

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, NOVEMBER 12, 2024—2:00 P.M.

Board Members: Edward (Bo) Carrington, Chair
Kurt Burkhardt, Vice-Chair
John Shepherd
Marcia Joseph
Ronald Rosenberg

Staff Members: Bart Svoboda, Zoning Administrator/Director of Zoning
Francis MacCall, Deputy Zoning Administrator
Lisa Green, Manager of Code Compliance
Marsha Alley, BZA Clerk and Recorder

County Attorney: Andy Herrick, Interim County Attorney

BZA Attorney: James Bowling, IV

1. Call to Order

The meeting was called to order at 2:00 p.m. by Chair Edward (Bo) Carrington.

2. Establish a Quorum

Mr. Carrington established a quorum.

The following members were present: Ronald Rosenberg; John Shepherd; Kurt Burkhardt; Marcia Joseph; and Edward Carrington.

Also present were Andy Herrick, Bart Svoboda, James Bowling, Lisa Green, Francis MacCall, and Marsha Alley.

Mr. Carrington requested to modify the agenda to address the closed meeting under Old Business first.

MOTION: Mr. Rosenberg motioned to amend the agenda to address the closed meeting under Old Business before the public hearing. There were no objections.

3. Old Business

A. Convene to Closed Meeting under Virginia Code § 2.2-3711(A)(1) – to discuss, consider, or interview prospective candidates for employment – BZA Legal Services Contract renewal for FY2024-25 Public Hearings

MOTION: Mr. Shepherd motioned for the BZA to enter into a closed session. Mr. Rosenberg second the motion, which passed unanimously (5-0).

B. Reconvene to Open Meeting – Certify Closed Meeting

MOTION: Mr. Shepherd motioned for the BZA to certify the closed session. Mr. Rosenberg second the motion, which passed unanimously (5-0).

C. Take Action on business discussed during Closed Meeting, if applicable

MOTION: Mr. Rosenberg motioned for the BZA to approve the contract with Mr. Bowling for legal services. Mr. Shepherd seconded the motion, which passed unanimously (5-0).

4. Public Hearings

A. VA2024-00002 Variance – TMP 58-21 – 724 Maranatha Lane

Lisa Green, Manager of Code Compliance, stated that the proposed variance was to reduce the front setback along Maranatha Lane from 25 feet to 1 foot in order for the applicant to use the accessory structure on the parcel as a second dwelling. She noted that the parcel was zoned RA, rural areas, so a 25-foot setback was required for detached single-family structures.

Ms. Green explained that the previous owner received a permit to build a workshop in 2008, which, at the time, only required a 6-foot setback as a workshop use. She said that the previous owner did not finalize the permit, so the project was deemed abandoned after six months of inactivity, but construction on the structure continued without a valid permit.

Ms. Green stated that the current owner contacted the County wanting to use the structure as a lawful dwelling, at which point, the compliance issues were identified. She said that the appellant had worked with staff to achieve compliance and submitted an application to convert the accessory structure into a detached single-family dwelling. She noted that the variance was required due to the change in use. She said that the building permit for the use could only be approved or denied after the variance was decided.

Staff recommended denial of the petition because it did not meet all the criteria for a variance. The appellant failed to show that the strict application of the zoning ordinance unreasonably restricted the utilization of the property or that the variance would alleviate a hardship due to a physical condition relating to the property.

The Chair opened the public hearing for comments by the appellant.

Patrick Kilcur, appellant, stated that when he purchased the property in March 2023, the listing agent specifically mentioned that the accessory structure could be used as a homestay, and prior owners had leased the structure in the past. After going through the homestay process, he was informed that the structure was not properly permitted as a dwelling. He said that if he was aware of these limitations, he would have reconsidered purchasing the property. He noted that the health department had approved the existing septic system for the primary dwelling and accessory structure. He intended to use the accessory structure as a homestay for family, friends, and as an AirBnB. He said that by not granting a variance, it would create a hardship because he would not know what to do with the structure otherwise.

Mr. Herrick clarified that the setbacks were not calculated to the front of the structure or the edge of Maranatha Lane, but rather, on the distance from the edge of the right-of-way.

Mr. Carrington asked for clarification about the definition of "front" and "side" setbacks.

Mr. Herrick explained that the ordinance specified that anything along a street frontage was considered in the front setback—the definition was not based on the orientation of the structures. He said that because Maranatha Lane was a private street, it required a 25-foot front setback.

Mr. Carrington asked if the property would have two fronts.

Mr. Herrick confirmed that it would—a setback along Dry Bridge Road, and a setback on either side of Maranatha Lane.

Mr. Carrington asked whether the structure could be fully permitted as an accessory structure in its current state.

Ms. Green explained that it would have to go through final inspections and the building permit process, but the zoning was in place.

Mr. Herrick clarified that it could not be permitted as an accessory dwelling.

Ms. Green added that the cooking elements would have to be removed.

The Chair opened the hearing for comments from the public. Hearing none, the Chair provided staff with five minutes for rebuttal.

Mr. Herrick offered his previous statements as the County's rebuttal.

The Chair provided the appellant five minutes for rebuttal.

Mr. Kilcur provided closing remarks. He noted that Maranatha Lane was more of a shared driveway rather than a private road, so the impacts of the variance were minimal. He expressed concerns about what the alternatives were if the variance was not approved. He indicated that he was not interested in further development on his property, and he requested that the Board grant the variance.

The Chair closed the public hearing and opened the floor for discussion from the Board.

Ms. Joseph suggested imposing restrictions on certain uses with approval of the variance. She expressed concerns about the long-term impacts of an AirBnB use, specifically regarding emergency response and infrastructure.

Mr. Shepherd said that staff's argument was that the appellant had reasonable use of the property because there was already a dwelling unit; however, the criterion was whether there was an unreasonable restriction.

Mr. Burkhart expressed concerns about the lack of transparency the appellant experienced in the home buying process.

Mr. Rosenberg said that these issues were caused by prior property owners. He said that the dwelling use had been active for a long time, so it gave the impression that it was permitted. He noted the past use as a dwelling did not appear to impact neighbors, nor did it impact the public. He said that not approving the variance would negatively impact the appellant, and he questioned what the implication would be if they denied the variance. He suggested including conditions on approval of the variance, such as limitations on expanding the existing accessory structure and the road.

Mr. Carrington asked the Board's opinion regarding whether the zoning imposes an unreasonable restriction on the use of the property.

Mr. Shepherd said that having two dwellings on the property was reasonable and denying that use was an unreasonable restriction.

Mr. Burkhardt asked if a dwelling was considered during the original permitting process.

Ms. Green replied that it was not considered for a dwelling, and the zoning application was only for an accessory structure with a workshop use. She stated that no inspections were done at the time of the original application for a dwelling.

Mr. Carrington asked how the County's interpretation of reasonable use had changed since *Louisa v. Vallerie Holdings* in 2015.

Mr. Herrick noted that the law on variances had recently changed, and the *Vallerie Holdings* case was the Court's recent interpretation of the new language. He said that if the setback took up a majority of the buildable area on the parcel, then he would agree that that would be an unreasonable restriction on the property. However, on the appellant's property, because there were likely four or more acres of buildable area outside of the setbacks, the secondary dwelling could be built, just not in its current location.

Mr. Herrick said that the location of the structure was restricted, but since it could be built elsewhere on the property, the County did not believe that was an unreasonable restriction. He said that he believed the court in *Vallerie Holdings* mistakenly focused solely on the existing structure rather than the property as a whole. He stated that the ordinance required consideration of the entire property.

MOTION: Mr. Rosenberg moved that the BZA grant the variance VA2024-00002 with the condition that the proposed structure is limited to the size described in Building Permit B2024-02522SF. Ms. Joseph seconded the motion.

Mr. Rosenberg stated that his motion was based on the findings in the staff report related to the three conditions that staff believed the appellant had satisfied. He noted that the Board agreed with these findings. He then asked the Board to reconsider the conditions that staff found were unmet. He asked if the Board agreed that the fourth factor was satisfied, that the strict application of the zoning ordinance unreasonably restricted the utilization of the property.

Ms. Joseph said that restricting the use when it had been active for many years was an unreasonable restriction on the utilization of the property.

Mr. Burkhardt said that denying the variance would restrict the appellants' ability to take care of their family. He said that it was an unreasonable restriction.

Mr. Shepherd said that he agreed with Ms. Joseph's reasoning.

Mr. Carrington said he believed the strict application of the ordinance unreasonably restricted the utilization of the property.

Mr. Rosenberg said that he agreed with Ms. Joseph's reasoning. He said that if the appellant were requesting to build a new structure, he would not support the request.

Mr. Bowling stated that the Board had to make a finding whether the hardship experienced by the appellant was self-inflicted.

Mr. Rosenberg said that the appellant experienced these issues in good-faith, and they were not self-inflicted.

Mr. Shepherd said that the issues were not self-inflicted, though they could have been discovered prior to purchasing the property.

Mr. Burkhardt agreed that the issues were not self-inflicted.

Ms. Joseph said that the property was acquired in good faith, and the hardships were not created by the appellant.

Mr. Carrington said that he agreed.

MOTION: The motion to grant the variance passed unanimously (5-0).

5. Approval of Minutes

A. March 12, 2024

MOTION: Mr. Rosenberg motioned to adopt the minutes for the March 12, 2024 meeting as presented. Mr. Shepherd seconded the motion, which passed unanimously (5-0).

6. New Business

There were no items to discuss.

7. Adjournment

MOTION: Mr. Shepherd motioned to adjourn. Ms. Joseph seconded the motion, which passed unanimously (5-0).

The meeting adjourned at 4:09 p.m.

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

Respectfully Submitted,


John Shepherd, Secretary Board of Zoning Appeals