enforce does not waive right to enforce. The failure of the Grantee to enforce any term of this Easement shall not be deemed a waiver of the right to do so thereafter, nor discharge nor relieve the Grantor from thereafter complying with any such term.

6. No third party right of enforcement. Nothing in this Easement shall create any right in the public or any third party to maintain any suit or action against any party hereto.

D. No buy-back option. The Grantor shall not have the option to reacquire any property rights relinquished by this Easement.

E. Notice of proposed transfer or sale. The Grantor shall notify the Grantee in writing at the time of closing on any transfer or sale of the Property. In any deed conveying all or any part of the Property, this Easement shall be referenced by deed book and page number in the deed of conveyance and shall state that this Easement is binding upon all successors in interest in the Property in perpetuity.

F. Relation to applicable laws. This Easement does not replace, abrogate or otherwise supersede any federal, state or local laws applicable to the Property.

G. Reference to existing laws. All references to existing laws shall include such laws as they may be hereafter amended or recodified, whether they are referenced herein or not.

H. Severability. If any provision of this Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Easement shall not be affected thereby.

I. Recordation. Upon execution by the parties, this Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Albemarle County, Virginia.

J. Authority to convey easement. The Grantor covenants that it is vested with good title to the Property and may convey this Easement.

K. Authority to accept easement. The Grantee is authorized to accept this Easement pursuant to *Virginia Code* § 10.1-1701.

L. Transfer of easement by grantee. Neither the Grantee nor its successors and assigns may convey or lease this Easement, whether or not for consideration, unless the conveyance or lease is conditioned as follows: (1) the conveyance or lease instrument requires that the conservation purposes that the Easement was originally intended to advance will continue to be carried out, 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 26 C.F.R. § 1.170A-14(c)(1)).

M. 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* § 10.1-1700 *et seq.* Restrictions set forth in the Easement may be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of *Virginia Code* § 10.1-1704. 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 values applicable for purposes of the calculations required by this paragraph shall be the values finally determined for purposes of any federal income tax deduction allowed with respect to the conveyance of this Easement. 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* § 10.1-1704.

N. No warranty by grantee as to qualification for charitable gift. The Grantor and the Grantee 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 Internal Revenue Service regulations (see 26 C.F.R. § 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Grantee makes no express or implied warranties regarding whether any tax benefits will be available to the Grantor from this Easement, whether any such tax benefits might be transferable, or whether there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

O. Counterparts. This Deed of Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Deed of Easement. Execution of this Deed of Easement at different times and in different places by the parties hereto shall not affect the validity of the Deed of Easement.

P. Construction. This Easement shall be construed to promote the purposes of this Easement and the Open Space Land Act.

Q. Consent of trustee and beneficiary to subordinate lien. By the Deeds of Trust, the Grantor conveyed the entire Property (and one other area of land) to David W. Kudravetz and Roger D. Williams, Trustees, to secure an outstanding obligation owed to Simeon, Beneficiary. Pursuant to the authorization of the Beneficiary, as evidenced by its signature hereto, the Trustees join in this deed to subordinate the liens of the Deeds of Trust to the easement conveyed hereby.

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WITNESS the following signatures and seals.

_____(SEAL)
Charles Wm. Hurt, as Trustee for Virginia Land Trust

COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of December, 2014, by Charles Wm. Hurt, as Trustee for Virginia Land Trust.

Gail B Watkins
Notary Public

My Commission Expires: May 31, 2017
Notary Registration No. 101082

GAIL B. WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2017

_____(SEAL)
Shirley L. Fisher, as Trustee for Virginia Land Trust

COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of December, 2014, by Shirley L. Fisher, as Trustee for Virginia Land Trust.

Gail B Watkins
Notary Public

My Commission Expires: May 31, 2017
Notary Registration No. 101082

GAIL B. WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2017

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SIMEON INVESTMENTS, LLC, Beneficiary

By: _____ (SEAL)
Charles Wm. Hurt, Manager

COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 3rd day of December, 2014, by Charles Wm. Hurt, as Manager for Simeon Investments, LLC, a Virginia limited liability company.

Gail B Watkins
Notary Public

My Commission Expires: May 31, 2017
Notary Registration No. 101082

GAIL B. WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2017

(SEAL)
David W. Kudravetz,
Trustee under Deeds of Trust

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me this 4th day of December, 2014, by David W. Kudravetz, Trustee under the Deeds of Trust.

Notary Public

My Commission Expires: July 31, 2018
Notary Registration No. 101844

TRUDY A. HEROLD NOTARY PUBLIC REG # 101844 MY COMMISSION EXPIRES 7/31/2018 COMMONWEALTH OF VIRGINIA

(SEAL)
Roger D. Williams,
Trustee under Deeds of Trust

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE, to-wit:

The foregoing instrument was acknowledged before me this 4th day of December, 2014, by Roger D. Williams, Trustee under the Deeds of Trust.

Notary Public

My Commission Expires: July 31, 2018
Notary Registration No. 101844

TRUDY A. HEROLD NOTARY PUBLIC REG # 101844 MY COMMISSION EXPIRES 7/31/2018 COMMONWEALTH OF VIRGINIA

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ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY

By: _____

Chairman

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Virginia :

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this 4th day of December, 2014, by Hamilton Moses, III, Chairman, on behalf of the Albemarle County Public Recreational Facilities Authority, Grantee.

_____
Notary Public

My Commission Expires: 3-31-18
Notary Registration No. 7031103

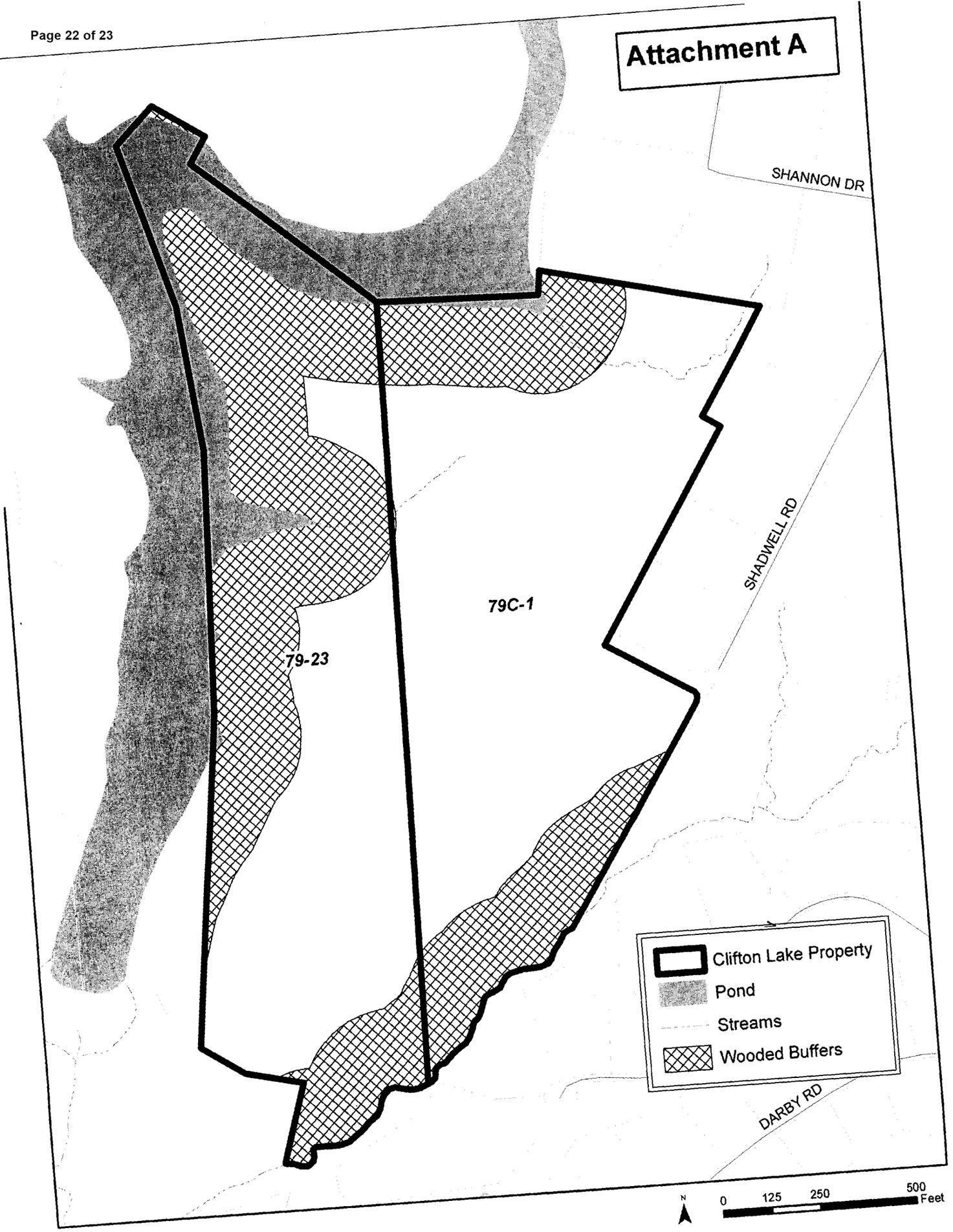
LISA McCALL BUSCH NOTARY PUBLIC MY COMMISSION NUMBER 7031103 COMMONWEALTH OF VIRGINIA

Approved as to form:

By: _____
County Attorney

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Attachment A



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RECORDED IN CLERK'S OFFICE OF
ALBEMARLE ON
DECEMBER 5, 2014 at 10:40:47 AM
AS REQUIRED BY VA CODE §58.1-802
STATE: $0.00 LOCAL: $0.00
ALBEMARLE COUNTY, VA
DEBRA M. SHIPP, CIRUIT CLERK

Attachment G

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND, REVISED T.M.79-23 & REVISED T.M.79C-1, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER(S), PROPRIETORS, AND/OR TRUSTEES, IF ANY.

Charles W Hurt

FOR: VIRGINIA LAND TRUST

GAIL B. WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2017

~~CITY~~/COUNTY OF Albemarle
STATE OF Virginia.
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 29th DAY OF June 2015. BY Charles W Hurt
FOR: VIRGINIA LAND TRUST

NOTARY PUBLIC Gail B Watkins #101082

MY COMMISSION EXPIRES : May 31, 2017 NOTARY SEAL

APPROVED FOR RECORDATION :

Gail B Watkins (agent) 7/7/15

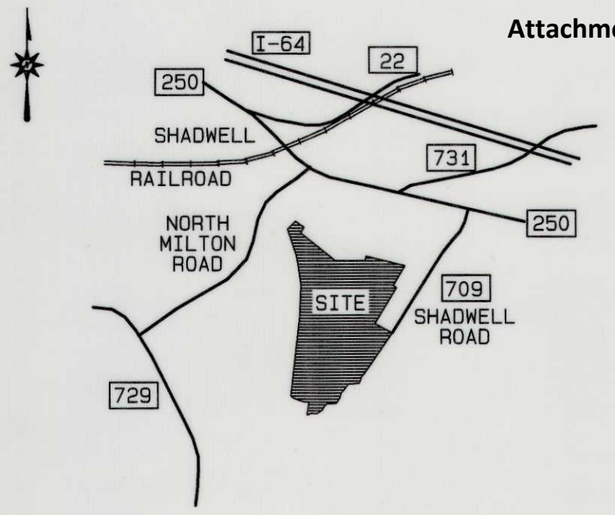
AGENT FOR THE BOARD OF SUPERVISORS DATE

COMMONWEALTH OF VIRGINIA
Brian S. Ray
BRIAN S. RAY
Lic. No. 002281
6-25-15
LAND SURVEYOR

NOTES:

1. OWNERS & ADDRESS: VIRGINIA LAND TRUST
   P.O.BOX 8147, CHARLOTTESVILLE, VA 22906
2. LEGAL REFERENCES:
   T.M.79-23
   D.B.799-433, D.B.4018-674, 675 PLAT, D.B.1128-536, 537 PLAT, D.B.809-354 PLAT, D.B.460-128 DESC., D.B.458-22 DESC., D.B.456-50 PLAT, D.B.453-16 PLAT, D.B.356-465 PLAT & D.B.329-133 PLAT.

   T.M.79C-1
   D.B.1018-169 PLAT, D.B.799-433, D.B.397-141 PLAT, D.B.376-375, D.B.339-458 PLAT & D.B.338-520 PLAT.
3. THE BOUNDARY DATA SHOWN HEREON IS BASED ON A CURRENT FIELD SURVEY.
4. T.M.79-23 AND T.M.79C-1 ARE SUBJECT TO THE FOLLOWING:
   A. A DEED OF EASEMENT TO ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY (D.B.4562-497).
   B. ACCESS TO TWO AREAS OF THE LAKE AS DEFINED IN D.B.477-501.
   C. A LAKE & DAM AGREEMENT AS DEFINED IN D.B.469-109 & D.B.460-103.
5. T.M.79-23 AND T.M.79C-1 ARE SUBJECT TO THE FOLLOWING INSOFAR AS THEY MAY APPLY:
   A. A DEED FOR FUTURE ACCESS TO LAKE AS DEFINED IN D.B.477-501.
   B. WATER RIGHTS AS DEFINED IN D.B.460-131.
6. ALL EASEMENTS KNOWN BY ME ARE SHOWN OR NOTED HEREON THIS PROPERTY IS SUBJECT TO ANY ADDITIONAL CONDITIONS, UTILITIES, EASEMENTS AND/OR COVENANTS THAT MAY EXIST.
7. ACREAGES BEFORE THIS BOUNDARY LINE ADJUSTMENT PLAT:
   T.M.79-23 =34.86 ACRES (AS PER TAXATION RECORDS)
   T.M.79C-1 =29.42 ACRES (AS PER TAXATION RECORDS).
8. DENOTES APPROXIMATE LOCATION OF AREAS WITHIN ZONE A AND SHADED ZONE X FLOOD PLAIN, ACCORDING TO THE FEMA FLOOD INSURANCE RATE MAP, DATED FEBRUARY 4, 2005, (COMMUNITY PANEL 510006 0295D).
9. DENOTES 200'WOODED BUFFER D.B.4562-497, 519 MAP

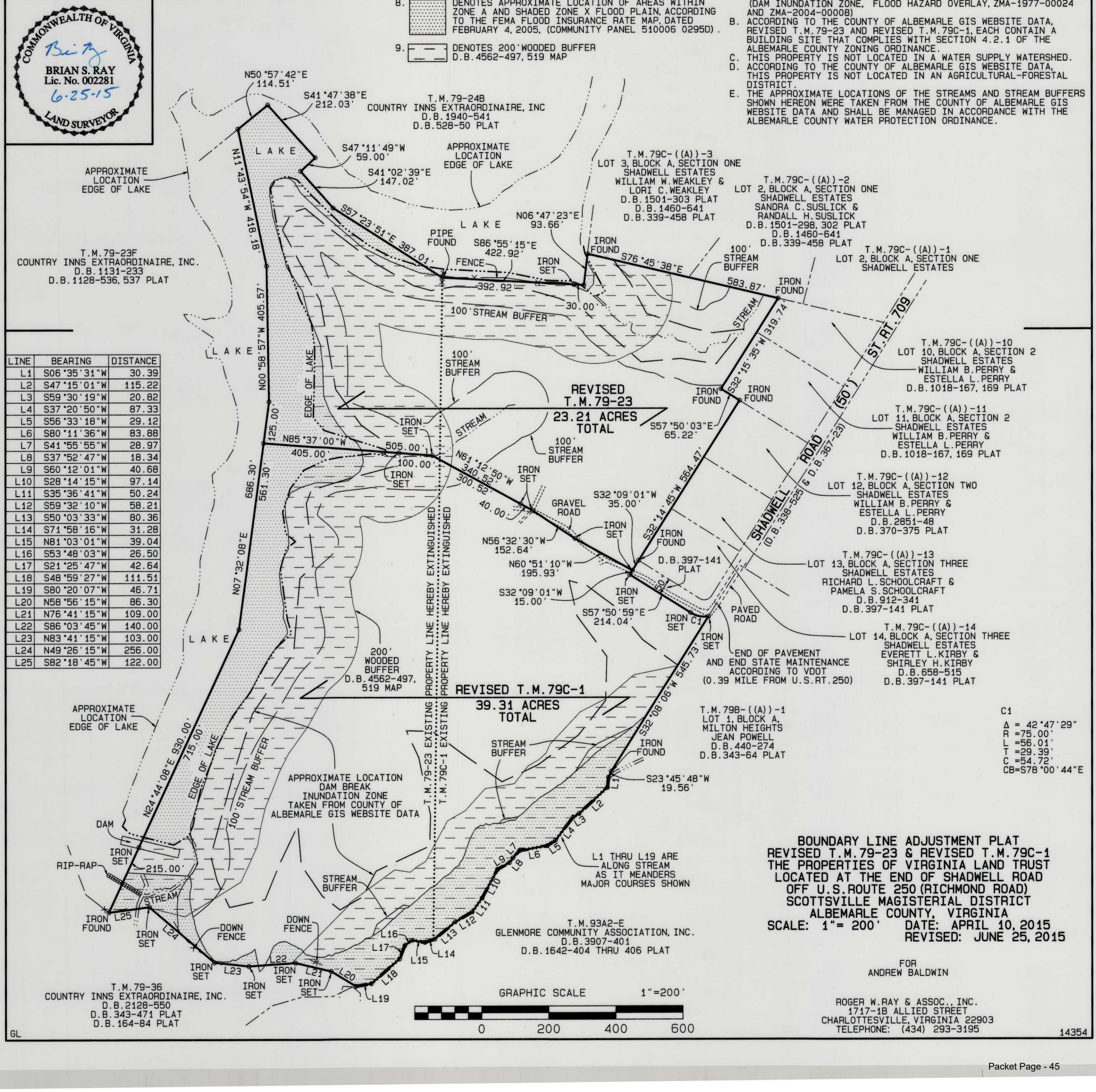


VICINITY MAP - SCALE: 1" = 2000'+/-

THE LAND USE NOTES SHOWN ON THIS PLAT ARE IMPOSED AT THE REQUEST OF THE DIRECTOR OF PLANNING. BY PLACING HIS/HER SIGNATURE ON THIS PLAT HE/SHE HAS DEEMED THAT THEY ARE CORRECT AND IN ACCORDANCE WITH THE ALBEMARLE COUNTY ZONING ORDINANCE IN EFFECT THIS DATE. THESE NOTES ARE NOT RESTRICTIVE COVENANTS RUNNING WITH THE LAND AND THEIR APPEARANCE ON THIS PLAT IS NOT INTENDED TO IMPOSE THEM AS SUCH. ANY REFERENCE TO FUTURE DEVELOPMENT RIGHTS SHOWN HEREON IS THEORETICAL ONLY.

A. PROPERTIES ARE ZONED PLANNED RESIDENTIAL DEVELOPMENT (DAM INUNDATION ZONE, FLOOD HAZARD OVERLAY, ZMA-1977-00024 AND ZMA-2004-00008)
B. ACCORDING TO THE COUNTY OF ALBEMARLE GIS WEBSITE DATA, REVISED T.M.79-23 AND REVISED T.M.79C-1, EACH CONTAIN A BUILDING SITE THAT COMPLIES WITH SECTION 4.2.1 OF THE ALBEMARLE COUNTY ZONING ORDINANCE.
C. THIS PROPERTY IS NOT LOCATED IN A WATER SUPPLY WATERSHED.
D. ACCORDING TO THE COUNTY OF ALBEMARLE GIS WEBSITE DATA, THIS PROPERTY IS NOT LOCATED IN AN AGRICULTURAL-FORESTAL DISTRICT.
E. THE APPROXIMATE LOCATIONS OF THE STREAMS AND STREAM BUFFERS SHOWN HEREON WERE TAKEN FROM THE COUNTY OF ALBEMARLE GIS WEBSITE DATA AND SHALL BE MANAGED IN ACCORDANCE WITH THE ALBEMARLE COUNTY WATER PROTECTION ORDINANCE.

LINE	BEARING	DISTANCE
L1	S06°35'31"W	30.39
L2	S47°15'01"W	115.22
L3	S59°30'19"W	20.82
L4	S37°20'50"W	87.33
L5	S56°33'18"W	29.12
L6	S80°11'36"W	83.88
L7	S41°55'55"W	28.97
L8	S37°52'47"W	18.34
L9	S60°12'01"W	40.68
L10	S28°14'15"W	97.14
L11	S35°36'41"W	50.24
L12	S59°32'10"W	58.21
L13	S50°03'33"W	80.36
L14	S71°58'16"W	31.28
L15	N81°03'01"W	39.04
L16	S53°48'03"W	26.50
L17	S21°25'47"W	42.64
L18	S48°59'27"W	111.51
L19	S80°20'07"W	46.71
L20	N58°56'15"W	86.30
L21	N76°41'15"W	109.00
L22	S86°03'45"W	140.00
L23	N83°41'15"W	103.00
L24	N49°26'15"W	256.00
L25	S82°18'45"W	122.00



BOUNDARY LINE ADJUSTMENT PLAT
REVISED T.M.79-23 & REVISED T.M.79C-1
THE PROPERTIES OF VIRGINIA LAND TRUST
LOCATED AT THE END OF SHADWELL ROAD
OFF U.S.ROUTE 250 (RICHMOND ROAD)
SCOTTSVILLE MAGISTERIAL DISTRICT
ALBEMARLE COUNTY, VIRGINIA
SCALE: 1"= 200' DATE: APRIL 10, 2015
REVISED: JUNE 25, 2015

FOR
ANDREW BALDWIN

ROGER W.RAY & ASSOC., INC.
1717-1B ALLIED STREET
CHARLOTTESVILLE, VIRGINIA 22903
TELEPHONE: (434) 293-3195

GL 14354

MINUTES OF A MEETING OF THE ALBEMARLE CONSERVATION EASEMENT AUTHORITY
August 11, 2022 (Thursday)

The Albemarle Conservation Easement Authority met online on July 14, 2022 at 4:45 p.m.

This meeting was held virtually according to the County's plan to resume normal governmental operations authorized by Virginia Code Section 15.2-1413 and the County's Continuity of Government Ordinance, which the County adopted because of COVID-19 pandemic and resulting state and local disaster declarations.

Members present were:
Rose Emery
David Emmitt
Jay Fennell, Chair
Sharon Merrick
John Moore
Hamilton Moses, III
Peter Taylor, Vice-chair

Members absent were:
Sherry Buttrick

Staff members present were:
Scott Clark, Senior Planner
Richard Deloria, Senior Assistant County Attorney
Carolyn Shaffer, Clerk, Planning Commission and Boards

AGENDA

1. Call to Order
2. Other Matters Not Listed on the Agenda
3. Approval of Minutes
4. PRF201400004 Clifton Lake – Kostelac Timbering Plan
5. ACE200500003 Chester/Music Hall – Dwelling Size Request
6. ACEA202200004 Doudera Donation Proposal
7. ACEA Remote Participation Policy
8. New Business
9. Old Business
10. Adjournment

1. Call to Order
A quorum of five was present at 4:45 p.m. when Mr. Fennell called the meeting to order.

Mr. Deloria read the Virtual Meeting Preamble for the ACEA (see attached) regarding the legal authorization for online meetings, and held a roll call of the members, who stated their names and locations.

2. Other Matters Not Listed on the Agenda
No public comments were made.

3. Review of Minutes
Mr. Taylor moved and Ms. Emery seconded to approve the minutes of the July 14, 2022 meeting.

The motion passed by a vote of 5:0.

Mr. Moore joined the meeting.

4. PRF201400004 Clifton Lake – Kostelac Timbering Plan
Mr. Clark presented a request for Authority approval of a pre-harvest plan for timbering on one of two parcels of the Clifton Lake easement property (Tax Map 79C Parcel 1, 39.31 acres).

Mr. Taylor moved and Mr. Emmitt seconded to approve the pre-harvest plan and authorize staff to send an approval letter.

The motion passed by a vote of 6:0.

5. ACE200500003 Chester/Music Hall – Dwelling Size Request
Mr. Clark presented a revised proposal for requested permission to exceed the maximum dwelling size for the Music Hall ACE property (Tax Map 65 Parcels 11, 11B, 11C; 76.461 acres). The deed permits the maximum size of 7,000 square feet to be exceeded by written permission of the easement holders. The revised proposal was for a maximum size of 11,500 square feet of above-ground finished living space for the primary dwelling. The proposal also included limiting the two permitted accessory dwellings to 2,000 square feet.

Mr. Taylor moved and Dr. Moses seconded that the authority approve a maximum size of 11,500 square feet for the proposed main dwelling, provided that only one accessory dwelling is permitted, and that it be limited to 2,000 square feet.

The motion passed by a vote of 6:0.

6. ACEA202200004 Doudera Donation Proposal
Mr. Clark presented a new easement donation proposal on Tax Map 18 Parcel 37 (79.9 acres).

Dr. Moses moved and Mr. Taylor seconded that, based on the finding that the proposal met the Authority's acceptance criteria, the Authority accept the proposal and authorize the Chair to sign a deed of easement reflecting the proposed terms.

The motion passed by a vote of 6:0.

7. ACEA Remote Participation Policy
Due to pending changes in Board of Supervisors direction on remote-participation guidelines, this item was postponed until the next meeting.

8. New Business
The Chair invited new business. There being none, the meeting moved on to the next item.

9. Old Business
The Chair invited members to raise old business. The Authority discussed various topics, including Virginia Land Conservation Foundation funding and the upcoming auction of the Justice easement property, but took no action.

10. Adjournment
The Authority adjourned the meeting at 6:37 p.m.

VIRTUAL MEETING PREAMBLE for the ACEA
August 11, 2022

Notwithstanding any provision in our Bylaws to the contrary, as permitted under Albemarle County's Continuity of Government Ordinance; this Authority's Resolution adopted on May 14, 2020; and Chapter 1283 of the 2020 Acts of the General Assembly, we are holding this meeting by real time electronic means with no Authority member physically present at a single, central location as it is unsafe to do so because of the COVID-19 pandemic. All Authority members are participating electronically. This meeting is being held according to Section 6 of the County's Continuity of Government Ordinance. All Authority members will identify themselves and state their general physical location during the roll call which we will hold next.

The public has real time audio-visual access to this meeting over Zoom and real time audio access over telephone, both as provided in the lawfully posted meeting notice. The public is always invited to send questions, comments, and suggestions to the Authority through the County's Community Development Office at any time and through the Zoom chat and raise hand features. This meeting is being recorded and will be made available on the County's website.

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 March 03, 2023 No: VIO-2023-109

CERTIFIED MAIL# 7021 0350 0000 3827 0370 CERTIFIED MAIL# 7021 0350 0000 3827 0387

Koste Lake LLC
1795 Fray's Mill Rd
Ruckersville VA, 22968

William Harville
327 W Main St Ste C
Charlottesville VA, 22903-5551

Property: Parcel ID 079C0-00-00-00100 Koste Lake LLC

Owner of Record

Zoning: Planned Residential Development [PRD] District

Dear Koste Lake LLC and William Harville

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 **March 3, 2023**:

1. **Trees that are not dead and that are greater than six (6) inches in diameter are being cut on this parcel without a site development plan to establish a use.**
2. **The storage of structures on this parcel is not a permitted use.**
3. **The Accumulation of Tires and Car Parts on this parcel constitutes a junkyard and is not a permitted use.**
4. **The manufactured homes stored on this parcel is not on a foundation required by the building code and not being used as a primary residence.**

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

1. **Albemarle County Code § 18-4.3 Tree Cutting**
2. **Albemarle County Code § 18-19.3 Permitted Uses.**
3. **Albemarle County Code § 18-19.3 Permitted Uses**

4. Albemarle County Code § 18-5.6 Manufactured homes on individual lots

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 **April 04, 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/216/637617797415170000. 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 Benjamin Cooper, Code Compliance Officer, at 434-296-5832 ext. 3427.

Lisa Green
Code Compliance Manager
County of Albemarle

Information provided by Appellant - Attachment J

Project Name: KOSTE LAKE LLC

Tax map and parcel: 079C0-00-00-00100 (79C-1) Zoning: ~~RA~~ PRN-A-1 PLANNED RES. NEIGBORHOOD, NONCONFORMING AGRICULTURAL USE, RURAL AREAS

Physical Street Address (if assigned):

Location of property (landmarks, intersections, or other): SOUTHWEST END OF SHADWELL RD KESWICK VA

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:

SEE ATTACHMENT # 1

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

Apr. 12 2023
Date

DOMINIQUE Kostelac, MANAGER ~~Koste~~ KOSTE LAKE LLC
Print Name

434 825 6117 / 434 212 1022
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote:

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

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?): DOMINIQUE KOSTELAC

Address 1785 FRAYS MILL RD City RUCKERSVILLE State VA Zip 22968

Daytime Phone (434) 825 6117 212 1022 Fax # (___) _____ E-mail NASUTOLLC@gmail.com

Owner of Record KOSTE LAKE LLC, DOMINIQUE Kostelac MANAGING MBR

Address 1785 FRAYS Mill RD City Ruckersville State VA Zip 22968

Daytime Phone (434) 825 6117 212 1022 Fax # (___) _____ E-mail NASUTOLLC@gmail.com

Applicant (Who is the Contact person representing?): DOMINIQUE Kostelac / KOSTE LAKE LLC

Address 1785 FRAYS Mill Rd City Ruckersville State VA Zip 22968

Daytime Phone (434) 825 6117 212 1022 Fax # (___) _____ E-mail NASUTO LLC @gmail.com

Zoning determination letter rebuttal statement:

On or about Mar 3 2023 the zoning dept c/o Lisa Green sent a zoning determination letter by a hard copy to the registered agent of Koste Lake LLC, the owner of parcel 079C0-00-00-00100. (79 C1)

The zoning letter makes 4 faulty assertions of violations and supporting zoning code which will be rebutted individually. The violations and code cited are:

1. **Trees that are not dead and that are greater than six (6) inches in diameter are being cut on this parcel without a site development plan to establish a use.**
2. **The storage of structures on this parcel is not a permitted use.**
3. **The Accumulation of Tires and Car Parts on this parcel constitutes a junkyard and is not a permitted use.**
4. **The manufactured homes stored on this parcel is not on a foundation required by the building code and not being used as a primary residence.**

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

1. **Albemarle County Code § 18-4.3 Tree Cutting**
2. **Albemarle County Code § 18-19.3 Permitted Uses.**
3. **Albemarle County Code § 18-19.3 Permitted Uses**

4. **Albemarle County Code § 18-5.6 Manufactured homes on individual lots**

The property in question was approved for a rezoning in 1978 From an A-1 (Agriculture) category to a A-1/ Planned residential neighborhood (PRN- A1) category (See Exhibit A). The new zoning category included a by right use of Agriculture. (See Exhibit B). In 1980 Albemarle County made a change to the zoning code of PRN-A1 and removed the agricultural by right use. (See Exhibit C)
The property continued from before the zoning era (circa 1960) through the zoning changes of 1980 to present with a nonconforming agricultural use as per 15.2-2307

§ 15.2-2307. Vested rights not impaired; nonconforming uses.

A. Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

It is important to note that silviculture is a clearly understood activity withing both Virginia's and Albemarle County's definition of Agriculture:

Per 3.2-300

§ 3.2-300. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of all kinds, meat, dairy, and poultry products, nuts, tobacco, nursery, and floral products and *the production and harvest of products from silviculture activity*. "Agricultural operation" also includes any operation devoted to the housing of livestock as defined in § 3.2-6500.

Per the U.S. Department of Agriculture definition, silviculture is understood per the following:

"Silviculture is the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society such as wildlife habitat, timber, water resources, restoration, and recreation on a sustainable basis. "

Silviculture is clearly understood as having multiyear and multi-generational growth and harvest cycles. Long periods between harvest are the norm wherein the period of growth between these harvest periods is as much a part of the activity as the harvest itself.

Recently, and with the unanimous approval of the Albemarle County Conservation Board, A state forestry plan for a timber harvest was submitted and approved under the care and supervision of Albemarle County Attorney Richard Deloria. The link to this review is posted here: https://www.youtube.com/watch?v=YKAoBvjPm20

Significant contractual obligations based on this County approval have been enjoined.

Additionally, the Conservation Easement was created and accepted by the Albemarle County Public Recreational Facility with full review of the Albemarle County attorney on December 3, 2014 inclusive of full knowledge of a continuation of silviculture on this parcel. In fact, the current Albemarle County GIS map includes that description of use as "Ag/Undev 20.1 to 100 Acres"

The trees being harvested in this recently approved select cut are routinely 100- 150 years old, demonstrating an uninterrupted continuity of this nonconforming activity.

As per County Code § 15.2-2307. Vested rights not impaired

"C. A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be

continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years."

Clearly the age of the trees themselves are proof of a continuous silviculture activity spanning over 150 years.

Additionally, the performance of agricultural activities is not simply construed to letting trees grow. The entire support mechanism required to have this happen may include staging and storing machinery to clear paths, cut trees, plant trees, provide light and air, store agricultural products and tools amongst many other required support elements. The nonconforming and continued use of the parcel as agriculture is not simply limited to the production of one crop, silviculture.

Silviculture as a continuous activity preserves the entire spectrum of agricultural use.

One aspect of agricultural use concerns accessory use per Sec. 3.1 – Definitions

Accessory use*, building or structure.* "Accessory use," "building" or "structure" means a subordinate use, building or structure customarily incidental to and located upon the same lot occupied by the primary use, building, or structure, and located upon land zoned to allow the primary use, building or structure; provided that a subordinate use, building or structure customarily incidental to a primary farm use, building or structure need not be located upon the same lot occupied by the primary farm use, building, or structure. For the purposes of section 1.7(c)(2), any street may serve any use or structure authorized by this chapter, regardless of whether the use or structure is on the same lot or in the same zoning district as the street.

It must be beyond argument that mobile tools such as tractors, hay wagons, tool trucks and harvesting equipment are clearly expected under preserved accessory uses in agriculture. The determination letter points out certain wheeled carts and absurdly attempts to define them as manufactured buildings in violation #4 .

The definition of manufactured homes withing the Albemarle County code in no way described the objects in question. Per Chapter 18, Article1 Sec. 3.1 – Definitions:

Manufactured home. The term "manufactured home" means a structure subject to federal regulation which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. The structure and use commonly known as a "mobile home" is a manufactured home. For floodplain management purposes, "manufactured home" includes park trailers,

travel trailers, and other similar vehicles placed on a site for longer than 180 consecutive days, but does not include a recreational vehicle.

It is easily demonstrated by first glance that these wheeled devises are missing entire walls or sides and that they are completely absent of infrastructure of any kind such as "plumbing, heating, air-conditioning, and electrical systems contained in the structure."

Without such elements which are essential to "to be used as a single-family dwelling" the attempt to define them as such is erroneous and clearly, willful and malicious harassment.

In addition, violation #3: the accumulation of tires and car parts is in error. These new spare tires and axels are a required companion to these mobile agricultural devises as they routinely require parts replacements when being moved. Such specialized parts are hard to find and must be immediately available when needed.

The use of mobile salvaged elements which the county is absurdly defining as a manufactured home has been thoroughly reviewed in sessions with the owner by Director of Zoning, Bart Zvodoba in numerous previous meetings. Pictures of the adaptive reuse of cost-effective wheeled assets for farm use were provided at these meetings showing common innovative solutions for a financially sustainable agriculture activity.

The owner/ manager Dominique Kostelac and family have long been leaders and innovators in agricultural projects in Albemarle County employing up to 80 people and creating critical farm revenue of millions of dollars annually in Albemarle County. The County Zoning department is well aware that the owners are well-documented innovators of wild gathered agricultural products and proprietary value-added techniques operating's over numerous farm properties inside and outside of the County.

To summarize the rebuttals to the four violations noted on the determination letter of Mar. 3 2023

#1 Trees being cut is a preserved nonconforming legal use
#2 The storage of structures is an inappropriate definition for wheeled tools supporting an permitted agricultural activity. Such wheeled equipment is clearly understood to be necessary and appropriate for a wide range of preserved agricultural activities.
#3 The mis-definition of needed parts as a junkyard is inappropriate to equipment required to support preserved agricultural activities.
#4 Defining wheeled equipment as manufactured residential buildings is inappropriate and clearly in error.

Submitted April 2, 2023

Dominique Kostelac, Koste Lake LLC, Managing Member
via upload Alb Co website

COUNTY OF ALBEMARLE

Planning Department

804/296-5823
414 EAST MARKET STREET
CHARLOTTESVILLE, VIRGINIA 22901

ROBERT W. TUCKER, JR.
DIRECTOR OF PLANNING

RONALD S. KEELER
ASSISTANT DIRECTOR OF PLANNING

MARY JOY SCALA
SENIOR PLANNER

CARLOS M. MONTENEGRO
PLANNER

January 25, 1978

Dr. Charles W. Hurt
1290 Seminole Trail
Charlottesville, Virginia

Re: BOARD OF SUPERVISORS ACTION
Request for ZMA-77-24

Dear Dr. Hurt:

This is to advise you that the Board of Supervisors at its meeting January 18, 1978, approved your request to rezone 92 acres from A-1 to A-1/RPN (County Tax Map 79, Parcel 23, part thereof; and County Tax Map 79C, Parcel 1) subject to the following conditions:

1. Written Health Department approval;
2. Virginia Department of Highways and Transportation approval of entrance facilities;
3. Albemarle County Engineering Department approval of all internal roads and private drives with adequate turnaround space at the end of each;
4. Virginia Department of Highways and Transportation approval of internal state roads;
5. No dwelling units nor spetic fields to be built on slopes in excess of 25%;
6. No dwelling units nor septic fields to be built within 50 feet of the lake water's edge at mean level to be determined by the Virginia Department of Health;
7. The applicant will have a certified engineer test the existing dam and certify that it is safe to the satisfaction of the County Engineer;
8. A maintenance agreement for the maintenance of all common areas, recreational facilities, private drives, and the dam to be approved by the County Attorney's Office and recorded;
9. Final subdivision approval will be subject to the County Engineer's Office approval of central water systems;
10. A grading permit will be required prior to subdivision approval;
11. All lots are to have access to common open space;
12. An approved secondary drainfield location must be provided for each lot;
13. That the Virginia Department of Highways and Transportation review the intersection of Route 250 East and Route 709 in order to determine whether signs or warning lights are necessary; if it is determined that controls are warranted, they shall be installed at the developer's expense;
14. County Engineering Department approval of right-of-way widths;

15. The number of lots in the development is limited to 39, with the reduction from the number of lots shown on plan presented to the Board of Supervisors meeting of January 18, 1978, to be made along Route 729 on the west side of the lake;
16. The developer is to install a road across the dam (non-dedicated) to provide access to Route 729;
17. Setback from Route 729 shall be 100 feet from the centerline of the road.

Sincerely,

Jane Gloeckner

Jane Gloeckner
Planning Department

jg/
cc: file

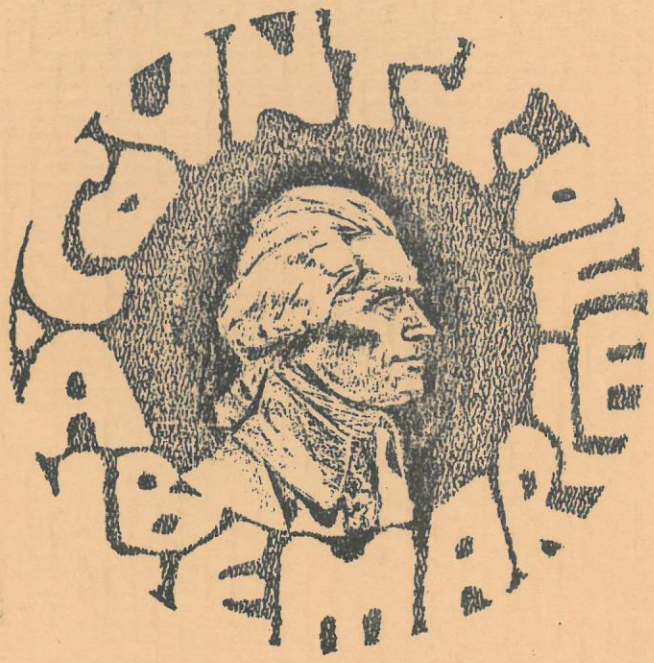
This record is missing the following:

Attachment in file at Albemarle County Zoning and Current Development Office

For assistance, please contact Sarah Baldwin at sbaldwin@albemarle.org or 434-296-5832.

zoning ordinance

albemarle county, virginia



adopted december 10, 1980

2.3 CONFLICTING ORDINANCES

Whenever provisions within this ordinance conflict with any local, state or federal statute or regulation with respect to requirements or standards, the most severe or stringent requirement or standard shall prevail.

For purposes of this section, any proffer heretofore accepted by the Board of Supervisors in accordance with Section 15.1-491.1, et seq., of the code shall be continued in effect and shall be construed to be a "local regulation" until amended or varied by the Board of Supervisors in accordance with law, regardless of the repealer of any previous zoning ordinance.

2.4 INTENT OF BONUS FACTOR PROVISIONS

The provision of bonus factors is intended to encourage development which reflects the goals and objectives of the comprehensive plan. To this end, bonus factors are based on development standards as recommended by the comprehensive plan.

2.4.1 APPLICATION OF BONUS FACTORS

Bonus factors shall be applied to the gross density-standard level in accordance with the regulations of the applicable district.

Unless otherwise specifically provided, bonus factors shall not be permitted for any improvement or design feature required by this ordinance, chapter 18 of the Code of Albemarle, or any other applicable law or regulation. Where permitted, bonus factors shall be applied in toto only.

2.4.2 PROCEDURES--GENERALLY

Bonus factors may be applied at the time of subdivision or site plan approval, whichever is applicable. The applicant shall submit preliminary plats or site development plans which shall be of sufficient detail to permit preliminary determinations of probable bonus factors by the staff.

19.0 PLANNED RESIDENTIAL DEVELOPMENT: PRD

19.1 INTENT, WHERE PERMITTED

PRD districts may hereafter be established by amendments to the zoning map in accordance with the provisions set forth generally for PD districts in section 8 and section 33, and with densities and in locations in accordance with the comprehensive plan.

The PRD is intended to encourage sensitivity toward the natural characteristics of the site and toward impact on the surrounding area in land development. More specifically, the PRD is intended to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious physical development, and creative design consistent with the best interest of the county and the area in which it is located.

To these ends, the PRD provides for flexibility and variety of development for residential purposes and uses ancillary thereto. Open space may serve such varied uses as recreation, protection of areas sensitive to development, buffering between dissimilar uses, and preservation of agricultural activity.

In recognition that development at such densities generally requires careful planning with respect to impact, it is also intended that the PRD be employed in areas where the comprehensive plan recommends densities in excess of twenty (20) dwelling units per acre.

19.2 APPLICATION

Nothwithstanding the requirements and provisions of section 8.0 - planned development districts generally, where certain PC or RPN districts have been established

. prior to the adoption of this ordinance such districts shall be considered to have been established as PRD districts under this ordinance and shall be so designated on the zoning map.

19.3 PERMITTED USES

19.3.1 BY RIGHT

The following uses shall be permitted subject to the requirements and limitations of this ordinance:

1. Detached single-family dwellings;
2. Semi-detached and attached single-family dwellings such as duplexes, triplexes, quadraplexes, townhouses, atrium houses, and patio houses provided that density is maintained and provided further that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall;
3. Multiple-family dwellings;
4. Churches;
5. Parks, playgrounds, community centers, and non-commercial recreational and cultural facilities such as tennis courts, swimming pools, game rooms, libraries and the like;

6. Electric, gas, oil and communication facilities, excluding multi-legged tower structures and including poles, lines, transformers, pipes, meters, and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations, and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 10 of the Code of Albemarle and all other applicable law;
7. Public uses and buildings such as schools, offices, parks, playgrounds, and roads funded, owned, or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations, and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12);
8. Temporary construction uses (reference 5.1.18);
9. Accessory uses and structures including Home Occupation: Class A (reference 5.2) and storage buildings;
10. Homes for developmentally disabled persons (reference 5.1.7).

19.3.2 BY SPECIAL USE PERMIT

The following uses shall be permitted only by special use permit; provided that no separate application shall be required for any such use as shall be included in the original PRD rezoning petition:

1. Day care, child care, or nursery facility (reference 5.1.6);
2. Fire and rescue squads (reference 5.1.9);
3. Rest home, nursing home, convalescent home, orphanage, or similar institution (reference 5.1.13);
4. Electrical power substations, transmission lines and related towers; gas or oil transmission lines, pumping stations, and appurtenances; unmanned telephone exchange centers; micro-wave and radio-wave transmission and relay towers, substations, and appurtenances (reference 5.1.12).
5. Home Occupation Class B (reference 5.2)

19.4 RESIDENTIAL DENSITIES

The gross and net residential densities permitted in any PRD district shall be shown on the approved Application Plan therefor, which shall be binding upon its approval. The overall gross density so approved shall be determined by the Board of Supervisors with reference to the Comprehensive Plan, but shall, in no event, exceed 35 dwelling units per acre. In addition, the bonus and cluster provisions of this ordinance shall be inapplicable to any PRD except as herein otherwise expressly provided.

19.5 MINIMUM AREA REQUIRED FOR ESTABLISHMENT OF DISTRICT

19.5.1 Minimum area required for the establishment of a PRD district shall be three acres.

19.5.2 Additional area may be added to an established PRD district if it adjoins and forms a logical addition to the approved development. The procedure for an addition shall be the same as if an original application were filed, and all requirements shall apply except the minimum acreage requirement of Section 19.5.1.

19.6 MINIMUM AREA REQUIREMENTS FOR OPEN SPACE AND RECREATIONAL USES

19.6.1 Not less than 25% of the area of any PRD shall be in open space, except as hereinafter expressly provided.

19.6.2 RECREATIONAL AREA REQUIREMENTS

For any development of thirty (30) dwelling units or more, exceeding four (4) dwelling units per acre in gross density, a minimum of fifty (50) square feet per dwelling unit of recreational area shall be provided on the property. Not more than twenty-five (25) percent of such area shall be provided within buildings. Unless otherwise specifically permitted due to the peculiar nature of a particular development, such area shall be developed proportionately with facilities appropriate to pre-school and elementary school aged children. The commission shall consider the appropriateness of such area for the intended usage in terms of such factors as location, shape, topographic characteristics, compatibility to adjoining uses, accessibility to residents and ease of supervision.

19.6.3 In the case of any proposed PRD having a total gross area of not less than 300 acres and a gross residential density of not more than 2 dwelling units per acre, the Board of Supervisors may waive the provision of common open space and recreation area as hereinabove required; provided that not less than 35% of the gross area of such proposed PRD shall be devoted solely to agriculture. For purposes of this section only, the term "devoted solely to agriculture" shall be deemed to include not more than one dwelling unit, which shall be included in the determination of the gross density of the PRD.

19.7 HEIGHT REGULATIONS

Unless otherwise provided at time of establishment of a PRD district, structures may be erected to a height of sixty-five (65) feet; provided, that any structure exceeding thirty-five (35) feet in height shall be setback from any street right-of-way or single-family residential or agricultural district, in addition to minimum yard requirements, a distance of not less than two (2) feet for each one (1) foot of height in excess of thirty-five (35) feet. Chimneys, flues, cooling towers, flag poles, radio or communication towers or their accessory facilities are excluded from the height limitation contained herein; the setback requirement of thirty-five (35) feet shall apply. Parapet walls are permitted up to four (4) feet above the limited height of the structure on which the walls rest; the setback requirements herein shall apply to parapet walls.

19.8 BUILDING SEPERATION

There shall be a minimum of twenty (20) feet between structures; provided that this provision shall not apply to structures built to a common wall.

19.9 SETBACK AND YARD REGULATIONS

19.9.1 Structures to be located on the outer perimeter of a PRD district shall conform to the setback and yard regulations of the adjoining district.

19.9.2 Within the PRD district, the Board of Supervisors shall establish minimum setback and yard requirements at time of establishment of such district.

19.10 MINIMUM OFF-STREET PARKING REGULATIONS

Off-street parking and loading space requirements shall be in accordance with Section 4.12, provided that the Board of Supervisors may vary or waive such requirements at time of establishment of a PRD district.

19.11 SIGN REGULATIONS

Sign regulations shall be as prescribed in Section 4.15.

Uses By right 1975 PRN

19-3-1 There shall be no special exceptions permitted in the RPN Districts. The following uses shall be permitted by right.

A. Dwelling units in detached, semi-detached, attached and multi-storied structures, or any combination thereof;

B. Churches (Amended 2/15/78)

C. Food stores; laundromats/dry cleaning; barber shop/beauty parlors; drug store/pharmacy; all of which are physically oriented, designed, and intended to serve primarily the residents of the RPN District, subject to 19-4-3 of this ordinance. (Amended 2/15/78)

D. Educational institutions;

E. Fire and rescue stations;

F. Public utilities: poles, lines, transformers, pipes, meters, and related or similar facilities; water, sewer, and gas distribution lines;

G. Day care centers;

H. Home occupation, Class A;

I. Community centers;

J. Parks and recreation facilities;

K. Accessory uses and buildings;

L. Life-care centers or geriatric health care facilities which may include varied types of dwelling units for the residents; housekeeping and laundry services; nursing and hospital facilities reasonably necessary to serve the residents; retail stores and shops, professional offices, restaurants, cafeterias and other food services, all of which are designed and intended primarily to serve the residents of the RPN district subject to Section 19-4-3 of this ordinance; and common areas where residents may engage in recreational, educational and cultural activities. (Adopted 10/19/77)

M. Agriculture. (Adopted 2/21/79)

Return to:
Kaylee C. Jamerson
w/ Absolute Title & Settlement

Prepared by:
Roger D. Williams VSB # 28205
McCallum & Kudravetz, P.C.
250 E. High Street
Charlottesville, VA 22902

Parcel ID: 079C0-00-00-00100

Assessed Value: $573,000.00

Name of Title Insurance Underwriter for Instrument: *Old Republic National Title Insurance Company*

THIS DEED dated this 21st day of July, 2022, by and between CHARLES WM. HURT and SHIRLEY L. FISHER, as TRUSTEES for the VIRGINIA LAND TRUST, pursuant to the terms of a certain land trust agreement dated May 18, 1984, as amended, the Grantor; and KOSTE LAKE LLC, a Virginia limited liability company, the Grantee, whose address is 1795 Frays Mill Road, Ruckersville, VA 22968;

WITNESSETH:

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND, REVISED T.M.79-23 & REVISED T.M.79C-1, IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNER(S), PROPRIETORS, AND/OR TRUSTEES, IF ANY.

Charles W Hurt

FOR: VIRGINIA LAND TRUST

GAIL B. WATKINS
NOTARY PUBLIC
REG. #101082
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES MAY 31, 2017

~~CITY~~/COUNTY OF Albemarle
STATE OF Virginia.
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 29th DAY OF June 2015. BY Charles W Hurt
FOR: VIRGINIA LAND TRUST

NOTARY PUBLIC Gail B Watkins #101082

MY COMMISSION EXPIRES : May 31, 2017 NOTARY SEAL

APPROVED FOR RECORDATION :

Gail B Watkins (agent) 7/7/15

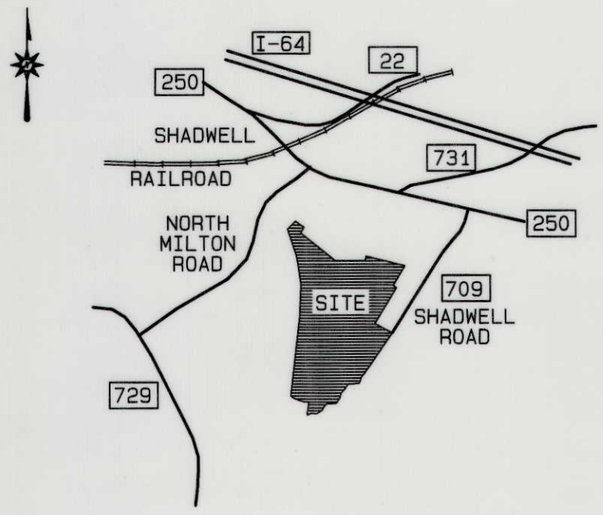
AGENT FOR THE BOARD OF SUPERVISORS DATE

COMMONWEALTH OF VIRGINIA
Brian S. Ray
BRIAN S. RAY
Lic. No. 002281
6-25-15
LAND SURVEYOR

NOTES:

1. OWNERS & ADDRESS: VIRGINIA LAND TRUST
   P.O.BOX 8147, CHARLOTTESVILLE, VA 22906
2. LEGAL REFERENCES:
   T.M.79-23
   D.B.799-433, D.B.4018-674, 675 PLAT, D.B.1128-536, 537 PLAT, D.B.809-354 PLAT, D.B.460-128 DESC., D.B.458-22 DESC., D.B.456-50 PLAT, D.B.453-16 PLAT, D.B.356-465 PLAT & D.B.329-133 PLAT.

   T.M.79C-1
   D.B.1018-169 PLAT, D.B.799-433, D.B.397-141 PLAT, D.B.376-375, D.B.339-458 PLAT & D.B.338-520 PLAT.
3. THE BOUNDARY DATA SHOWN HEREON IS BASED ON A CURRENT FIELD SURVEY.
4. T.M.79-23 AND T.M.79C-1 ARE SUBJECT TO THE FOLLOWING:
   A. A DEED OF EASEMENT TO ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY (D.B.4562-497).
   B. ACCESS TO TWO AREAS OF THE LAKE AS DEFINED IN D.B.477-501.
   C. A LAKE & DAM AGREEMENT AS DEFINED IN D.B.469-109 & D.B.460-103.
5. T.M.79-23 AND T.M.79C-1 ARE SUBJECT TO THE FOLLOWING INSOFAR AS THEY MAY APPLY:
   A. A DEED FOR FUTURE ACCESS TO LAKE AS DEFINED IN D.B.477-501.
   B. WATER RIGHTS AS DEFINED IN D.B.460-131.
6. ALL EASEMENTS KNOWN BY ME ARE SHOWN OR NOTED HEREON THIS PROPERTY IS SUBJECT TO ANY ADDITIONAL CONDITIONS, UTILITIES, EASEMENTS AND/OR COVENANTS THAT MAY EXIST.
7. ACREAGES BEFORE THIS BOUNDARY LINE ADJUSTMENT PLAT:
   T.M.79-23 =34.86 ACRES (AS PER TAXATION RECORDS)
   T.M.79C-1 =29.42 ACRES (AS PER TAXATION RECORDS).
8. DENOTES APPROXIMATE LOCATION OF AREAS WITHIN ZONE A AND SHADED ZONE X FLOOD PLAIN, ACCORDING TO THE FEMA FLOOD INSURANCE RATE MAP, DATED FEBRUARY 4, 2005, (COMMUNITY PANEL 510006 0295D).
9. DENOTES 200'WOODED BUFFER D.B.4562-497, 519 MAP



VICINITY MAP - SCALE: 1" = 2000'+/-

THE LAND USE NOTES SHOWN ON THIS PLAT ARE IMPOSED AT THE REQUEST OF THE DIRECTOR OF PLANNING. BY PLACING HIS/HER SIGNATURE ON THIS PLAT HE/SHE HAS DEEMED THAT THEY ARE CORRECT AND IN ACCORDANCE WITH THE ALBEMARLE COUNTY ZONING ORDINANCE IN EFFECT THIS DATE. THESE NOTES ARE NOT RESTRICTIVE COVENANTS RUNNING WITH THE LAND AND THEIR APPEARANCE ON THIS PLAT IS NOT INTENDED TO IMPOSE THEM AS SUCH. ANY REFERENCE TO FUTURE DEVELOPMENT RIGHTS SHOWN HEREON IS THEORETICAL ONLY.

A. PROPERTIES ARE ZONED PLANNED RESIDENTIAL DEVELOPMENT (DAM INUNDATION ZONE, FLOOD HAZARD OVERLAY, ZMA-1977-00024 AND ZMA-2004-00008)
B. ACCORDING TO THE COUNTY OF ALBEMARLE GIS WEBSITE DATA, REVISED T.M.79-23 AND REVISED T.M.79C-1, EACH CONTAIN A BUILDING SITE THAT COMPLIES WITH SECTION 4.2.1 OF THE ALBEMARLE COUNTY ZONING ORDINANCE.
C. THIS PROPERTY IS NOT LOCATED IN A WATER SUPPLY WATERSHED.
D. ACCORDING TO THE COUNTY OF ALBEMARLE GIS WEBSITE DATA, THIS PROPERTY IS NOT LOCATED IN AN AGRICULTURAL-FORESTAL DISTRICT.
E. THE APPROXIMATE LOCATIONS OF THE STREAMS AND STREAM BUFFERS SHOWN HEREON WERE TAKEN FROM THE COUNTY OF ALBEMARLE GIS WEBSITE DATA AND SHALL BE MANAGED IN ACCORDANCE WITH THE ALBEMARLE COUNTY WATER PROTECTION ORDINANCE.

LINE	BEARING	DISTANCE
L1	S06°35'31"W	30.39
L2	S47°15'01"W	115.22
L3	S59°30'19"W	20.82
L4	S37°20'50"W	87.33
L5	S56°33'18"W	29.12
L6	S80°11'36"W	83.88
L7	S41°55'55"W	28.97
L8	S37°52'47"W	18.34
L9	S60°12'01"W	40.68
L10	S28°14'15"W	97.14
L11	S35°36'41"W	50.24
L12	S59°32'10"W	58.21
L13	S50°03'33"W	80.36
L14	S71°58'16"W	31.28
L15	N81°03'01"W	39.04
L16	S53°48'03"W	26.50
L17	S21°25'47"W	42.64
L18	S48°59'27"W	111.51
L19	S80°20'07"W	46.71
L20	N58°56'15"W	86.30
L21	N76°41'15"W	109.00
L22	S86°03'45"W	140.00
L23	N83°41'15"W	103.00
L24	N49°26'15"W	256.00
L25	S82°18'45"W	122.00

N50°57'42"E 114.51'
S41°47'38"E 212.03'
T.M.79-24B
COUNTRY INNS EXTRAORDINAIRE, INC
D.B.1940-541
D.B.528-50 PLAT
S47°11'49"W 59.00'
S41°02'39"E 147.02'
APPROXIMATE LOCATION EDGE OF LAKE
N11°43'54"W 418.18'
S57°23'51"E 387.01'
PIPE FOUND
S86°55'15"E 422.92'
FENCE
IRON SET
392.92'
30.00'
100'STREAM BUFFER
N06°47'23"E 93.66'
IRON FOUND
S76°45'38"E 583.87'
100' STREAM BUFFER
IRON FOUND
T.M.79C-((A))-3
LOT 3, BLOCK A, SECTION ONE
SHADWELL ESTATES
WILLIAM W.WEAKLEY & LORI C.WEAKLEY
D.B.1501-303 PLAT
D.B.1460-641
D.B.339-458 PLAT
T.M.79C-((A))-2
LOT 2, BLOCK A, SECTION ONE
SHADWELL ESTATES
SANDRA C.SUSLICK & RANDALL H.SUSLICK
D.B.1501-298, 302 PLAT
D.B.1460-641
D.B.339-458 PLAT
T.M.79C-((A))-1
LOT 2, BLOCK A, SECTION ONE
SHADWELL ESTATES
T.M.79-23F
COUNTRY INNS EXTRAORDINAIRE, INC.
D.B.1131-233
D.B.1128-536, 537 PLAT
N00°58'57"W 405.57'
125.00'
N85°37'00"W 405.00'
505.00'
100.00'
IRON SET
EDGE OF LAKE
STREAM
100' STREAM BUFFER
REVISED T.M.79-23
23.21 ACRES TOTAL
S32°15'35"W 319.74'
ST. RT. 709
IRON FOUND
S57°50'03"E 65.22'
S32°14'45"W 564.47'
(50')
SHADWELL ROAD (D.B.338-525 & D.B.367-23)
T.M.79C-((A))-10
LOT 10, BLOCK A, SECTION 2
SHADWELL ESTATES
WILLIAM B.PERRY & ESTELLA L.PERRY
D.B.1018-167, 169 PLAT
T.M.79C-((A))-11
LOT 11, BLOCK A, SECTION 2
SHADWELL ESTATES
WILLIAM B.PERRY & ESTELLA L.PERRY
D.B.1018-167, 169 PLAT
N61°12'50"W 340.52'
300.52'
40.00'
GRAVEL ROAD
S32°09'01"W 35.00'
N56°32'30"W 152.64'
N60°51'10"W 195.93'
S32°09'01"W 15.00'
S57°50'59"E 214.04'
D.B.397-141 PLAT
T.M.79C-((A))-12
LOT 12, BLOCK A, SECTION TWO
SHADWELL ESTATES
WILLIAM B.PERRY & ESTELLA L.PERRY
D.B.2851-48
D.B.370-375 PLAT
T.M.79C-((A))-13
LOT 13, BLOCK A, SECTION THREE
SHADWELL ESTATES
RICHARD L.SCHOOLCRAFT & PAMELA S.SCHOOLCRAFT
D.B.912-341
D.B.397-141 PLAT
PAVED ROAD
IRON C1 SET
T.M.79C-((A))-14
LOT 14, BLOCK A, SECTION THREE
SHADWELL ESTATES
EVERETT L.KIRBY & SHIRLEY H.KIRBY
D.B.658-515
D.B.397-141 PLAT
END OF PAVEMENT AND END STATE MAINTENANCE ACCORDING TO VDOT (0.39 MILE FROM U.S.RT.250)
N07°32'08"E 686.30'
561.30'
200' WOODED BUFFER D.B.4562-497, 519 MAP
T.M.79-23 EXISTING PROPERTY LINE
T.M.79C-1 EXISTING PROPERTY LINE
REVISED T.M.79C-1
39.31 ACRES TOTAL
S32°08'06"W 545.73'
T.M.79B-((A))-1
LOT 1, BLOCK A, MILTON HEIGHTS
JEAN POWELL
D.B.440-274
D.B.343-64 PLAT
C1
Δ = 42°47'29"
R =75.00'
L =56.01'
T =29.39'
C =54.72'
CB=S78°00'44"E
APPROXIMATE LOCATION EDGE OF LAKE
N24°44'08"E 930.00'
715.00'
EDGE OF LAKE
100' STREAM BUFFER
APPROXIMATE LOCATION DAM BREAK INUNDATION ZONE TAKEN FROM COUNTY OF ALBEMARLE GIS WEBSITE DATA
STREAM BUFFER
IRON FOUND
S23°45'48"W 19.56'
L1 L2 L3 L4 L5 L6 L7 L8 L9 L10 L11 L12 L13 L14 L15 L16 L17 L18 L19
L1 THRU L19 ARE ALONG STREAM AS IT MEANDERS MAJOR COURSES SHOWN
DAM
IRON SET
RIP-RAP
215.00'
STREAM
IRON FOUND
IRON SET
L24 L25
DOWN FENCE
IRON SET L23
IRON SET L22
IRON SET L21
DOWN FENCE
IRON SET L20
T.M.79-36
COUNTRY INNS EXTRAORDINAIRE, INC.
D.B.2128-550
D.B.343-471 PLAT
D.B.164-84 PLAT
T.M.93A2-E
GLENMORE COMMUNITY ASSOCIATION, INC.
D.B.3907-401
D.B.1642-404 THRU 406 PLAT
GRAPHIC SCALE 1"=200'
0 200 400 600

BOUNDARY LINE ADJUSTMENT PLAT
REVISED T.M.79-23 & REVISED T.M.79C-1
THE PROPERTIES OF VIRGINIA LAND TRUST
LOCATED AT THE END OF SHADWELL ROAD
OFF U.S.ROUTE 250 (RICHMOND ROAD)
SCOTTSVILLE MAGISTERIAL DISTRICT
ALBEMARLE COUNTY, VIRGINIA
SCALE: 1"= 200' DATE: APRIL 10, 2015
REVISED: JUNE 25, 2015

FOR
ANDREW BALDWIN

ROGER W.RAY & ASSOC., INC.
1717-1B ALLIED STREET
CHARLOTTESVILLE, VIRGINIA 22903
TELEPHONE: (434) 293-3195

GL 14354

a. In districts other than the RA, cutting of trees shall be limited to dead trees and trees of less than six inches in diameter measured at six inches above ground; except that trees may be cleared as an incident to the preparation of land for the establishment of some other use permitted in the district, provided that:

   1. Such use is exempt from the provisions of section 32 hereof; or
   2. A site development plan for such permitted use shall have been approved in accordance with the provisions of section 32 of this ordinance;

b. The following regulation shall apply in all zoning districts:

   1. Unless otherwise specifically approved to accommodate development pursuant to section 32 hereof, no tree within 15 feet of any perennial stream or water supply impoundment may be cut, except for dead trees or trees of less than six inches in diameter measured at six inches above ground; or in order to provide access for livestock or for another permitted use;

c. The foregoing notwithstanding, the zoning administrator may authorize cutting of trees which:

   1. Are deemed by the zoning administrator to pose a clearly demonstrable danger to buildings or other structures or otherwise a danger to public safety; or
   2. Have been specifically recommended for removal following field investigation by the Virginia Department of Forestry as being virulent or pestilent to other trees in the vicinity;

d. For the purpose of this ordinance, the term "tree cutting" shall be deemed to include sawing, burning, bulldozing, poisoning, girdling or any other activity which could reasonably be anticipated to result in the death of a tree. Fill and waste areas shall not be deemed a permitted use but preparatory activity to establish a permitted use. (Added 9-9-92)

Sec. 19.1 - Intent, where permitted.

PRD districts may hereafter be established by amendment to the zoning map in accordance with the provisions set forth generally for PD districts in sections 8.0 and 33.0, and with densities and in locations in accordance with the comprehensive plan.

The PRD is intended to encourage sensitivity toward the natural characteristics of the site and toward impact on the surrounding area in land development. More specifically, the PRD is intended to promote economical and efficient land use, an improved level of amenities, appropriate and harmonious physical development, and creative design consistent with the best interest of the county and the area in which it is located.

To these ends, the PRD provides for flexibility and variety of development for residential purposes and uses ancillary thereto. Open space may serve such varied uses as recreation, protection of areas sensitive to development, buffering between dissimilar uses and preservation of agricultural activity.

While a PRD approach is recommended for developments of any density, it is recommended but not required that the PRD be employed in areas where the comprehensive plan recommends densities in excess of 15 dwelling units per acre, in recognition that development at such densities generally requires careful planning with respect to impact. (Amended 8-14-85)

Sec. 19.2 - Application.

Notwithstanding the requirements and provisions of section 8.0, planned development districts, generally, where certain planned community (PC) or residential planned neighborhood (RPN) districts have been established prior to the adoption of this ordinance, such districts shall be considered to have been established as PRD districts under this ordinance and shall be so designated on the zoning map.

Sec. 19.3 - Permitted uses.

Sec. 19.3.1 - By right.

The following uses shall be permitted by right in the PRD district, subject to the applicable requirements of this chapter:

1. Detached single-family dwellings.
2. Semi-detached and attached single-family dwellings such as two-family dwellings, triplexes, quadraplexes, and townhouses, provided that density is maintained, and provided further that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall.
3. Multiple-family dwellings.
4. (Repealed 9-2-81)
5. Parks, playgrounds, community centers and noncommercial recreational and cultural facilities such as tennis courts, swimming pools, game rooms, libraries and the like.
6. Electric, gas, oil and communication facilities, excluding tower structures and including poles, lines, transformers, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility. Water distribution and sewerage collection lines, pumping stations, and appurtenances owned and operated by the Albemarle County Service Authority. Except as otherwise expressly provided, central water supplies and central sewerage systems in conformance with Chapter 16 of the Code of Albemarle and all other applicable law. (Amended 5-12-93)
7. Public uses and buildings including temporary or mobile facilities such as schools, offices, parks, playgrounds and roads funded, owned or operated by local, state or federal agencies (reference 31.2.5); public water and sewer transmission, main or trunk lines, treatment facilities, pumping stations and the like, owned and/or operated by the Rivanna Water and Sewer Authority (reference 31.2.5; 5.1.12). (Amended 11-1-89)
8. Temporary construction uses (reference 5.1.18).

9. Accessory uses and structures including home occupation, Class A (reference 5.2) and storage buildings.
10. Group home (reference 5.1.07). (Amended 8-9-17)
11. Stormwater management facilities shown on an approved final site plan or subdivision plat. (Added 10-9-02)
12. Tier I and Tier II personal wireless service facilities (reference 5.1.40). (Added 10-13-04)
13. Family day homes (reference 5.1.56). (Added 9-11-13)
14. Homestays (reference 5.1.48)

(§ 20-19.3.1, 12-10-80; 9-2-81; 11-1-89; 5-12-93; Ord. 02-18(6), 10-9-02; Ord. 04-18(2), 10-13-04; Ord. 13-18(5), 9-11-13; Ord. 17-18(4), 8-9-17; Ord. 19-18(3) 6-5-19; Ord. 19-18(6), 8-7-19)

Sec. 19.3.2 - By special use permit.

The following uses shall be permitted by special use permit in the PRD district, subject to the applicable requirements of this chapter and provided that no separate application shall be required for any such use as shall be included in the original PRD rezoning petition: (Amended 5-5-10)

1. Child day center (reference 5.1.06).
2. Fire and rescue squad stations (reference 5.9).
3. Assisted living facility, skilled nursing facility, children's residential facility, or similar institution (reference 5.1.13).
4. Electrical power substations, transmission lines and related towers; gas or oil transmission lines, pumping stations and appurtenances; unmanned telephone exchange centers; microwave and radio-wave transmission and relay towers, substations and appurtenances (reference 5.1.12).
5. Home occupation, Class B (reference 5.2).
6. Religious assembly use. (Added 9-2-81; Amended 8-9-17)
7. Stand alone parking and parking structures (reference 4.12, 5.1.41). (Added 11-7-84; Amended 2-5-03)
8. Swim, golf, tennis or similar athletic facilities (reference 5.1.16). (Added 9-13-89)
9. Offices. (Added 6-8-94)
10. Tier III personal wireless service facilities (reference 5.1.40). (Added 10-13-04)
11. Historical centers, historical center special events, historical center festivals (reference 5.1.42). (Added 6-8-05)
12. Farmers' markets (reference 5.1.47). (Added 5-5-10)

(§ 20-19.3.2, 12-10-80; 9-2-81; 11-7-84; 9-13-89; 6-8-94; Ord. 03-18(1), 2-5-03; Ord. 04-18(2), 10-13-04; Ord. 05-18(7), 6-8-05; Ord. 10-18(4), 5-5-10; Ord. 17-18(4), 8-9-17; Ord. 17-18(5), 10-11-17; Ord. 19-18(3), 6-5-19)

Sec. 5.6 - Manufactured homes on individual lots.

The County, in an effort to provide for affordable housing for all residents, permits manufactured homes to be situated on individual lots in certain districts. The following regulations shall apply:

a. The manufactured home shall be located on a foundation approved pursuant to the Building Code;

b. The manufactured home shall only be used as a primary residence.

(§ 20-5.6, 12-10-80; 3-5-86; 11-11-92; § 18-5.6, Ord. 98-A(1), 8-5-98; Ord. 18-18(1), 1-10-18)

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

§ 15.2-2307. Vested rights not impaired; nonconforming uses

A. Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

B. For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

C. A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever, with respect to the building or structure, the square footage of a building or structure is enlarged, or the building or structure is structurally altered as provided in the Uniform Statewide Building Code (§ 36-97 et seq.). If a use does not conform to the zoning prescribed for the district in which such use is situated, and if (i) a business license was issued by the locality for such use and (ii) the holder of such business license has operated continuously in the same location for at least 15 years and has paid all local taxes related to such use, the locality shall permit the holder of such business license to apply for a rezoning or a special use permit without charge by the locality or any agency affiliated with the locality for fees associated with such filing. Further, a zoning ordinance may provide that no nonconforming use may be expanded, or that no nonconforming building or structure may be moved on the same lot or to

any other lot which is not properly zoned to permit such nonconforming use.

D. Notwithstanding any local ordinance to the contrary, if (i) the local government has issued a building permit, the building or structure was thereafter constructed in accordance with the building permit, and upon completion of construction, the local government issued a certificate of occupancy or a use permit therefor, or (ii) the owner of the building or structure has paid taxes to the locality for such building or structure for a period of more than the previous 15 years, a zoning ordinance shall not provide that such building or structure is illegal and subject to removal solely due to such nonconformity. Such building or structure shall be nonconforming. A zoning ordinance may provide that such building or structure be brought in compliance with the Uniform Statewide Building Code, provided that to do so shall not affect the nonconforming status of such building or structure. If the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal. If the structure is one that requires no permit, and an authorized local government official informs the property owner that the structure will comply with the zoning ordinance, and the improvement was thereafter constructed, a zoning ordinance may provide that the structure is nonconforming but shall not provide that such structure is illegal and subject to removal solely due to such nonconformity. In any proceeding when the authorized government official is deceased or is otherwise unavailable to testify, uncorroborated testimony of the oral statement of such official shall not be sufficient evidence to prove that the authorized government official made such statement.

E. A zoning ordinance shall permit the owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance as provided in § 15.2-2310. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.) and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance of the locality. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the zoning ordinance shall provide for an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this paragraph. For purposes of this section, "act of God" shall include any natural disaster or phenomena including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under § 18.2-77 or 18.2-80, and obtain vested rights under this section.

F. Notwithstanding any local ordinance to the contrary, an owner of real property shall be permitted to replace an existing on-site sewage system for any existing building in the same

general location on the property even if a new on-site sewage system would not otherwise be permitted in that location, unless access to a public sanitary sewer is available to the property. If access to a sanitary sewer system is available, then the connection to such system shall be required. Any new on-site system shall be installed in compliance with applicable regulations of the Department of Health in effect at the time of the installation.

G. Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the property on which the sign is located, if notified by the locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify the property owner, the locality through its own agents or employees may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy.

H. Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

Code 1950, §§ 15-843, 15-848, 15-968.6; 1962, c. 407, § 15.1-492; 1966, c. 202; 1975, c. 641; 1997, c. 587;1998, c. 801;2002, c. 823;2003, cc. 21, 53, 189;2004, c. 538;2006, c. 244;2008, cc. 377, 411; 2009, c. 782;2010, cc. 315, 698;2014, c. 648;2016, c. 584;2017, c. 404.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Photographs from March 3, 2023 onsite inspection

ZVIO202300109
03/03/2023
TMP 079C0-00-00-00100























ALBEMARLE COUNTY BOARD OF ZONING APPEALS

IN RE: APPEAL OF NOTICE OF OFFICIAL DETERMINATION OF VIOLATION, VIO-2-23-109
DOMINIQUE KOSTELAC **APPEAL NO. AP2023-00003**

DECISION

At a duly-noticed meeting on July 11, 2023, the Albemarle County Board of Zoning Appeals (the "BZA") heard the appeal of the Zoning Administrator's official determination of violation, dated March 3, 2023, by Appellant Dominique Kostelac. After hearing and considering all of the evidence and arguments, the BZA hereby:

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

Dated: _____

_____
Marcia Joseph, Chair
Albemarle County Board of Zoning Appeals

This decision was adopted by the BZA on July 11, 2023 by the following vote:

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

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ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, JUNE 6, 2023—2:00 P.M.
LANE AUDITORIUM

Board Members Present:	John Shepherd Marcia Joseph Edward (Bo) Carrington – arrived at approximately 2:20 pm Kurt Burkhart
Board Members Absent:	Ronald Rosenberg
Staff Members:	Bart Svoboda, Zoning Administrator 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 herself.

Edward Carrington arrived shortly after the meeting was underway. Ronald Rosenberg was absent.

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

3. Public Hearing
A. AP2023-00001 Appeal of HO2023-002: Legal Gun, LLC {Sign #3}
Mr. Bart Svoboda, Zoning Administrator, provided a presentation of the appeal to the Board. He described the property as tax map parcel (TMP) 43-34(E) as being approximately 3.51 acres, zoned RA, and located at 2822 Free Union Road. He said that the application was submitted on January 5, 2023, and on January 23, the adjacent property owner notices were mailed. He said that on February 17, an approval was issued, and on March 20, an appeal was filed.

Mr. Svoboda explained that VDOT no longer reviews home occupation traffic impacts because it is their belief that the trips generated by home occupations in the ordinance do not generate impacts rising to a level of concern for VDOT to perform a formal review. He said that gun sales were prohibited on the site unless they were produced by one or more family members, and the applicant had indicated they would occasionally make guns on the site. He said it was determined the use met the regulations in the applicable ordinance, so approval was granted. He said that after review, it was determined the Zoning official correctly applied the ordinance in determining the application met the requirements in County Code § 18-5.2A, so the Board should affirm the determination.

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Ms. Margaret Maupin, appellant, said she believed the approved application did not follow the spirit of County Code § 18-5.2A. She said firearms businesses should not be located in homes, and they should be located in commercial spaces to be regulated and monitored. She said that the approval determination was made in error and caused the following harms: there was only a brief site visit to the home to inspect the square footage. She asked whether the inspection investigated where firearms would be stored and how they would be secured. She asked whether firearm storage requirements were presented to the applicant.

Ms. Maupin expressed concerns about the number of firearms-related home occupations approved in the past two years and the extent of firearms-related activities requested by the applicant. She said that the storage of firearms at the site was inconsistent with the County's aim to preserve and protect the rural nature of the neighborhood. She said that the applicant was required to have a license from the ATF, for which there were eight types, but the County had no knowledge or access to the type of license granted to the applicant.

Ms. Maupin said it was incompatible with County Code § 18-5.2A, which stipulated a balance between limiting economic home-based development with the need to protect and preserve the County's agricultural areas and residential areas. She said that permitting a firearms business in the midst of a neighborhood was antithetical to the interests of the area, and there would be negative impacts. She said that the permit to manufacture and sell guns was within three to six miles of two elementary, which posed a danger for the students to be exposed to gun violence.

Ms. Maupin said that the presence of the business would increase traffic and accidents at the intersection of Free Union Road and Woodlands Road. She said that the approval did not consider the community concerns regarding a firearms business in the neighborhood, and there were over 182 signatures on the petition in opposition to the application.

Ms. Maupin said that three of the five abutting property owners opposed the approval of the application. She said that the home occupation would interfere with the quality and character of the neighborhood. She said that allowing a firearms business as a home occupation did not promote the health, safety, or general welfare of the public according to state code.

Ms. Alley read the rules for public comment.

Linda Barr, 5244 Free Union Road, said she was opposed to the home occupation use, and she expressed concerns about impacts on safety and the character of the area.

Marilyn Marshall, 3445 Free Union Road, expressed concerns about the firearms-related home occupation use. She said that schools should be notified of the business, and parents should be provided the information.

Kerin Yates expressed concerns about the intersection at Free Union Road and noted that it was dangerous. She said that the site did not have safe access.

Patricia Doud expressed concerns about how firearms would be tested on the property and noted that the road was dangerous.

Ronna Gray expressed concerns about the location of a firearms-related home occupation in a rural neighborhood.

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Karl Pfefferkorn, property owner on Ridge Road, said that he was a local resident who wished to use the services offered by the home occupation and firearms were part of rural living. He said that the home occupation use should be allowed.

John Swartzwelder expressed concerns about the lack of information regarding the applicant's ATF license. He said that the Board should consider the possibility of gunfire being heard in the neighborhood.

April Holmes requested the Board to rescind the permit. She said she was a resident of Free Union. She noted that the applicant had committed to not providing ammunition on-site, but she asked what monitoring was in place.

Teresa Gillie said that there were more appropriate locations for a firearms-related business.

Joan Payne-Currier, Ridge Road, expressed concerns about producing guns in a home occupation and the secure storage of firearms.

Robert Ruff, 410 Houndstooth Court stated he lived adjacent to the applicant's property. He said that the applicant would likely not be manufacturing firearms but rather assembling, selling, and trading them.

Neil MacDougall requested the Board to consider the legal definition of transfer in regards to the application.

Major General Douglas Caton, retired, stated he owned a farm neighboring the applicant's property. He expressed concerns about his children or animals being shot. He said he was against the approval of a firearms-related home occupation in a residential area.

Mr. Herrick offered a rebuttal to public comment. He said that the issue at hand was about whether the Zoning Administrator correctly interpreted the zoning ordinance. He said that grounds for reconsidering the Zoning Administrator's decision had to be based on County Code § 18-5.2A and whether the decision was in violation of the ordinance. He said that the County Attorney believed the Zoning Administrator correctly handled the application and requested the Board to affirm the decision.

Ms. Maupin said that allowing a firearms-related home occupation use did not follow state code. She said that FFLs were not needed because there were 50 in the region. She questioned the efficacy of the appeals process. She requested the Board rescind the approval.

Ms. Joseph closed the public hearing and brought the matter before the Board.

Mr. Shepherd clarified that the approval permitted altering and storing firearms and providing legal services.

Mr. Svoboda responded that those were the conditions in Attachment D.

Mr. Shepherd expressed concerns that the staff report and clearance did not tie the altering of firearms use to a specific section of § 18-5.2. He questioned where storage was permitted in the rural areas and noted that firearms storage was not customary or incidental to a gun smithing shop.

Mr. Burkhart expressed concerns about the methods that would be used to produce firearms, such as a 3D printer, and about the number of firearms to be produced in a year for which there was no indication. He

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asked how the ordinance would apply to discharging firearms. He asked whether the applicant would have to comply with contemporary ordinance requirements if the ordinance were updated at a future date.

Mr. Svoboda explained that if the use was existing and the ordinance changed, then it would be categorized as a non-conforming use. He said it was unlikely the ordinance would be applied retroactively, and the business would be constrained to the limitations it was previously approved under.

Mr. Carrington said that staff applied the relevant ordinances appropriately.

Ms. Joseph said that altering firearms as a use was not connected to the ordinance requirements. She questioned the ability to offer secure storage of firearms as a permitted use. She said that the approval did not follow the ordinance requirements because it left too much for interpretation.

Mr. Svoboda said that alterations in terms of gunsmithing allowed for changing components such as triggers.

Ms. Joseph asked whether the components would be made in-house and how waste materials from manufacturing would be handled. She expressed concerns that alterations were not defined in the approval, and there was no connection to the requirements in the ordinance.

Mr. Svoboda responded that they did not require applicants to provide an explanation as to what the use was for or how materials would be utilized.

Mr. Shepherd said that the application should meet every criterion listed in § 18-5.2A.

Ms. Joseph expressed concerns that there was pertinent information missing from the application, and she was not able to affirm the administrative determination.

Mr. Carrington asked whether the home occupation permit would be revoked if it was found in violation of the performance standards.

Mr. Svoboda responded that it was a possibility, but there was a violation procedure which included notices, fines, and court procedures.

Mr. Shepherd said that there were no specific performance standards for the application, which made it difficult to enforce.

Ms. Joseph noted that there were no limits to the number of alterations which could be performed, no distinction of what the alterations could include, and no detail regarding the secure storage of firearms.

Mr. Herrick responded that performance standards applied, but it was a finite list and not at the discretion of the Zoning Administrator. He said the performance standards listed in § 4.14—noise, vibration, glare, heat, and electrical disturbance—were limited to uses of an industrial character, and a certified engineer's report was not required for every use. He explained that the zoning clearance stipulated that if applicants complied with the plan as submitted, they would be in compliance with the zoning ordinance, but the Zoning Administrator would still be able to enforce the ordinance if the use was not in compliance.

Mr. Carrington asked Mr. Bowling for his opinion regarding the lack of specificity.

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Mr. Bowling said the Board had to address the matter at hand and determine whether the ordinance was appropriately applied.

MOTION: Mr. Shepherd moved to reverse the Zoning Administrator's decision based on §5.2A(d)(1) and §5.2A(l)(6), the lack of the engineer's report required by §5.2A(k), the requirements of §4.14, §4.14.5(a)(4), and §4.14.5.4(d), and because storage was not a permitted use in the rural area. Ms. Joseph seconded the motion, which failed (2-2). Mr. Rosenberg was absent.

AYE	NAY
Mr. Shepherd	Mr. Burkhart
Ms. Joseph	Mr. Carrington

MOTION: Mr. Carrington moved to affirm the decision of the Zoning Administrator for the reasons stated in the staff report. Mr. Burkhart seconded the motion, which failed (2-2). Mr. Rosenberg was absent.

AYE	NAY
Mr. Burkhart	Mr. Shepherd
Mr. Carrington	Ms. Joseph

Ms. Joseph explained that with both motions resulting in tie votes, the decision of the Zoning Administrator stays. She explained that anyone who was not satisfied with the outcome could appeal the decision of the BZA to the Circuit Court as the next step in the appeal process.

Recess

The Board took a 10-minute recess.

B. AP2023-00002 Appeal of Determination of a Homestay Request {Sign #15}

Mr. Svoboda said the determination was whether the ordinance was appropriately applied. He said on February 8, 2023, an official notice of violation was issued. He said from February 17 through March 7, a series of conversations were held regarding the requirement that a primary use be located within the jurisdiction of the County to permit the homestay use of the cabin as an accessory use.

Mr. Svoboda said on March 2, the official determination was issued which determined the cabin was not eligible to be operated as a homestay because the primary dwelling was located in Nelson County. He said on March 29, the appeal was filed. He said that the determination was based on the fact no primary use existed in the County's jurisdiction, so the cabin did not qualify as an accessory use. He said that the County ordinance only applied within its jurisdiction, and because the Zoning Administrator's determination was correct, the Board should affirm the determination.

Ms. Allison Harwood, appellant, stated that the cabin had been constructed in the late 1700s, and it had been restored to include solar power. She said they received notice of non-compliance from the County within two months of the homestay, and they were not eligible for a homestay use because of the characteristics of the property. She said that the entire 34 acres of the parcel was under a conservation easement, and it was indivisible.

Mr. Steve Blaine, representing the appellant, said that the Zoning Administrator made an inference from the ordinance that the main use must be located in the County for the homestay to qualify. He said it was the appellant's position that the location of the main use in the County was not necessary to protect the health, welfare, and safety of the County, and it was not consistent with the reading of the ordinance. He said that the cabin met all other parcel-related qualifications for a homestay.

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Mr. Blaine explained that the homestay ordinance required a primary dwelling to be located on the same parcel, not within the County, and the appellant's primary residence was located on the same parcel as the homestay. He said that the location of the primary use did not preclude the County from regulating the homestay use, as evidenced by the non-compliance notice.

Mr. Burkhart noted that in communications between the County and the appellant, the appellant was advised to obtain building permits from Nelson County while installing solar panels on the cabin property. He asked who in the County advised the appellant to address business with Nelson County.

Ms. Harwood responded that her husband had managed the communications for the solar power permits, so she was not able to provide a name for who provided the information.

Mr. Burkhart asked what Nelson County's response was to the appellant's inquiries.

Ms. Harwood responded that Nelson County issued the permits.

Mr. Blaine said that the use was being regulated, so the County had jurisdiction on the cabin, so it should have jurisdiction over the homestay use. He stated that the ordinance did not require jurisdiction over the primary use because it only required the existence of a primary use as a factual condition.

Ms. Alley read the rules for public comment.

Brent Gunsalus said he lived on a property adjacent to the appellant. He stated that the appellants lived in Michigan, and they no longer lived in the main house on the parcel in Nelson County. He said that the solar panels the appellant installed were located in Nelson County. He expressed concerns about a firepit that was placed on the appellant's property approximately 95 feet from his property, and as screening, the appellant installed a woodshed that was inadequate. He said that the homestay use would impact his property, and § 5.1.48(D)(3)(1) requested the Board to consider adverse impacts on the surrounding neighborhood.

Alan Lane said he neighbored the Gunsalus property. He noted the negative impacts of other homestays in the neighborhood and supported Brent Gunsalus' comments.

Charles Coyner said he owned property which neighbored the appellant's property, but his property was located in Nelson County. He said the homestay would not impact his property and he supported the homestay use.

Brenda Saunders said her property bordered the appellant's property, and it was located both in Nelson and Albemarle County. She noted that the cabin had been rented out for several years, but it had been recently renovated. She said that the primary residence in Nelson was only 200 feet from the cabin in Albemarle. She said that someone was always present at the main house, and she and her husband maintained the property for the appellant.

Lyn Gunsalus said her property was adjacent to the appellant's property. She expressed concerns about the firepit and the potential noise levels.

Mr. Herrick provided a rebuttal to public comment. He explained that under County Code § 18-5.1.48(b)(1), every homestay must have an associated primary residential use. He said that the cabin was the only structure on the parcel in the County, and the Zoning Administrator did not have jurisdiction over structures outside of the County. He said that it had been the County's administrative practice to consider

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only structures and uses that were within the County. He requested that the Board affirm the Zoning Administrator's decision because there was no primary use on the parcel within the County's jurisdiction.

Mr. Blaine said that there was a primary use on the parcel, so the homestay use should qualify. He reiterated that it was not necessary for the primary use to be located within the County. He noted that the appellants currently resided in Minnesota, and they were aware of the requirements for the onsite manager.

Ms. Joseph closed public comment.

Mr. Burkhart said he agreed with the appellant's argument that the primary dwelling did not have to be within the County to qualify as a homestay use. He said that the ordinance left the matter up for interpretation.

Mr. Shepherd asked the appellant to elaborate on the conversations held with the County between the initial notice and the final determination of non-compliance. He asked what options had been offered to the appellant to have the use come into compliance.

Mrs. Harwood responded that there was a phone conversation with a Zoning official, but she was not part of the discussion. She said that it did not feel like they were given options by the County.

Mr. Shepherd suggested deferring the Board's decision and sending the matter back through the special exception process.

Ms. Joseph clarified that the County could not declare or determine whether there was a primary use on the parcel if the use was not within the County's jurisdiction. She asked whether the County could obtain documentation from Nelson County stipulating the primary use then issue a special exception to the applicant. She asked what other avenues to approval were available for the appellant.

Mr. Herrick responded that the ordinance listed the specific areas for which special exceptions could be granted. He said that § 5.1.48(B)(2) discussed special exceptions for a non-resident manager. He said § 5.1.48(B)(3) discussed special exceptions to yard requirements. He said that there were parcel-based regulations in § 5.1.48(C), and there was a special exception in § 5.1.48(C)(2)(ii) related to structure types.

Mr. Herrick said that the Board of Supervisors could not issue a special exception under the circumstances affecting the appellant because there was no specific mention of such a special exception in the ordinance. He said that the ordinance did not specifically state the primary use had to be in the County because it was the County ordinance, and the provisions were assumed to apply only in the County. He said that there was no special exception to waive the primary use requirement.

Mr. Blaine said that there was an agreement on the facts that the primary residential use was in Nelson County, and the accessory use was in Albemarle County. He said that the primary use did not have to be in the County in order to enforce the homestay ordinance.

MOTION: Mr. Shepherd moved to affirm the administrative determination. There was no second. The motion died.

MOTION: Mr. Shepherd moved to reverse the administrative determination. Mr. Carrington seconded the motion.

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Mr. Shepherd stated the relationship between the primary dwelling and accessory homestay existed on the parcel, and the homestay use could be regulated in the County.

Mr. Carrington stated that the homestay met the definition of an accessory use, including the requirement the use was on the same lot as the primary use, so it was therefore permitted.

The motion carried unanimously (4-0).

4. Approval of Minutes
A. May 2, 2023

MOTION: Mr. Burkhart moved to approve the minutes as presented. Mr. Carrington seconded the motion, which carried unanimously (4-0).

5. Old Business
There was none.

6. New Business
Mr. Svoboda stated that there would be an appeal hearing next month, and noted that the meeting date was July 11, 2023.

7. Adjournment
MOTION: Mr. Carrington moved to adjourn the meeting. Mr. Shepherd seconded the motion, which carried unanimously (4-0).

The meeting adjourned at approximately 5:25 p.m.

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

Respectfully Submitted,

John Shepherd, Secretary Board of Zoning Appeals

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