County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
AGENDA
TUESDAY, AUGUST 1, 2023 at 2:00 P.M
LANE AUDITORIUM

1. Call to Order

2. Establish a Quorum

3. Public Hearing:
   A. VA2023-00001 Albemarle Lake Lot {Sign #79}
      Property Owner(s): The Macker, LLC
      Contact Person: Greg Baldwin
      Tax Map Parcel ID: 041A0-00-00-09200
      Staff: Francis MacCall

4. Approval of Minutes
   A. June 6, 2023
   B. July 11, 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.

VA2023-001 Albemarle Lake Lot

Information submitted by the Applicant is included in Attachments A, B, and C.

STAFF: Francis H MacCall
PUBLIC HEARING: August 1, 2023

STAFF REPORT: VA2023-00001 Albemarle Lake Lot

OWNER/APPLICANT: The Macker LLC
PARCEL ID: 041A0-00-00-09200
ZONING: Rural Areas (RA)
ACREAGE: 0.32 acres
LOCATION: This vacant property is in northwestern Albemarle County and fronts on State Route 669 (Lakeside Dr). Please refer to the Map and Plat of the Property (Attachment A) for reference.

TECHNICAL REQUEST AND EXPLANATION: County Code § 18-10.4 requires the following minimum yards (setbacks) in the Rural Areas zoning district: Front 25', Side 25', and Rear 35'.

The applicant is requesting a variance to reduce the "sideline setback requirement to a 10 ft. sideline setback" to allow a dwelling to be located 15 feet from the two side property lines (See Attachment B & C).

BACKGROUND:
Lots within the Albemarle Lake subdivision were created in the 1930s and 40s before any subdivision or zoning requirements. The majority of the lots within the subdivision are considered nonconforming lots as defined in the Zoning Ordinance *"a "Nonconforming lot" means a lawful lot of record existing on the effective date of the zoning regulations applicable to the district in which the lot is located, that does not comply with section 4 and the minimum applicable size, frontage, width, building site or other lot requirements of that zoning district."*

QUALIFYING CONDITIONS:
Under Virginia Code § 15.2-2309(2) (Attachment D), the BZA may "grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section."

These provisions and Albemarle County Code § 18-34.4(i) (Attachment E), are outlined below.

Virginia Code § 15.2-2201 - Definitions
A variance is "a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when" all of the following four standards are met.

1. *The strict application of the ordinance would unreasonably restrict the utilization of the property, and*

2. *Such need for a variance would not be shared generally by other properties, and*

3. *Provided such variance is not contrary to the purpose of the ordinance.*

4. *It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*

And

County Code § 18-34.4(i) provides:
The Board shall grant a variance if the evidence shows:

(i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or

(ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;

And all of the following:

1. *Good faith acquisition and hardship not self-inflicted. The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant for the variance.*

2. *No substantial detriment. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*

3. *Condition of situation not general or recurring. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*

4. *Use variance prohibited. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.*

5. *Special use permit or special exception not available. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.*

STAFF ANALYSIS:
Staff has evaluated this application against the above variance standards.

Virginia Code § 15.2-2201
Standard:

1. *The strict application of the ordinance would unreasonably restrict the utilization of the property, and*
   Staff: Strictly applying the 25' side setback does not unreasonably restrict the property's utilization. The owner has not demonstrated that a dwelling of a different configuration and size could not be sited on the property, nor that agricultural activities cannot happen there. Staff believes that agriculture is still a **reasonable** use of the land, which may include associated accessory structure(s) for that use.

2. *Such need for a variance would not be shared generally by other properties, and*
   Staff: The need for a variance is shared generally by other properties. Most parcels within the Lake Albemarle subdivision would share the need for a variance, as most are considered nonconforming lots. That said, according to Section 6.1 of the Zoning

Ordinance, "Nonconforming uses, structures, and **lots are declared to be incompatible with the zoning districts in which they are located** and, therefore, are authorized to continue only under the circumstances provided herein until they are discontinued, removed, changed, or action is taken to conform to the zoning regulations applicable to the district in which the use, structure or lot is located."

To place a dwelling as proposed by the applicant, parcels could be combined to comply with the side setbacks. This type of action would be needed for multiple other lots within the subdivision to comply with the required setbacks.

3. *Provided such variance is not contrary to the purpose of the ordinance.*
   Staff: A setback variance would be contrary to the purpose of the Zoning Ordinance for nonconformities outlined in Section 6.1 noted above and in Attachment F.

4. *It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*
   Staff: There would be no change in the use of the property if the variance were granted.

County Code § 18-34.4(i)
Standard: *The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property.*
Staff: The owner can **reasonably** utilize the property with a by-right use of agriculture and accessory structures supporting that use.
Or
Standard: *Granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;*
Staff: The property has no physical conditions that create a hardship to its use.

And

1. *The property interest for which the variance is being requested was acquired in good faith, and any hardship was not created by the applicant for the variance.*
   Staff: This application meets this standard. The property was acquired in good faith, and any hardship was not created by the applicant.

2. *Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.*
   Staff: This application meets this standard. Staff has not identified a substantial detriment to adjacent and nearby properties.

3. *The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*
   Staff: This application meets this standard. There are approximately 51,072 parcels in Albemarle County, with approximately 23,677 lots zoned Rural Areas, with approximately 16.4% or 3,873 being nonconforming to the 2-acre minimum lot size for the RA district. The various shapes of nonconforming lots make it difficult to identify other non-conformities. Regardless of other non-conformities, the property is a nonconforming lot.

With the property being one lot of approximately 3,873 nonconforming lots, the property's condition would not be considered of a general or recurring nature. That said, there are already regulations that address the nature of these types of lots and the restrictions imposed by the regulations.

4. *Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.*
   Staff: This application meets this standard. The granting of the variance would not result in a use not otherwise permitted on the property.

5. *The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.*
   Staff: This application meets this standard. The Rural Areas zoning district regulations for setbacks are not subject to a special use permit or special exception.

STAFF RECOMMENDATION:
Because the applicant has not met the burden of proof by a preponderance of the evidence that the application meets either the standard for a variance or either criterion outlined in Section 34.1 of the Zoning Ordinance, staff must recommend denial of this variance request.

PROPOSED MOTIONS:
The following motions are offered for consideration and action by the Board:

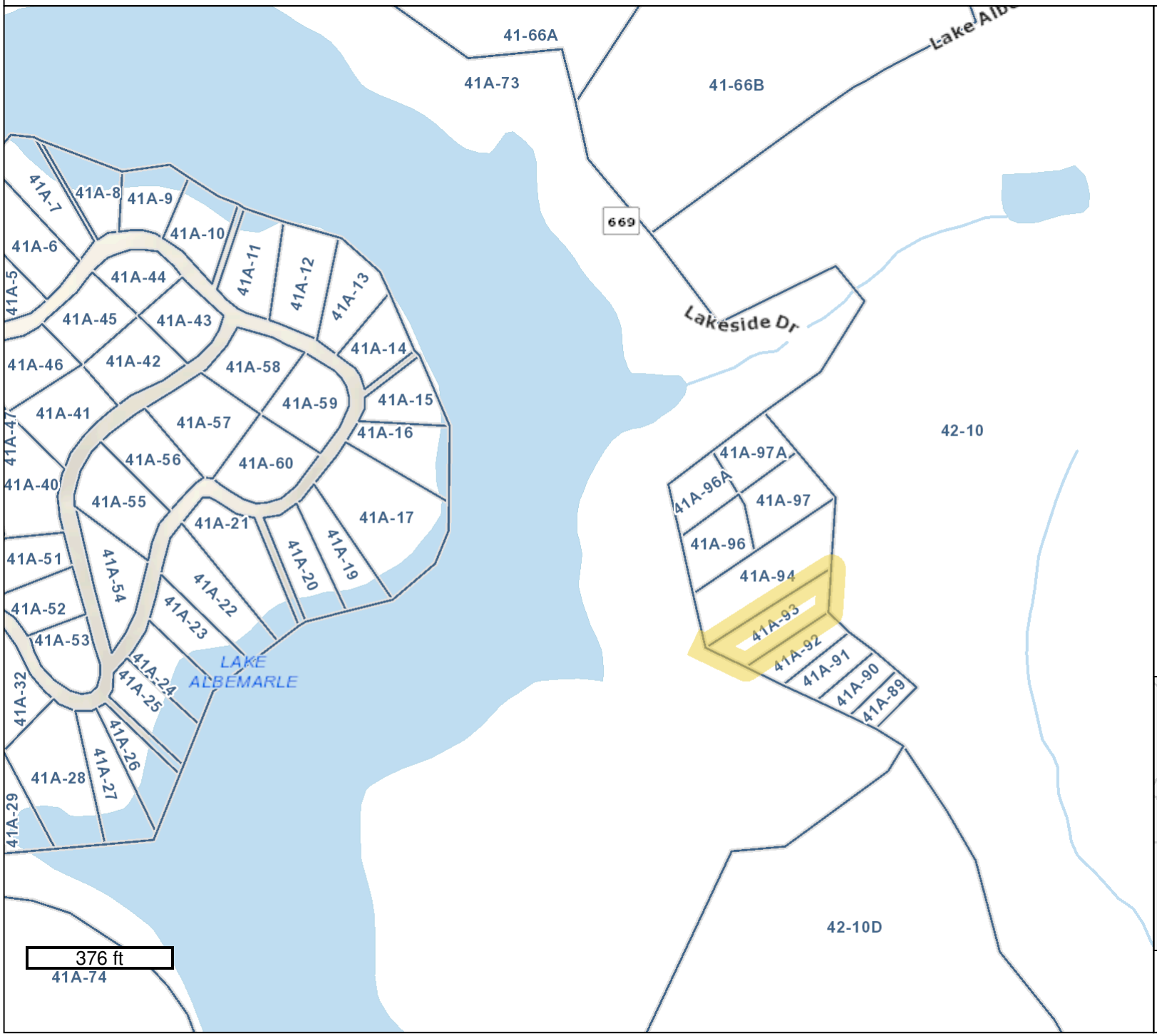
If the Board chooses to deny this variance (as staff recommends):
I move to deny the variance application VA2023-00001 Albemarle Lake Lot for the reasons stated in the staff report.

Alternatively, if the Board finds legal grounds to grant this variance:
I move to approve variance application VA2023-00001 Albemarle Lake Lot to reduce the minimum side yards on Parcel 041A0-00-00-09200 to 10 feet on the following grounds: [State legal grounds for granting variance].

<u>Attachments:</u>

Attachment A: Map and Plat of the Property
Attachment B: Variance Application VA2023-00001 Albemarle Lake Lot
Attachment C: Plats/plans showing proposed setback distances
Attachment D: Virginia Code § 15.2-2309(2)
Attachment E: County Code § 18-34.4(i)
Attachment F: County Code § 18-6.1 and 6.4

ATTACHMENT A



Legend

(Note: Some items on map may not appear in legend)

Parcel Info
- Parcels

Water Features
- Major Water Bodies
- Ponds
- Other Streams

Zoning Info
- Zoning Entrance Corridors
- Proffers
- Natural Resource Extraction Overlay

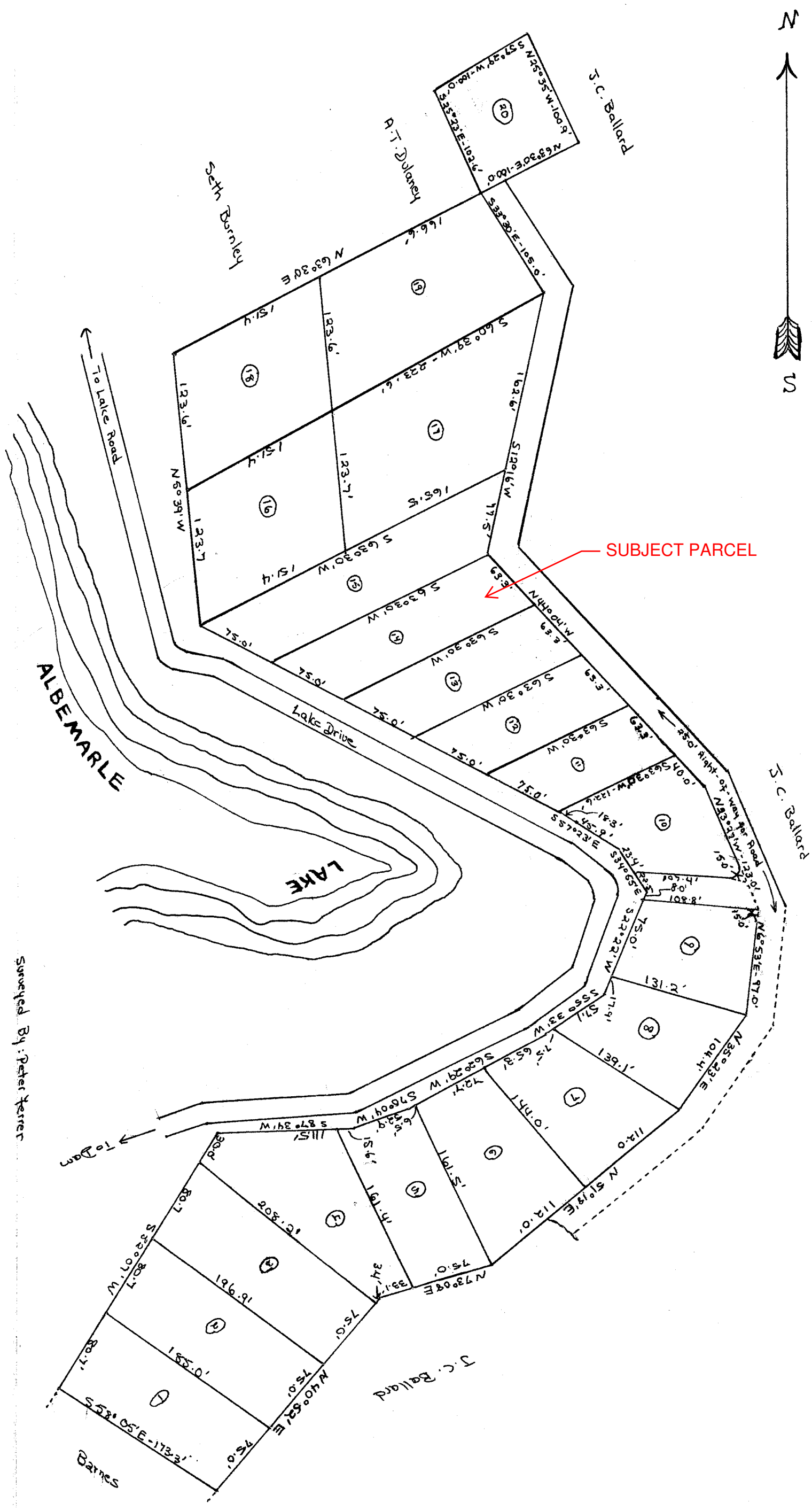
Zoning Classifications
- Rural Areas
- Village Residential
- R1 Residential
- R2 Residential
- R4 Residential
- R6 Residential
- R10 Residential
- R15 Residential
- Planned Unit Development
- Planned Residential Development
- Neighborhood Model District
- Monticello Historic District
- C1 Commercial
- Commercial Office
- Highway Commercial
- Planned Development Shopping Ctr.
- Planned Development Mixed Comm.
- Downtown Crozet District
- Light Industry
- Heavy Industry
- Planned Development Industrial Par
- Town of Scottsville

GIS-Web
Geographic Data Services
www.albemarle.org/gis
(434) 296-5832

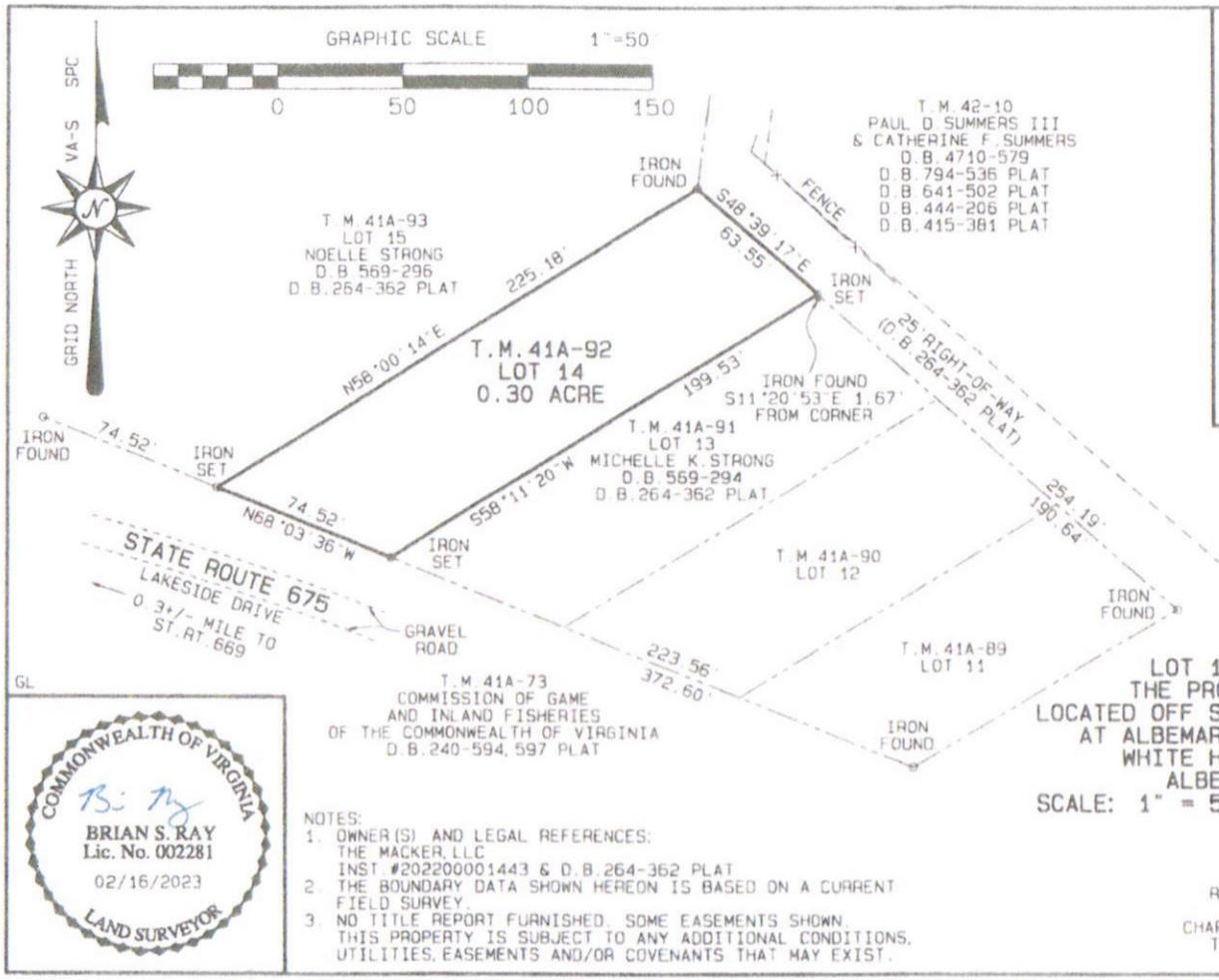
Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

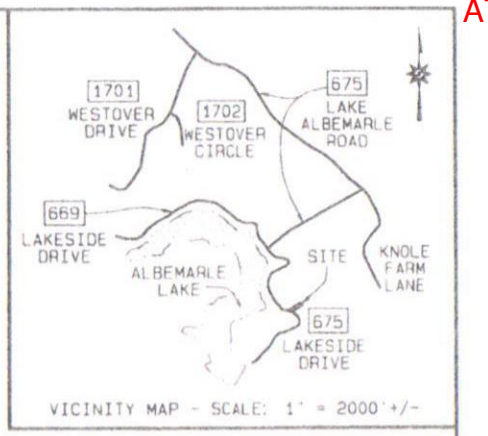
July 19, 2023

Map elements may scale larger than GIS data measured in the map or as provided on the data download page due to the projection used. Map Projection: WGS84 Web Mercator (Auxiliary Sphere) (EPSG 3857)


N
S
SUBJECT PARCEL
ALBEMARLE
LAKE
Lake Drive
To Lake Road
To Dam
Seth Burnley
A.T. Dolaney
J.C. Ballard
J.C. Ballard
J.C. Ballard
Barnes
Surveyed By: Peter Ferrer

ATTACHMENT A





COMMONWEALTH OF VIRGINIA
BRIAN S. RAY
Lic. No. 002281
02/16/2023
LAND SURVEYOR

NOTES:
1. OWNER(S) AND LEGAL REFERENCES:
THE MACKER, LLC
INST. #202200001443 & D.B. 264-362 PLAT
2. THE BOUNDARY DATA SHOWN HEREON IS BASED ON A CURRENT FIELD SURVEY.
3. NO TITLE REPORT FURNISHED. SOME EASEMENTS SHOWN. THIS PROPERTY IS SUBJECT TO ANY ADDITIONAL CONDITIONS, UTILITIES, EASEMENTS AND/OR COVENANTS THAT MAY EXIST.

BOUNDARY SURVEY
LOT 14, CONTAINING 0.30 ACRE
THE PROPERTY OF THE MACKER, LLC
LOCATED OFF STATE ROUTE 675 (LAKESIDE DRIVE)
AT ALBEMARLE LAKE (AKA LAKE ALBEMARLE)
WHITE HALL MAGISTERIAL DISTRICT
ALBEMARLE COUNTY, VIRGINIA
SCALE: 1" = 50' DATE: FEBRUARY 16, 2023

FOR
THE MACKER, LLC

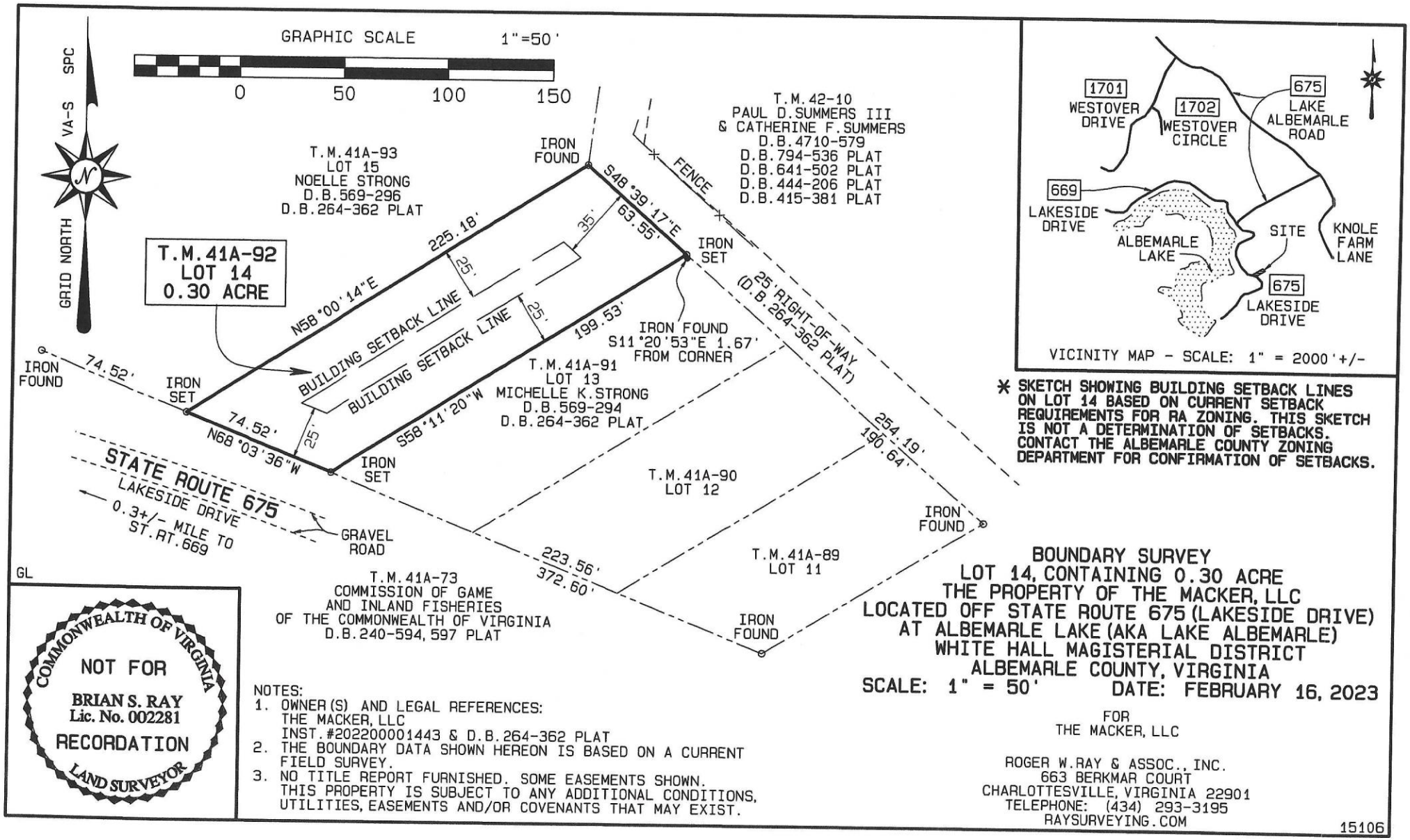
ROGER W. RAY & ASSOC., INC.
663 BERKMAR COURT
CHARLOTTESVILLE, VIRGINIA 22901
TELEPHONE: (434) 293-3195
RAYSURVEYING.COM

15106

MERIDIAN PLANNING GROUP, LLC
Engineering • Surveying • Planning
440 Premier Circle, Suite 200
Charlottesville, VA 22901
Phone: 434-882-0121

County: Albemarle	Project Name: Albemarle Lake - Lot 14
Tax Map: TM 41A-92	Subdivision: Albemarle Lake
HDID:	Title: Lot Line Survey
Size: B	
Date: 25 Apr 23 / Scale: N/A	Sheet: 10 of 10 / Rev: 0

EXISTING SET BACK ACCORDING TO ORDINANCE



ATTACHMENT B

FOR OFFICE USE ONLY VA # _____ SIGN # _____

ZONING ORDINANCE SECTION: _____

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

Application for Variance

☑ **Variance = $615.68** (Application $592 + $23.68 Technology Surcharge)
to be paid once application is deemed complete

☑ **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)

Project Name: ALBEMARLE LAKE LOT

Parcel ID Number: 41A-92 **Zoning:** SINGLE FAMILY RESIDENTIAL (URBAN)

Physical Street Address (if assigned): _____

Contact (who should the main contact about this project): GREG BALDWIN
Street Address _____
City _____ **State** _____ **Zip Code** _____
Phone Number 434-989-1932
Email GREG@COREDVILLE.COM

Owner of Record: THE MACKER, LLC
Street Address P.O. BOX 388
City STAUNTON **State** VA. **Zip Code** 24402
Phone Number _____
Email _____

Applicant (if different from the owner): _____
Street Address _____
City _____ **State** _____ **Zip Code** _____
Phone Number _____
Email _____

Variance is defined as follows
A variance is defined as a reasonable deviation from those provisions regulating the shape, size or area of a lot, or the size, height, area,

bulk or location of a structure when the strict application of this chapter would unreasonably restrict the utilization of the property, and the need for the variance would not be shared generally by other lots, and provided that the variance is not contrary to the purpose of this chapter, provided that a variance shall not include a change in use. (Albemarle County Code Chapter 18 Section 3)

REQUIRED ATTACHMENTS & OTHER INFORMATION TO BE PROVIDED for THE APPLICATION TO BE CONSIDERED COMPLETE AND OFFICIALLY SUBMITTED

- [x] Nine (9) folded copies of any and all plans or additional information
- [x] One (1) copy of a recorded plat or boundary survey of the property requested for the variance. If there is no recorded plat or boundary survey, please provide legal description of the property and the Deed Book and page number or Plat Book and page number.
- [x] Drawings showing all existing and proposed improvements on the property, with all dimensions and distances to property lines, and any special conditions on the property that may justify the request.
- [x] Written description of your request (include dimensions, measurements or sizes in feet). **This is to also include evidence as noted below**. BUILD HOUSE ON THIS LOT
- [x] As the owner/applicant I certify that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, which are owed to the County of Albemarle and have been properly assessed against the subject property, **have been paid.**

Please be aware that the board shall grant a variance if the evidence shows:

(i) That strict application of the terms of the ordinance **would unreasonably restrict the utilization of the property**;

(ii) That granting the variance would alleviate a **hardship due to**

a physical condition relating to the property or

due to improvements thereon at the time of the effective date of the ordinance; or

(iii) That granting the variance would alleviate a **hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability**

and

(iv) All of the following:

1. **Good faith acquisition and hardship not self-inflicted.** The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
2. **No substantial detriment.** Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
3. **Condition of situation not general or recurring.** The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
4. **Use variance prohibited.** Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.
5. **Special use permit or special exception not available.** The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

Please be aware that the evidence required above needs to be provided by the applicant and should be provided with the written description as noted above.

Owner/Applicant Must Read and Sign

I hereby certify that I own the subject property, or have the legal power to act on behalf of the owner in filing this application. I also certify that the information provided on this application and accompanying information is accurate, true, and correct to the best of my knowledge. By signing this application I am consenting to written comments, letters and or notifications regarding this application being provided to me or my designated contact via fax and or email. This consent does not preclude such written communication from also being sent via first class mail.

Signature of Owner/Applicant

Date 5/10/23

Print Name WM. G. BALDWIN

Daytime phone number of Signatory 989-1932

Board of Zoning Appeals Action/vote: _____

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

CERTIFICATION THAT NOTICE OF THE APPLICATION HAS BEEN PROVIDED TO THE LANDOWNER

This form must accompany this zoning application if the application is not signed by the owner of the property.

I certify that notice of the application for, THE MACKEE, LLC REQUEST FOR A VARIANCE
[Name of the application type & if known the assigned application #]

was provided to THE MACKEE, LLC / TODD CAER, MANAGER
[Name(s) of the record owners of the parcel]

the owner of record of Tax Map and Parcel Number TMM 41A - 92

by delivering a copy of the application in the manner identified below:

✓ Hand delivery of a copy of the application to THE MACKEE, LLC / MANAGER TODD CAER
[Name of the record owner if the record owner is a person; if the owner of record is an entity, identify the recipient of the record and the recipient's title or office for that entity]

on 5/10/23
Date

_____ Mailing a copy of the application to _____
[Name of the record owner if the record owner is a person; if the owner of record is an entity, identify the recipient of the record and the recipient's title or office for that entity]

on _____ to the following address _____
Date

_____
[Address; written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records satisfies this requirement].

_____
Signature of Applicant

WM. GREG BALDWIN
Print Applicant Name

5/10/23
Date

OWNER

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

Lot 14 Albemarle Lake Request for a Variance

This is a request for a variance from the present 25 ft. sideline setback requirement to a 10 ft. sideline setback to accommodate the construction of the house on this lot. We can verify that we meet the health and safety requirements for this lot (We can drill a well, we can install a septic system that meets current requirements, which is engineered and presently submitted to the health department for approval.

I am requesting a variance because the strict application of the ordinance would unreasonably restrict the utilization of the property.

The property was acquired in good faith/

Granting the variance will not be a substantial detriment to adjacent property, since our use would be the same as theirs.

Conditions of this variance would not necessitate a general change to the ordinance.

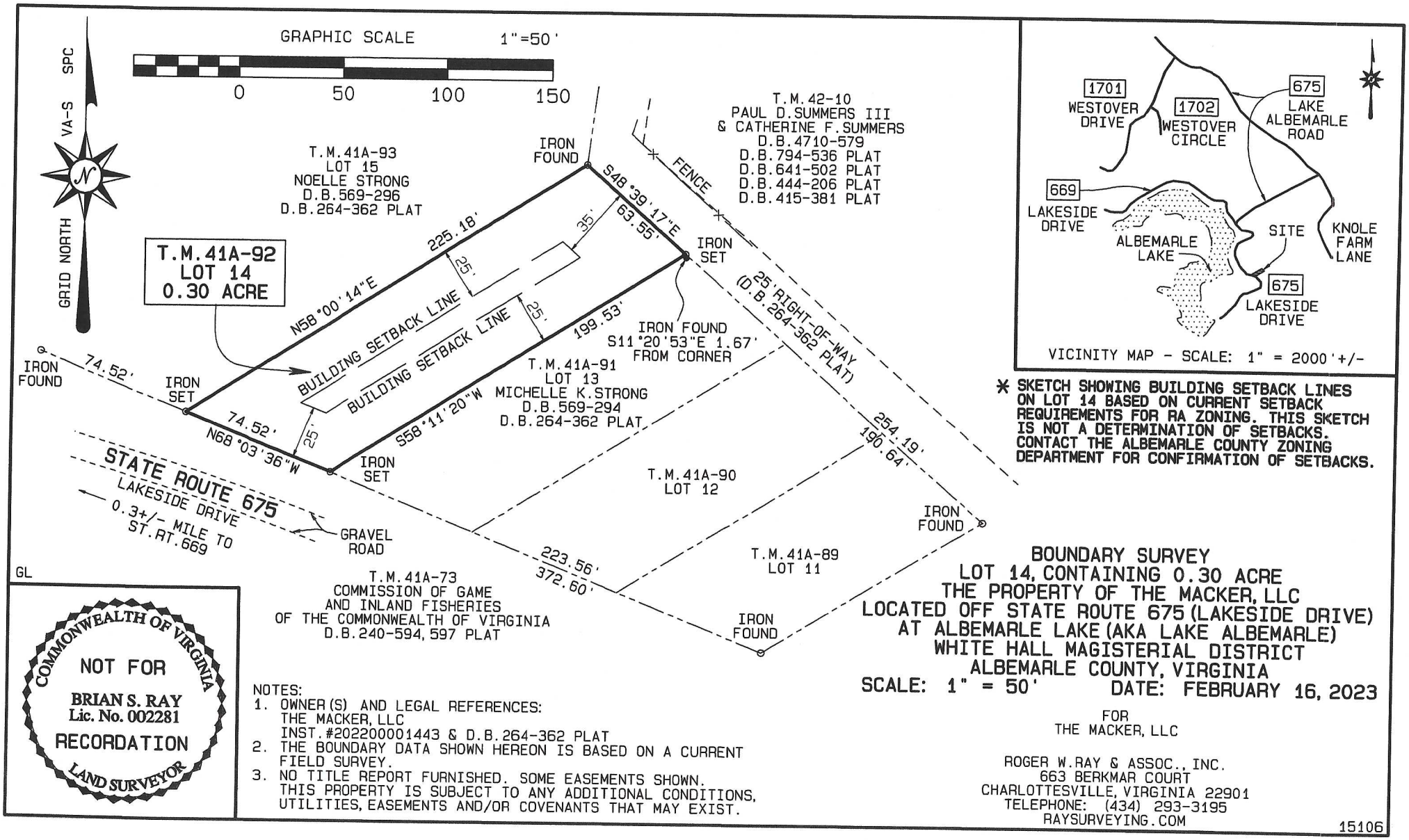
Granting this variance will not result in a use that is not otherwise permitted.

Also, the relief sought by this variance is not available by a Special Use Permit or special exception.

Please consider these issues in making your decision, Greg Baldwin/ agent for The Macker,LLC

ATTACHMENT C
Applicant's survey showing the required 25' side setbacks or primary structures

EXISTING SET BACK ACCORDING TO ORDINANCE



* SKETCH SHOWING BUILDING SETBACK LINES ON LOT 14 BASED ON CURRENT SETBACK REQUIREMENTS FOR RA ZONING. THIS SKETCH IS NOT A DETERMINATION OF SETBACKS. CONTACT THE ALBEMARLE COUNTY ZONING DEPARTMENT FOR CONFIRMATION OF SETBACKS.

COMMONWEALTH OF VIRGINIA
NOT FOR
BRIAN S. RAY
Lic. No. 002281
RECORDATION
LAND SURVEYOR

NOTES:
1. OWNER(S) AND LEGAL REFERENCES:
   THE MACKER, LLC
   INST.#202200001443 & D.B.264-362 PLAT
2. THE BOUNDARY DATA SHOWN HEREON IS BASED ON A CURRENT FIELD SURVEY.
3. NO TITLE REPORT FURNISHED. SOME EASEMENTS SHOWN. THIS PROPERTY IS SUBJECT TO ANY ADDITIONAL CONDITIONS, UTILITIES, EASEMENTS AND/OR COVENANTS THAT MAY EXIST.

BOUNDARY SURVEY
LOT 14, CONTAINING 0.30 ACRE
THE PROPERTY OF THE MACKER, LLC
LOCATED OFF STATE ROUTE 675 (LAKESIDE DRIVE)
AT ALBEMARLE LAKE (AKA LAKE ALBEMARLE)
WHITE HALL MAGISTERIAL DISTRICT
ALBEMARLE COUNTY, VIRGINIA
SCALE: 1" = 50' DATE: FEBRUARY 16, 2023

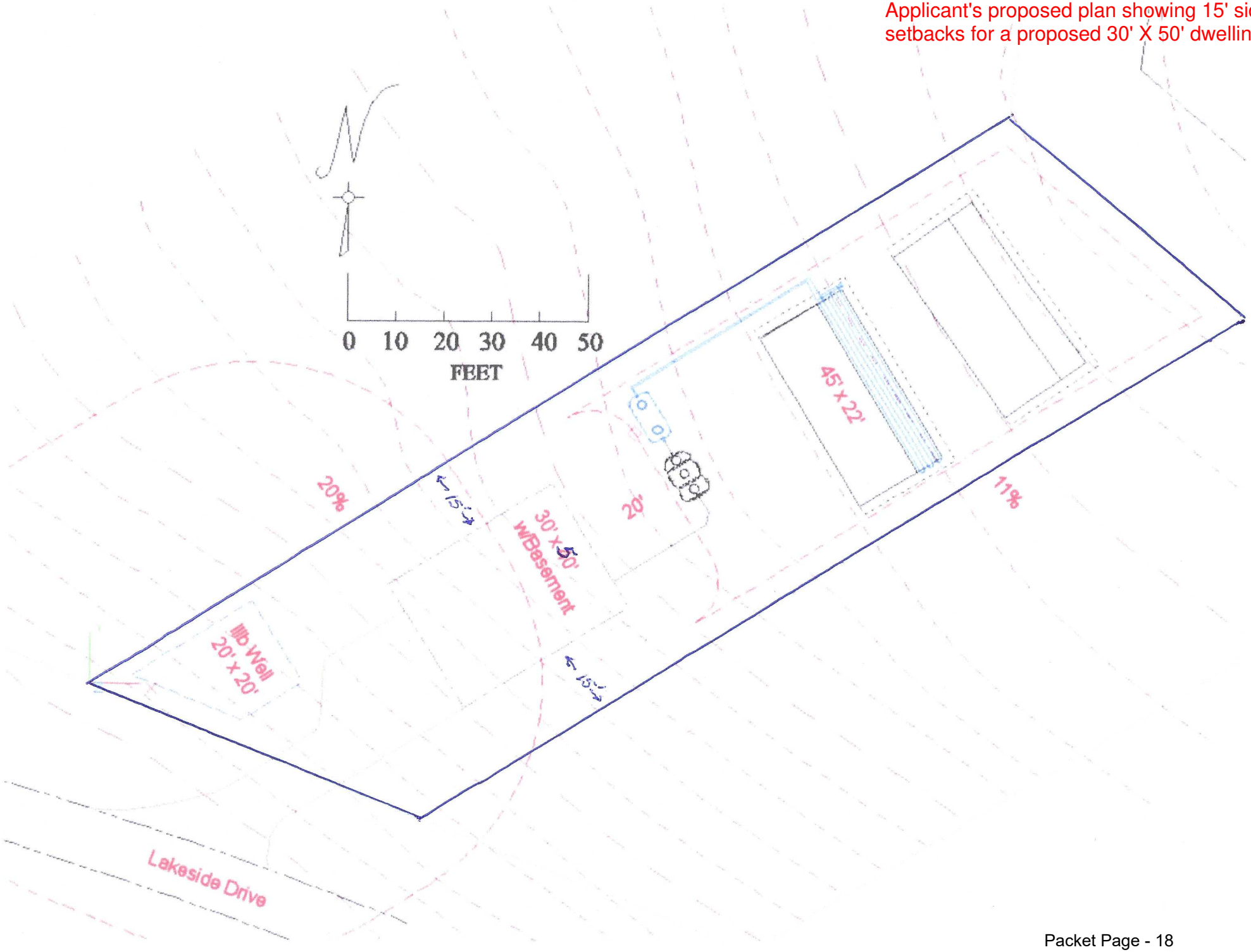
FOR
THE MACKER, LLC

ROGER W.RAY & ASSOC., INC.
663 BERKMAR COURT
CHARLOTTESVILLE, VIRGINIA 22901
TELEPHONE: (434) 293-3195
RAYSURVEYING.COM

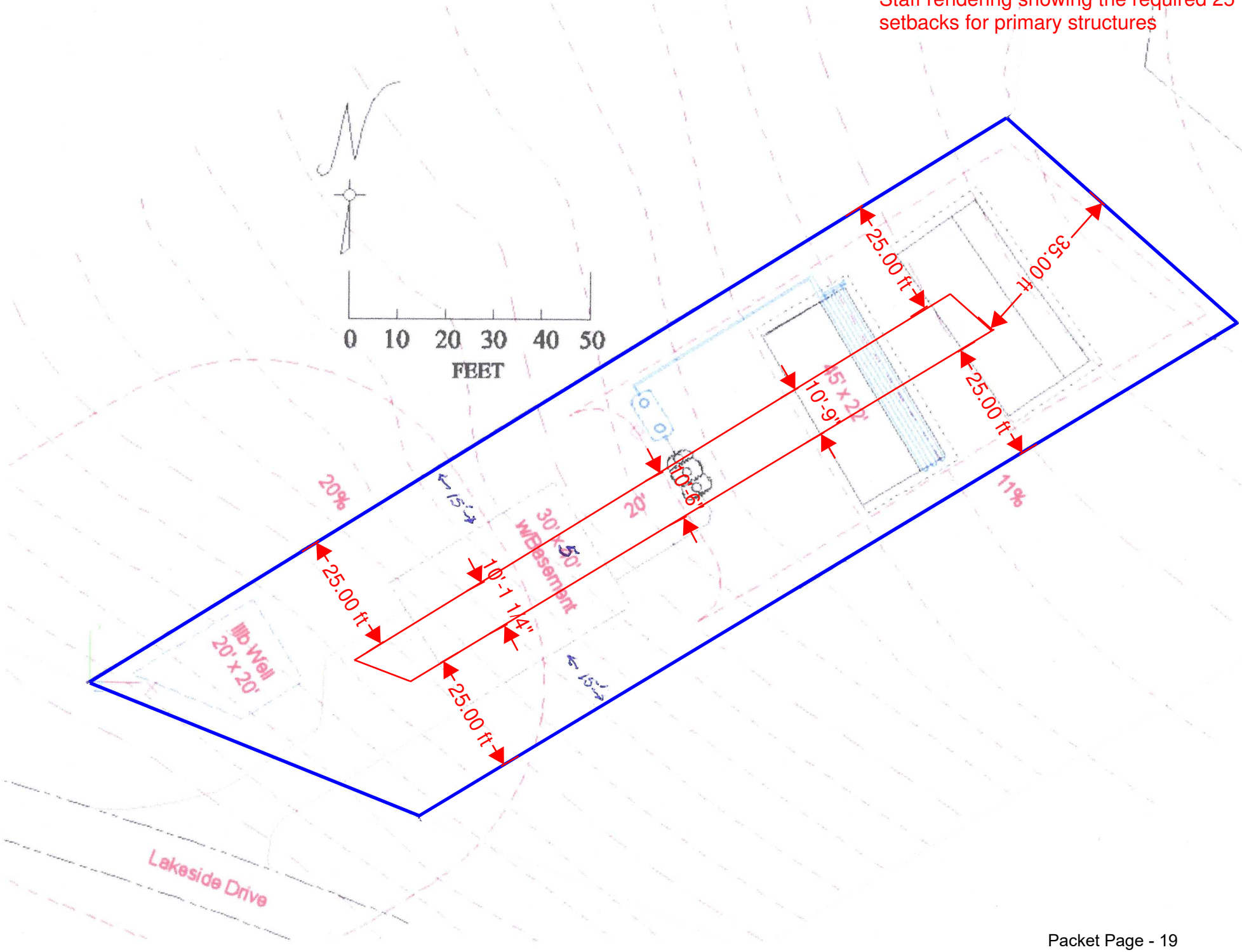
15106

ATTACHMENT C

Applicant's proposed plan showing 15' side setbacks for a proposed 30' X 50' dwelling

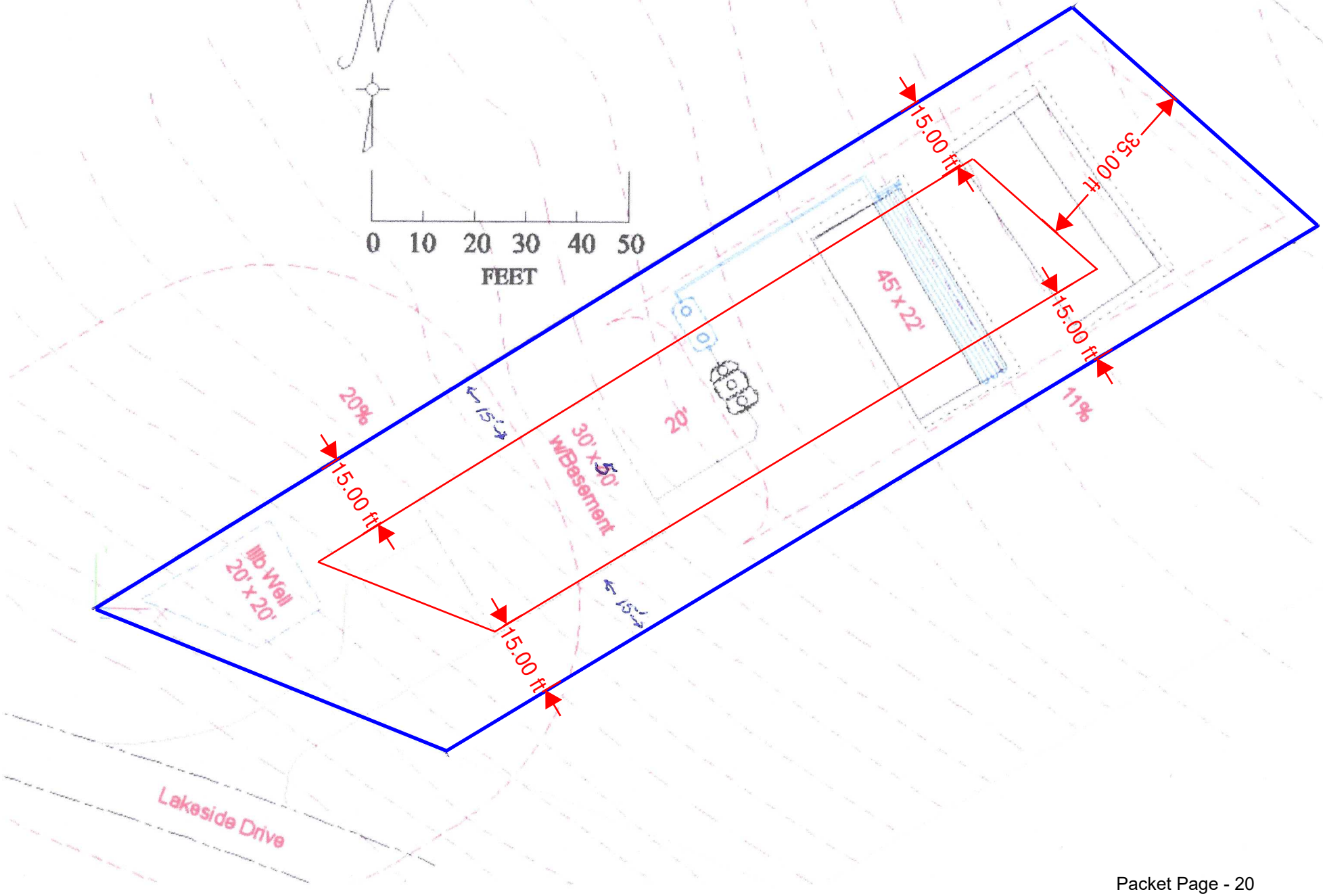


ATTACHMENT C
Staff rendering showing the required 25' side setbacks for primary structures



ATTACHMENT C

Staff rendering showing the proposed 15' side setbacks



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

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application. Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair

housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204.

However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555;1997, c. 587;2000, c. 1050; 2002, c. 546;2003, c. 403;2006, c. 264;2008, c. 318;2009, c. 206;2015, c. 597;2018, c. 757.

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.

Section 34.4 - Variances.

i. *Criteria to establish basis to grant a variance*. The board shall grant a variance if the evidence shows: (i) that strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or (ii) that granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance; and all of the following:

1. *Good faith acquisition and hardship not self-inflicted*. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
2. *No substantial detriment*. Granting the variance will not be a substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
3. *Condition of situation not general or recurring*. The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
4. *Use variance prohibited*. Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property.
5. *Special use permit or special exception not available*. The relief or remedy sought by the variance application is not available through a special use permit or special exception authorized by this chapter when the application is filed.

j. *Factors not to be considered*. The board shall not base any decision on the merits of the purpose and intent of any relevant provision in the zoning ordinance.

k. *Time for decision*. The board shall schedule a reasonable time for the hearing on an application so that it may make its decision within 90 days after the date the application was deemed to be complete. This 90-day period is directory, not mandatory.

l. *Action by the board; vote required to grant variance*. The concurring vote of three members of the board is required to grant a variance.

m. *Conditions on variance.* In granting a variance, the board may impose conditions, as follows:

1. *Nature of conditions*. The board may impose reasonable conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest.
2. *Guarantee or bond to ensure compliance*. The board also may require that the applicant provide a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.
3. *Conditions deemed to be essential and nonseverable*. Except as the board may specify in a particular case, any condition imposed on a variance shall be deemed to be essential and nonseverable from the variance itself and any condition determined to be invalid, void or unlawful shall invalidate the variance.

n. *Effect of granting variance; expansion of structure*. The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and this chapter; however, any structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under this chapter. If an expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

Sec. 6.1 Purpose.

The purpose of this section 6 is to regulate nonconforming uses, structures and lots in a manner consistent with sound planning and zoning principles, except for nonconforming signs regulated by section 4.15, and nonconforming uses and structures within the flood hazard overlay district regulated by section 30.3. Nonconforming uses, structures and lots are declared to be incompatible with the zoning districts in which they are located and, therefore, are authorized to continue only under the circumstances provided herein until they are discontinued, removed, changed or action is taken to conform to the zoning regulations applicable to the district in which the use, structure or lot is located.

(Ord. 00-18(4) , 6-14-00)

State law reference(s)—Va. Code § 15.2-2307 .

Sec. 6.1.1 (Repealed 6-14-00)

Sec. 6.1.2 (Repealed 6-14-00)

Sec. 6.1.3 (Repealed 6-14-00)

Sec. 6.1.4 (Repealed 6-14-00)

Sec. 6.4 Nonconforming lots.

A nonconforming lot may continue, subject to the provisions, conditions and prohibitions set forth herein.

A. *Uses allowed on a nonconforming lot*. A nonconforming lot may be used as though it satisfies the zoning regulation that makes it nonconforming, provided that:

1. The use is either a nonconforming use or is a use that complies with the zoning regulations applicable to the district in which the lot is located; and
2. The zoning administrator determines that the lot may be occupied consistent with the public health, safety and general welfare.

B. *Subdivision that includes a nonconforming lot*. A nonconforming lot may be subdivided as part of a subdivision provided that all of the resulting lots comply with the requirements of the zoning district in which they are located and all other applicable requirements of the Albemarle County Code.

C. *Combination of a nonconforming lot with another lot*. A nonconforming lot may be combined with a conforming lot or a nonconforming lot provided the size, area or frontage of the resulting lot is increased to make it conforming or not more nonconforming.

D. *Boundary line adjustment between a nonconforming lot and a conforming lot*. One or more boundary lines between a nonconforming lot and a conforming lot may be adjusted provided:

1. The boundary line adjustment does not make the conforming lot nonconforming or the nonconforming lot more nonconforming; and
2. If the lots are in the rural areas zoning district, the boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

E. *Boundary line adjustment between nonconforming lots*. One or more boundary lines between two or more nonconforming lots may be adjusted provided:

1. The boundary line adjustment does not make either nonconforming lot more nonconforming; and
2. If the lots are in the rural areas zoning district, the boundary line adjustment does not result in an increase in the number of lots or dwelling units that could otherwise be established on each lot.

F. *Subdivision, combination, or adjustment of boundary line of nonconforming lot used by country store*. A nonconforming lot may be subdivided, combined with any other lot, or have one or more of its boundary lines adjusted provided: (i) the resulting lot or lots serve a country store, Class A or B; (ii) the subdivision, combination or boundary line adjustment is required to allow the country store use to meet the requirements of the Virginia Department of Health; (iii) the location of all structures on the resulting lot or lots will not become nonconforming or more nonconforming; (iv) the size of the resulting lot or lots will not become more nonconforming.

G. *Change to nonconforming lot resulting from public dedication or eminent domain*. The area of a nonconforming lot may be reduced by the dedication of land for public use or by the exercise of eminent domain.

H. *Setbacks applicable to a nonconforming lot*. The current front, rear and side yard minimum setbacks applicable to the district in which the lot is located shall apply to a nonconforming lot provided that, if any such setback is thereafter reduced as a result of an amendment to the setbacks applicable to the district in

which the lot is located and is in effect when an existing structure is extended or enlarged, then that reduced setback shall apply.

I. *Effect of change of ownership*. A change of the ownership or occupancy of a nonconforming lot shall not affect the status of the nonconforming lot.

(§§ 20-6.1.1, 6.1.2, 6.5.1, 6.5.2, 6.5.4, 12-10-80, 4-15-81, 9-21-88, 6-14-89, 9-9-92; § 18-6.4, Ord. 98-A(1), 8-5-98; Ord. 00-18(4) , 6-14-00; Ord. 08-18(7) , 11-12-08; Ord. 09-18(10) , 12-2-09)

State law reference(s)—Va. Code § 15.2-2307 .

Sec. 6.4.1 (Repealed 6-14-00)

Sec. 6.4.2 (Repealed 6-14-00)

Sec. 6.4.3 (Repealed 6-14-00)

VA2023-001 Albemarle Lake Lot

Emails from the Public

Marsha Alley

From: A Johnson <anne.t.johnson@gmail.com>
Sent: Wednesday, July 12, 2023 8:50 PM
To: BZA
Subject: Appeal of variance request for Parcel 41A-92
Attachments: Screen Shot 2023-07-12 at 8.49.15 PM.png

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

July 12, 2023

Board of Zoning Appeals
401 McIntire Road
Charlottesville, VA 22901

Dear Board of Zoning Appeals,

I am writing in regard to variance application #VA202300001 for parcel 41A-92 on Lake Albemarle. We have lived on Lake Albemarle since 1991 and strongly oppose the variance being requested for this parcel. Our position is based on several concerns. Our first concern is that we were told by the County that we would not be granted a variance after we purchased our property in 1993. At the time, we wanted to put an addition on the back of our home, but it would have impeded on the back set back requirement. The guidance we were given from the County was to talk to our neighbor and see if we could purchase a strip of land from the adjacent landowner to meet the required setbacks. Needless to say, that was not feasible. Given our experience, it would be a ***highly inequitable*** application of the current zoning requirements to grant a setback variance for a parcel that should have been surveyed prior to its recent purchase especially if it was purchased with development in mind. A survey would show the inherent challenges of the property to site a home and meet required setbacks. Given this lot was purchased by a developer, ignorance of the requirements is not an acceptable excuse for a setback variance.

My second concern is that granting a variance would set a harmful precedent for dozens of non-conforming lots around Lake Albemarle and fundamentally endanger the rural designation of the area. Lake Albemarle was created in 1938 by the Civilian Conservation Corp. After joint investment by the County, City, and State, and an attempt by the State to sell the lake, it was agreed that the State would operate and preserve the lake. Many of the lots around Albemarle Lake were subdivided in 1944 and are generally very small and non-conforming to current zoning requirements for acreage. Any recent sales like parcel 41A-92 removes any grandfathering and requires them to comply with current zoning requirements.

Those of us who have purchased properties and or land in this neighborhood are well aware of the limitations of these lots (i.e., critical slope, etc.) and accept them as it is a uniquely rural area and value the intent of recent zoning regulations to maintain the rural character of the County. And we have lived with the consequences like poor internet and cell service and impacts on property values. We will accept any new development provided it complies with the same requirements we were required to comply with and that is the current zoning and set back requirements. Because of our experience and respect for current requirements intended to preserve the rural nature of Albemarle County, we recently acquired an adjacent lot to allow us to have the option to extend our home while complying with setback requirements.

We respectfully ask the board to equitably apply current zoning requirements and respect the rural designation of Lake Albemarle.

Respectfully,
Anne Johnson and Peter Massarelli
1960 Lakeside Dr
Charlottesville, VA 22901

Westover
Lake Albemarle Boat Launch
41A-77A
41A-73
41-66A
41-66B
LAKE ALBEMARLE
669
41A-48
41A-74
41-73
42-10D
Lakeside Dr
41A-96A
41A-97
41A-96
41A-94
41A-93
41A-92
41A-91
41A-89

Marsha Alley

From: Julia Kurtz <jljkurtz@gmail.com>
Sent: Wednesday, July 12, 2023 3:34 PM
To: BZA
Subject: Letter Opposing VA202300001
Attachments: Letter Opposing VA202300001.pdf

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

Hello,

I wanted to follow up on a conversation with Marcia several weeks ago. Attached, please find my letter opposing setback variance application VA202300001. We are the closest neighbors to the property in question so would like to offer our thoughts to the Board of Zoning Appeals. Can you please distribute this letter with the application packet to the Board?

Also, would you please confirm receipt of this email? My husband and I plan to attend the Board hearing on August 1st. We really appreciate your time and consideration. Please let me know if you need any additional information from me.

Thanks again!

Julia Kurtz

July 11, 2023

Board of Zoning Appeals
401 McIntire Road
Charlottesville, VA 22902

Dear Board of Zoning Appeals:

Thank you for this opportunity to submit input regarding variance application #VA202300001. As a close neighbor to the applicant's property on Lakeside Drive in Charlottesville, I would like to strongly oppose the applicant's request for a variance to the side building setbacks on Lot 14 in Lake Albemarle. This application does not meet the requirements for granting a variance as the setbacks do not unreasonably restrict utilization of the property, nor is there a physical condition on the property that creates a hardship. We urge the Board of Zoning Appeals to deny this request for the following reasons:

1. The conditions stated in the Albemarle County Zoning Ordinance for granting a variance do not include the desire to build a bigger house than a lot size allows. Per the Boundary Survey dated 2/16/2023, Lot 14 is 74.52 feet wide at the front of the property and 63.55 feet wide at the rear of the property with a total lot size of 0.30 acres. After the standard building setbacks of 25 feet on either side, the allowable width for a house is between 13.5 and 24.5 feet. The owner purchased this lot relatively recently in February, 2022 and the variance application characterizes the lot as "acquired in good faith." The property dimensions and lot size were known at the time of purchase. It appears that the owners purchased a lot too small for the size of their desired house.

2. The owner's agent states in the variance application that the variance would not create a substantial detriment to the adjacent properties "since our use would be the same as theirs." However, the houses near this lot all adhere to the setback requirements. In fact, a neighbor wishing to build a minor addition years ago that would have required a setback variance was told not to bother applying since the rural setback requirements were strictly enforced. These are very narrow lots so clearing the land for an oversized house in close proximity to other houses in a rural zone does, in fact, create a detriment.

3. Allowing the owner to build up to 15 feet to the property line on either side renders the adjacent lots effectively unbuildable. If the adjacent lots also successfully applied for setback variances, we could see houses potentially 30 feet apart in an area zoned as rural. A driveway could be located right up to the property line. If not grandfathered into the previous zoning rules, a minimum property size of 2 acres is required. Locating houses so close together would not adhere to the rural character of the neighborhood.

4. This is an environmentally sensitive area adjacent to Lake Albemarle, which flows into the Chesapeake Bay Watershed. Several properties nearby include areas of critical slope. A house built here should be of an appropriate size relative to the lot. Furthermore, sufficient vegetative buffer between houses is even more important leading down a slope into a lake.

5. An important note is that this property was purchased to develop and turn a profit. While of course this is a reasonable pursuit, we believe it is a dangerous precedent to allow a developer to simply apply for a variance for the sole purpose of building a bigger house and therefore earning a greater profit. We hope that the intent of the zoning ordinance is to ensure setback rules are not waived at the whim of developers.

6. The owner is not harmed in denying this variance. The owners can build a smaller house that is more suitable for the lot size or they can sell the lot for a profit.

Application #VA202300001 does not meet the criteria for granting a variance. As such, we hope that the Board of Zoning Appeals will enforce the applicable setbacks set forth in the Albemarle County Zoning Ordinance and deny this application. Thank you for your time.

Sincerely,

Julia Kurtz

Julia Kurtz

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.

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 stated that the approval determination was made in error and caused the following harms as outlined in her presentation:

1) There was no investigation aside from a brief site visit to the home to inspect that the square footage was within 400 square feet, noting that there is no formal checklist for this site visit as the approval is a ministerial procedure, meaning that the application and approval is simply a matter of checking boxes. 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.

2) Twelve (12) firearms-related home occupations have been approved in Albemarle County since 2010, with half of those businesses being approved in the last two and a half years. This applicant is requesting a wider array of firearms-related activities than the previous eleven applicants.

3) The storage of firearms at the site is inconsistent with the County's aim to preserve and protect the rural nature of the neighborhood. Public knowledge of the storage of firearms on the site could invite theft which would in turn spread into the peaceful neighborhood. The county nor the ATF have any requirements as to the security measures needed for safe storage of firearms; although, ATF does require a stop on the firearm once it is sold.

4) The applicant is required to have a license from the ATF as well as a permit from the county. The ATF lists eight (8) types of licenses, ranging from a collector of curios to a manufacturer or importer of destructive devices. The county has no knowledge or access to the type of license for which the applicant has applied. It is an error, and wholly inappropriate, on the part of the Zoning Administrator to approve this, or any, permit with no knowledge of which type of FFL the applicant is trying to achieve.

5) It is incompatible with County Code §18-5.2A, which states that there should be a balance between encouraging limited economic home-based development with the need to protect and preserve the quality and character of the county's agricultural and residential areas. Permitting a firearms business in the midst of a neighborhood was antithetical to the interests of the area that includes homes and farms and that the presence of a gun dealer in the neighborhood would create insecurity and thereby cause harm, changing the peaceful character of the area.

6) A firearms business will inevitably be accompanied by a higher crime rate due to the potentially dangeraous nature of some gun buyers coming to purchase, repair, or store firearms. The business is located in a residential area of the Rural Areas zoning district and residents do not want the peaceful character altered.

7) A firearms business will cause harm by depressing property values and selling prices.

8) The permit to manufacture and sell guns was issued for the business that is within three to six miles of two elementary schools which poses a danger for the students by being exposed to possible gun violence.

9) The presence of the business would increase traffic and accidents at the intersection of Free Union Road and Woodlands Road.

10) The criteria for approval did not consider the community concerns and opposition regarding a firearms business in the neighborhood as demonstrated by the more than 182 signatures on the petition in opposition to the application. There are six (6) abutting parcels (5 property owners); three of the five abutting property owners (60%) oppose the approval of the application.

11) This home occupation interferes with the quality and character of the neighborhood as referenced on the county web site as requirements for home occupations.

12) This zoning decision does not serve the purpose of zoning as referenced in Virginia Code §15.2-2283. Allowing a firearms business as a home occupation does not promote the health, safety, or general welfare of the public.

13) The Virginia Code §15.2-2200 encourages localities to improve the public health, safety, convenience, and welfare of citizens. The Zoning Administrator’s approval of this application is counter to the stated goal in the Code of Virginia. As a result of this error, other unknown dangers could arise which could negatively impact the safety and security of the neighborhood.

DRAFT

Ms. Maupin closed by apologizing to the applicant for using the wrong wording in regard to his standing with the Virginia bar to note the associate or not practicing status. She stated that June 2nd was National Gun Violence Awareness Day, noting that four days later she stands before the BZA trying to reduce gun violence in this small way, hoping that the BZA will make the decision to reject the Zoning Administrator's approval of this application and any further firearms businesses in homes. She asked for those in attendance who support and sponsored the appeal and anyone who opposed the firearm business permit to stand. She asked, should any harm happen to anyone in the community or in her family related to this approved firearms related home business, who should be held accountable?

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.

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.

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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, noting that other items were not included in the approval.

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 stated this section also requires that all home occupations must comply with performance standards. 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 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.

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Mr. Shepherd said that the application should meet every criterion listed in §18-5.2A and that performance standards should be considered.

There was continued discussion regarding performance standards as they relate to the ministerial review process.

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.

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

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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.

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.

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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 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.

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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.

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).

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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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ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, JULY 11, 2023—2:00 P.M.

Board Members Present:	John Shepherd Marcia Joseph Edward (Bo) Carrington Kurt Burkhart
Board Members Absent:	Ronald Rosenberg
Staff Members Present:	Bart Svoboda, Zoning Administrator Lisa Green, Manager of Code Compliance Benjamin Cooper, Code Compliance Officer I 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 Kurt Burkhart, Edward Carrington, John Shepherd, and herself.

The following members were absent: Ronald Rosenberg.

She stated that also present were Andy Herrick, James Bowling, IV, Marsha Alley, Bart Svoboda, Lisa Green, and Benjamin Cooper.

3. Public Hearing
A. AP2023-00003 Appeal of VIO2023-109 {Sign #18}
Mr. Bart Svoboda, Zoning Administrator, provided a presentation of the appeal to the Board. He reviewed the zoning designation history of the parcel from Agriculture to Planned Residential Neighborhood/A-1 in 1978 and noted the perpetual open space easement that was placed on the parcel in 2014 by the Virginia Land Company. He added that in 2015, the County approved the boundary line adjustment submitted by the Virginia Land Trust, noting that the plat specifically noted the applicable zoning district as PRD and that the parcel was not located in the Agricultural Forestal District. He stated that in 2022, the Albemarle Conservation Easement Authority approved a harvest plan for the site. He explained that though the conservation easement complied with the comprehensive plan for rural areas, the zoning designation was PRD, and timbering was not a permitted use in the PRD zoning district. He clarified that an easement could be more restrictive than the underlying zoning but not less restrictive.

Mr. Svoboda stated that the appellant's first argument was an attempt to invoke a vested right on a use that was no longer permitted in the PRD zoning district. He explained that the use was not established, so there was no vested right on the property, and the property owner only recently took possession of the property. He stated that the appellant's second argument claimed a vested right associated with the open

space easement encumbering the property. He explained that there was an open space easement limiting uses on the property, but it did not overrule the underlying zoning district. He stated that the appellant's third argument was that, "mobile tools, such as tractors, hay wagons, two trucks, and harvesting equipment" were the same as a manufactured building or structure.

Mr. Svoboda explained that the violation notice, VIO2023-109, cited the appellant for tree cuttings that were not dead or dying and were greater than six inches, unpermitted storage of structures on the parcel, the accumulation of tires and car parts on the parcel constituting an unpermitted junkyard, and manufactured homes stored on the parcel not on a foundation which were not used as a primary residence.

Mr. Burkhart asked what initiated the complaint.

Mr. Svoboda responded that a nearby resident called in a complaint regarding noise and bulldozer sounds.

Mr. Svoboda stated the appellant's final argument was that the Zoning Administrator erred in classifying tires and car parts as junk and claimed that the items were required parts for the mobile agricultural devices. He said that the PRD did not permit agriculture, so even if the parts were for agriculture, there was no accessory use. He said that by the appellant's own admission and with photographic evidence, tree cuttings had occurred, and there were structures, tires, and parts located on the property. He noted that the appellant could seek a remedy through a rezoning request. He recommended the Board affirm the Zoning Administrator's official determination.

Mr. Burkhart asked what the timeline would be if the appellant sought to rezone the property.

Mr. Svoboda responded that an estimated timeline would be between six and eight months. He added that he had discussed the opportunity with the appellant.

Mr. Carrington asked whether the storage of structures was a use defined in County Code.

Mr. Svoboda responded that it was a use in the commercial district.

Mr. Carrington asked whether staff would reject a site plan if it conflicted with a conservation easement.

Mr. Svoboda responded that as part of the site plan review, staff would ask the easement holder whether the use complied with the terms of the easement. He said that if the use did not comply, the easement holder would have to grant permission of the use on the property and would become party to the application.

Mr. Carrington asked whether an ownership change would have an impact on an existing non-conforming use.

Mr. Svoboda explained that non-conforming uses did not expire with an ownership change.

Mr. Dominique Kostelac, appellant, stated that he had a right to continue agriculture as a non-conforming use and as a vested right on the property. He said that the property had one owner since the 1970s, Dr. Hurt, who had continuously maintained a silviculture crop. He read a letter submitted by Dr. Hurt. He said that he continued to maintain the non-conforming silviculture use and vested agricultural status on the property.

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Mr. Kostelac noted that the comprehensive plan designated the area as rural/agricultural. He explained that when the property was rezoned in 1977, there was no dispute that the category included agriculture, and the conservation easement limited the maximum number of subdivisions. He claimed that the agricultural use was preserved by the continuing non-conforming use and a vested right. He stated that the structures defined in the ordinance did not include structures with wheels, and he claimed that structures did not include cars, trucks, vans, or RVs because they were not affixed to the earth.

Mr. Kostelac stated that the junkyard violation was made in error. He claimed that spare tires and axles were required companions for the vehicles and devices on the property because they routinely required replacement. He said that specialized parts were hard to find and must be immediately available when needed. He stated that junk only referred to discarded, dismantled, or inoperable vehicles, furniture, construction materials, and others. He claimed that the items in question on the property were highway certified and traveled with the required brakes, lights, and licenses. He said that they experienced problems while transporting the items and temporarily set aside the damaged materials on the property.

Mr. Kostelac claimed that there was no manufactured home on the property, and the Zoning Department had not observed, identified, or photographed a manufactured home on the property. He reiterated that the property had retained an agricultural use, and tree cuttings were permitted. He said that the citation related to the storage of structures was erroneous, and undefined wheeled devices were permitted though the agricultural use and separately as wheeled vehicles.

Mr. Kostelac stated there was no junkyard on the property, and the items on the property did not fall within the definition of junk and were not accumulated in a junkyard. He claimed that there was no evidence from the County of a manufactured home on the property. He claimed that the items in question were stored within a 40-acre parcel with posted no trespassing signs and a security gate, so all pictures were taken in violation of the 4th Amendment.

Mr. Carrington asked Mr. Kostelac if there was evidence of the active management of the timber.

Mr. Kostelac stated that he provided a letter from the previous property owner.

Mr. Burkhart asked how expectations that prior uses on the property would transfer with the sale were communicated to the appellant.

Mr. Kostelac said that the conversations were vast, but he was not able to recall all of them. He said that they did not touch on the transfer of uses because they understood the law.

Ms. Joseph opened the public hearing noting that there were no members of the public wishing to comment on the matter.

Mr. Andy Herrick, Deputy County Attorney, provided a rebuttal to the appellant's argument. He explained that to establish a legal non-conforming use, there must be a continuous usage of the property that was not discontinued for more than two years. He explained that the burden of proof was on the applicant to establish a legal non-conforming use. He explained that the law placed the burden of proof on the owner because they were presumed to have better records and documentation as to what the uses on the property had been.

Mr. Herrick said that Mr. Carrington's question regarding specific evidence of active timbering on the property was salient, and the provided answer was minimal. He stated that Dr. Hurt's correspondence did not suggest when, if ever, the property had been timbered. He said that until there was evidence of active

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timbering on the property, such as a forest management plan, the appellant had failed to meet the burden of proof to establish forestry as a legal non-conforming use on the property. He noted that Dr. Hurt sought to rezone the property from A1 to PRD in 1978, indicating the intention to convert the property from its existing use to PRD.

Mr. Herrick explained that the conservation easement was held by the Conservation Easement Authority, not the County. So, when the Authority approved the timbering plan from the appellant, it did not constitute County approval. He said that the approval of the timbering plan was not sufficient to address the zoning ordinance. He stated that there were pictures in the staff report showing dismantled parts existing on the property per the definition of junk.

Mr. Herrick said that Mr. Svoboda would be able to clarify how the Code Enforcement Officers entered the property. He explained that the property was not posted at the time the Code Enforcement Officers entered. He said that the pictures were pursuant to a valid search. He stated that the County's argument was that the appellant had not established a legal non-conforming use, and the Conservation Authority did not and was unable to give permission to contravene the zoning ordinance. He recommended that the Board affirm the notice of violation.

Mr. Kostelac offered a rebuttal. He stated that Paul Haney, drafter of the timbering plan, said that nothing was done to manage the type of timber crop on the property, and the trees did not need yearly cuttings. He said that the silviculture crop was 80 to 100 years old, and it had received the highest value from silviculture experts. He said that in terms of the junkyard violation, he used the parts for emergency repairs and to innovate new solutions for the materials, such as chicken coops or mobile devices with undefined uses. He indicated that there was a range of waterfront activities that occurred on the site. He claimed that the silviculture use was preserved on the site. He stated that the property was gated and posted.

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

Mr. Shepherd clarified that the existence of an easement would not control the County's determination on how to proceed. He noted that the County would be required to consult with the easement holder and receive an agreement before enforcing County code.

Mr. Svoboda responded that an easement could not overrule, override, or rezone a property. He said that if there was an easement on a property and a structure or use encroached on the easement, the County would deny zoning approval until the easement holder gave permission.

Mr. Carrington asked whether the structure pictured in the staff report was served by any utility.

Mr. Svoboda responded that it was not.

Mr. Carrington clarified that the structure then did not meet the definition of a manufactured home.

Mr. Svoboda responded that in Article 3.1 of the Zoning Ordinance, a manufactured home was defined as a structure subject to federal regulations which was transportable in one or more sections, was eight body feet or more in width and 40 body feet or more in length, and was 320 square feet or more when erected on a site. He said that the difference between a modular home and a manufactured home was that modular homes were built to state standards, and manufactured homes were built to federal HUD standards. He said that the labeling of a structure was important, and any of the structures would require a permit.

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Mr. Carrington noted that the definition stated manufactured homes included plumbing, heating, air-conditioning, and electrical systems contained in the structure. He asked whether there was a separation in the definition of the structure from the utilities.

Mr. Svoboda clarified that the definition applied to those components installed at the factory, not the onsite hookups. He said that in the photographs of the structure, wiring was visible. He said that a manufactured home was considered a manufactured home before it was connected to utilities.

Mr. Carrington asked whether a modular office structure would be considered a manufactured home.

Mr. Svoboda responded that it could not be defined as a manufactured home.

Mr. Shepherd asked for clarification regarding the structures located on the site.

Mr. Svoboda responded that the photographs in the staff report depicted the items and structures on the site.

Mr. Shepherd noted there were about 13 tires and three axles. He asked whether there were other items on the property not pictured that may be related to a logging operation.

Mr. Benjamin Cooper, Code Compliance Officer, addressed the Board at the request of the Chair. He responded that the items pictured in the report were all the items which were visible on the property.

Mr. Bowling clarified that the structure referred to in the staff response to the appeal was the same building as the manufactured home stored on the parcel and not on a foundation.

Mr. Cooper responded yes.

Mr. Burkhart asked whether the structure was measured.

Mr. Cooper responded that he did not measure the structures. He said that there were a few separated structures on the property.

Mr. Burkhart asked whether a no trespassing sign and gate were visible when Mr. Cooper visited the property.

Mr. Cooper responded that he entered the property from the Glenmore side and walked across the creek and up the hill.

Mr. Burkhart asked if Mr. Cooper took the route to circumvent the gate.

Mr. Cooper responded that he did not see the gate. He said that he was discussing the matter with the complaining party and with their permission used their property to access the appellant's property. He stated that he did not see any no trespassing signs.

Mr. Carrington asked whether Mr. Cooper was searching for no trespassing signs.

Mr. Cooper responded that he tried to keep a lookout for signs, and if he saw no trespassing signs, he typically included them in his pictures.

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Mr. Burkhart asked whether the structure was on the property when it was purchased.

Mr. Kostelac responded that he brought the structures to the property, and he experienced six tire blowouts while transporting the structures to the site.

Mr. Shepherd said that in terms of the forestry use, the 1980 rezoning was key to understanding the case. He stated that after 1980, the site would be subject to the tree cutting ordinance, and allowing the trees to passively grow did not show a vested right, and no right had been asserted.

Mr. Burkhart suggested addressing each of the violations separately rather than all at once.

Mr. Carrington asked whether the Board should be concerned about the right of entry and potential violations in the gathering of evidence.

Mr. Bowling responded that the right of entry was not an issue before the Board. He said that it would be a separate issue entirely under the 4th Amendment.

Mr. Carrington said he did not believe the structure on the property constituted a manufactured home based on the definition of a manufactured home. He suggested modifying the violation. He said the photographs did not illustrate a junkyard and noted that the materials were stacked neatly and appeared to be stored for future use. He said that the natural, passive growth of trees did not constitute agricultural activity, and the parcel was subject to the tree cutting provisions in the ordinance.

Ms. Joseph said she agreed with the County Attorney regarding the silviculture onsite. She noted the lack of documentation from the appellant regarding silviculture on the property. She said that in terms of the junkyard violation, she could consider the items junk because the only activity on the site was tree cutting and storage. She said she supported the staff recommendations.

There was discussion regarding the option to address each violation separately.

Mr. Shepherd said the tree cutting was not a vested right, so he supported the Zoning Administrator's decision. He said that the manufactured homes appeared to be storage facilities without building permits, so they were not permitted on the property. He said that if the items related to the junkyard violation were kept in storage buildings, then they would not be considered junk.

MOTION: Mr. Carrington moved to affirm the Zoning Administrator's determination, VIO2023-109, that trees which are not dead and greater than six inches in diameter were being cut on the parcel in violation of § 18-4.3. Mr. Shepherd seconded the motion, which passed unanimously (4-0). (Mr. Rosenberg was absent.)

Mr. Carrington said that in terms of the violation related to the storage of structures on site, the structures in question did not meet the definition of structure in the ordinance.

MOTION: Mr. Carrington moved to reverse the Zoning Administrator's determination, VIO2023-109, on violations 2 and 4 because the of the definitions included in the ordinance related to "structure" and "manufactured home". Mr. Burkhart seconded the motion, which passed (3-1). (AYE: Ms. Joseph, Mr. Burkhart, and Mr. Carrington; NAY: Mr. Shepherd; Mr. Rosenberg was absent.)

MOTION: Mr. Shepherd moved to affirm the Zoning Administrator's determination, VIO2023-109, that the accumulation of tires and car parts on the parcel constituted a junkyard and was not a permitted use.

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Ms. Joseph seconded the motion, which passed (3-1). (AYE: Ms. Joseph, Mr. Burkhart, and Mr. Shepherd; NAY: Mr. Carrington; Mr. Rosenberg was absent.)

Ms. Joseph stated that the appellant would receive a letter explaining the results of the proceedings. She explained that if the appellant disagreed with the ruling and wanted to appeal the decision, they had the right to appeal the matter to the Circuit Court.

4. Approval of Minutes
A. June 6, 2023

Mr. Shepherd requested that a sentence be added to the minutes mentioning the Board's discussion regarding ministerial review.

Ms. Alley asked where the insertion should be made.

Mr. Shepherd said he did not recall where the discussion took place because it was not mentioned in the minutes.

Mr. Svoboda suggested deferring approval of the minutes until the next meeting to give staff the opportunity to identify in the recording where the discussion took place and to draft a summary for approval by the Board.

Ms. Joseph noted that on page 2, line 4, it stated, "…and caused the following harms:" but no list of harms was provided. She suggested correcting "elementary" on page 2, line 19, to, "elementary schools".

MOTION: Mr. Burkhart moved to defer the June 6, 2023 minutes until the next scheduled meeting in August. Mr. Carrington seconded the motion, which carried unanimously (4-0). (Mr. Rosenberg was absent.)

5. Old Business
Ms. Joseph said they had discussed drafting motions with Mr. Bowling when reversing decisions of the Zoning Administrator, and she and Mr. Carrington had met with staff on how to draft motions. She noted that the motions needed to be able to explain the reasoning of the Board in case the decisions were appealed.

6. New Business
Ms. Joseph suggested that the Board pursue requesting the Circuit Court to appoint alternates for Board members. She said they could request staff to research possible routes forward. She said she wanted to avoid tie votes.

There was discussion regarding if the alternates would serve for individual meetings, defined time periods, or by rotation. It was suggested that there should be a short list of one to three people to serve as alternates.

Mr. Bowling suggested that staff and the Board of Supervisors provide feedback. He noted that the Court was able to appoint up to three alternate members.

MOTION: Mr. Shepherd moved that the Board request staff to investigate the possibility of requesting the Court to appoint alternate Board of Zoning Appeals members. Mr. Carrington seconded the motion, which carried unanimously (4-0). (Mr. Rosenberg was absent.)

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Mr. Carrington stated that he would be traveling for personal reasons during the next meeting, but he would be able to participate virtually if needed.

7. Adjournment

MOTION: Mr. Burkhart moved to adjourn the meeting. Mr. Shepherd seconded the motion, which carried unanimously (4-0). (Mr. Rosenberg was absent.)

The meeting adjourned at approximately 3:59 p.m.

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

Respectfully Submitted,

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John Shepherd, Secretary Board of Zoning Appeals

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