

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
LANE AUDITORIUM
TUESDAY, AUGUST 1, 2023—2:00 P.M.

Board Members: John Shepherd
Marcia Joseph
Edward (Bo) Carrington – Participated Remotely
Kurt Burkhardt
Ronald Rosenberg

Staff Members: 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 Kurt Burkhardt, John Shepherd, Ronald Rosenberg, and herself.

The following members participated remotely: Edward Carrington.

Ms. Joseph noted that Andy Herrick, James Bowling IV, Marsha Alley, Francis MacCall, and Ethan Busching were also present.

In following the appropriate procedure for remote participation, Mr. Carrington stated that he was traveling with his family in Florida and requested to participate in the meeting remotely.

MOTION: Mr. Burkhardt moved that the Board accept Mr. Carrington's request to participate in the meeting remotely. Mr. Shepherd seconded the motion, which passed 4-0, with Mr. Carrington not yet participating.

3. Public Hearing

A. VA2023-00001 Albemarle Lake Lot [Sign #79]

Mr. Francis MacCall, Deputy Zoning Administrator, stated that the variance application proposed to reduce the sideline setback requirement to allow a dwelling to be located on the property. He stated the property was located in the northwestern portion of the County near Lake Albemarle on Lakeside Drive, and it was zoned RA, Rural Areas. He explained that the requested variance sought to reduce the rural area setback requirements for the sideline from 25 feet to 15 feet to allow the construction of a 30-foot by 50-foot dwelling.

Mr. MacCall explained that to grant a variance, a request must meet all criteria outlined in the variance definition provided in the State Code and in the County Zoning Ordinance. He noted that in terms of the

1 application, not all criteria were met according to the staff analysis resulting in the staff recommendation
2 to deny the variance request.

3
4 Mr. Greg Baldwin, representing the appellant, stated that his client had purchased the property in good
5 faith for its use, and according to the standards, they had met all the criteria except for the setback. He
6 noted that there were only a few small lots which could be utilized around Albemarle Lake, and the
7 subject lot had frontage on a state road. He noted that he would be able to build a 10-foot-wide and 100-
8 foot-long house on the property without the variance.

9
10 Mr. Baldwin said that if the variance were denied, there would not be another avenue for constructing a
11 dwelling on the site. He said that four lots fronted the state route, and the County had appraised the
12 subject lot at \$65,000 and taxed it as if it could be utilized. He said that the lots across the lake with no
13 road access or improvements were appraised at \$3,500. He said that the requested variance would not
14 impact the neighboring properties.

15
16 Ms. Joseph opened the public hearing, and Ms. Alley read the rules for public comment.

17
18 Mr. Stefan Kurtz, neighboring resident, noted that there were processes to appeal the tax assessment for
19 the site. He said that the applicant had not demonstrated they would be unable to build on the lot, only
20 that they could not build a specific size dwelling. He said that the variance would negatively impact the
21 neighboring lots.

22
23 There being no other speakers, Ms. Joseph closed the public hearing.

24
25 Mr. Andy Herrick, Deputy County Attorney, provided a rebuttal to the applicant's presentation and public
26 comment. He stated that not all of the legal requirements for a variance had been met. He stated that there
27 was a separate process for tax assessment appeals; and if the owner believed the property had been over-
28 assessed, there was a process to have the assessment corrected. He stated that there were structures which
29 could be built on the property, and there was an ability to use the property. He stated that the applicant
30 purchased the property aware of its size and aware of the setback requirements. He requested that the
31 Board deny the variance.

32
33 Mr. Baldwin did not offer rebuttal comments.

34
35 Ms. Joseph brought the matter back before the Board.

36
37 Mr. Shepherd stated that he agreed with the criteria that staff identified as being met by the appellant. He
38 noted that for the Board to approve the variance, they would have to find the setback requirements an
39 unreasonable restriction. He stated that he believed the appellant was not under an unreasonable
40 restriction because they had the ability to construct a dwelling, it would just have to be a small dwelling,
41 like a tiny-house.

42
43 Mr. Shepherd said that providing a variance would be contrary to the purpose of Section 6, which related
44 to nonconforming uses. He said that the state code criteria was beyond subjective, and based on that
45 criteria, the Board should deny the request.

46
47 Mr. Rosenberg asked for information about the surrounding lots and residential uses.

48
49 Mr. MacCall stated that the subject lot was along a country road with two houses on the side, and a third
50 house was further back.

1
2 Mr. Shepherd clarified that the lots were wooded.

3
4 Mr. Rosenberg noted that the area was not developed for agricultural purposes and questioned what a
5 reasonable use would be.

6
7 Mr. Burkhart asked whether the appellant knew of any County setback requirements prior to purchasing
8 the property.

9
10 Mr. Baldwin stated that the setback requirements were known at the time of purchase.

11
12 Mr. Burkhart asked whether the proposed dwelling would serve as a primary residence or investment
13 property.

14
15 Mr. Baldwin stated that it would not serve as a primary residence, and it would be an investment property.
16 He clarified that they would be able to build a 10-foot-wide house on the site or fit a trailer on the site if it
17 were permitted. He said that a residential use is the only use that would apply to the lots.

18
19 Mr. Rosenberg asked whether the appellant had considered a smaller reduction in the setback variance.

20
21 Mr. Baldwin responded that they had considered different sizes. He noted that the main issues were the
22 setback requirements, and he noted that a 10-foot-wide house on the property would devalue the
23 neighboring residences.

24
25 Mr. Rosenberg asked whether the appellant had considered splitting the parcel and selling it to the
26 neighboring residents.

27
28 Mr. Baldwin stated that they had considered that option.

29
30 Ms. Joseph stated that she could not support approving the variance request based on the state code and
31 County regulations.

32
33 **MOTION:** Mr. Shepherd moved that the Board deny the variance request, VA2023-00001. Mr. Burkhart
34 seconded the motion, which passed 4-1 (Ayes: Mr. Shepherd, Mr. Burkhart, Mr. Carrington, Ms. Joseph;
35 Nays: Mr. Rosenberg.)

36
37 Ms. Joseph stated that the decision could be appealed to the Circuit Court.

38
39 **4. Approval of Minutes**

40 **A. June 6, 2023**

41 **B. July 11, 2023**

42 Mr. Shepherd noted that his proposed amendments to the June 6, 2023 minutes had been addressed.

43
44 Mr. Burkhart requested that the June 6, 2023 minutes be amended on page 31 to mention he stated the
45 ordinance was imperfect and that he encouraged people to get involved with the ordinance drafting
46 process. He requested that Ms. Alley review the recording to draft a summary of his statement.

47
48 **MOTION:** Mr. Shepherd moved to adopt the June 6, 2023 minutes, as amended by Mr. Burkhart, and the
49 July 11, 2023 minutes. Mr. Rosenberg seconded the motion, which passed unanimously (5-0).

5. Old Business

Ms. Joseph asked whether there was an update from the Circuit Court regarding the appointment of alternate Board members.

Mr. Bowling stated that they could have up to three alternatives appointed, but the process began with an application from the Board of Supervisors to appoint alternative members.

Mr. Herrick clarified that the request would have to be made by the Board of Supervisors to the Circuit Court.

Mr. Bowling stated that the Board could make a direct request of the Board of Supervisors to submit the application.

Ms. Joseph noted that at the last meeting, they had voted to request staff to consider the matter.

Mr. Bowling responded that staff had not had time to come to a decision on what to do.

Mr. MacCall agreed.

Mr. Bowling stated that the Board could give staff more time or go directly to the Board of Supervisors.

Mr. Shepherd asked whether the zoning staff would help draft a staff report to present to the Board of Supervisors.

Mr. MacCall said that he would take note of the questions and suggestions and discuss them with the Zoning Administrator.

Mr. Bowling suggested that the Board could write a letter signed by the Chair to the Board of Supervisors requesting alternates to be appointed.

Mr. Rosenberg noted that the request could create doubt about the Board members' commitment to the position, so he suggested waiting for more information from staff regarding the merits of appointing alternate members.

Mr. Burkhart asked when the last time a Board member was removed for failing to attend meetings.

Mr. Herrick responded that the Board had never failed to have a quorum, though there had been occasional absences. He noted that applicants could request a deferral if Board members were absent, and there were sections in state code to address tie votes. He stated that he was not aware of a prior Board member whose attendance was so low to warrant removal. He clarified that any removal would be at the discretion of the Circuit Court.

Ms. Joseph noted that the intent of the alternates was to maintain a quorum. She said that the appointment process took a long time, and there were times when the Board had to sit with four members because it was waiting for new appointments.

Mr. Rosenberg noted that as long as there was a quorum, the actions of the Board were legal and legitimate, even if the full Board was not present. He cautioned against the secondary implications of the request for alternate members.

1 Mr. Shepherd said that they should wait for staff to present a proposal and make a decision by vote as to
2 whether to proceed.

3
4 Mr. MacCall suggested that a written proposal from the Board be presented at the Chair/Vice-Chair
5 meeting.

6
7 Mr. Carrington said he was happy to continue the discussion through that venue.

8
9 **6. New Business**

10 Mr. MacCall stated that there were two variance applications scheduled for the next meeting on
11 September 12, 2023. He added that at the end of August, the 45th Certified Board of Zoning Appeals
12 Program was being held, sponsored by VCU. He noted that Ms. Alley could send the information to
13 Board members who were interested.

14
15 Ms. Alley stated that in the past, a virtual training opportunity was held in the spring, and they anticipated
16 it would continue next year.

17
18 Mr. MacCall stated that there was a registration cost, and the Zoning Division would be able to cover the
19 cost for Board members.

20
21 Ms. Alley stated that the Daily Progress had recently changed the submittal deadlines for legal ads which
22 had thrown off the Zoning deadlines by four days for legal ads and impacted other internal deadlines. She
23 said that they were still working on the internal processes to get the materials to the Board in a timely
24 manner.

25
26 Mr. MacCall stated that in the matter of a previous appeal, the adjacent property owners had filed an
27 appeal with the Circuit Court, and it was in process.

28
29 Ms. Joseph clarified that the appeal was regarding the case involving firearms.

30
31 Mr. Shepherd stated he would be participating remotely during the September meeting because of travel.

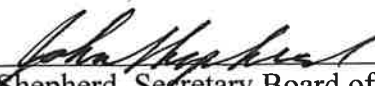
32
33 **7. Adjournment**

34 **MOTION:** Mr. Burkhardt moved to adjourn the meeting. Mr. Shepherd seconded the motion, which
35 passed unanimously (5-0).

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37 The meeting adjourned at approximately 3:22 p.m.

38
39 (Recorded by Marsha Alley and transcribed by Golden Transcription Services)

40
41 Respectfully Submitted,

42
43
44
45  11-14-2023
46 John Shepherd, Secretary Board of Zoning Appeals