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, DECEMBER 3, 2024 at 2:00 P.M
LANE AUDITORIUM

1. Call to Order

2. Establish a Quorum

3. Public Hearings:
   A. Project: AP2024-00005 Polo G, LLC; Nathan Kostelac & Summer Kostelac
      Appellant: Dominique Kostelac
      Property Owner(s): Polo G, LLC; Nathan Kostelac & Summer Kostelac
      Tax Map Parcel ID: 04600-00-00-10100
      Staff: Lisa Green

4. Approval of Minutes
   A. November 12, 2024

5. Old Business

6. New Business
   A. Upcoming Meeting Information

7. Adjournment

Opportunities for the public to access and participate in the meeting will be posted at https://www.albemarle.org/community/quick-links/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.

AP2024-005 Polo G, LLC

Staff Report and Attachments

STAFF: Lisa Green, Manager of Code Compliance
PUBLIC HEARING: December 3, 2024

STAFF REPORT: AP2024-00005

APPLICANT/APPELLANT: Dominique Kostelac

Subject Parcel Number:
04600-00-00-10100 (the "Property")

Location:
The Property is located on the north side of Polo Grounds Road (Route 643) and the west side of the Norfolk Southern Railway in northern Albemarle County (Attachment A). The Property is approximately 1.13 acres, is zoned Rural Areas (RA) (Attachment B), and is owned by Polo G LLC (a Virginia limited liability company), Nathan Kostelac, and Summer Kostelac ("Current Owners").

Background:
The Property is zoned Rural Areas (RA).

On November 23, 2021, the Current Owners purchased Property from Virginia Land Trust/Charles W. Hurt, Trustee, who originally purchased the Property on December 21, 1984. (Attachment C)

On January 31, 2022 – Dominique Kostelac of Polo G LLC met with the County for a preapplication conference to discuss a proposed 4200-square-foot private school. No application related to this meeting was ever filed.

On May 24, 2022, the County received a complaint regarding tree clearing on the lot, a driveway being installed, and modular structures being delivered without erosion control measures and without building permits. An investigation began and concluded tree cutting was allowed under the RA zoning district regulations and erosion control measures were not required because the lot clearing did not exceed 10,000 sq. ft in area.

However, a determination was made that three "mobile classrooms," had been placed on the Property without required permits. The mobile classrooms are industrialized buildings under the County's zoning regulations. Additionally, it was found that the structures were placed on the 100-year floodplain within the Flood Hazard Overlay (FH) District. (Attachment D)

On June 13, 2022, the first Notice of Official Determination of Violation, VIO2022-00167, was sent. This Notice is not the subject of this appeal.

On June 29, 2022, VDOT issued an Official Notice (Attachment E) to Mr. Kostelac for an Un-Authorized Entrance Installation from the Property onto State Route 643 – Polo Grounds Road. This case is pending and is scheduled to be heard in Albemarle County Circuit Court in January 2025.

On March 8, 2023, the Zoning Administrator requested the County Attorney file a warrant-in-debt in the Albemarle General District Court against the Current Owners due to continued non-compliance.

On March 16, 2023, Staff and the Director of Community Development met with Mr. Kostelac regarding the ongoing violations.

On April 24, 2023 – Court – Return date – A trial was set for May 22, 2023.

On May 22, 2023 – Court – Trial Date – The case was moved to July 24, 2023.

On July 19, 2023 – The Current Owners retained counsel, who requested a court continuance in order to prepare for trial.

On July 24, 2023 – Court – Attorney status date – A trial was set for September 25, 2023.

On September 25, 2023 – Court – A neighbor sent ex parte communication to the resident judge, creating a conflict of interest. The judge recused himself from hearing the case and postponed the trial to January 22, 2024.

On January 22, 2024 – Court – The sitting judge considered pretrial motions and dismissed the County's case without prejudice because the Notice of Official Determination of Violation had not been sent to Polo G LLC's registered agent. The judge did not rule on the merits of the case (Attachment F).

On January 30, 2024 – An investigation began anew, which involved a site inspection off the property from the VDOT public right-of-way. Staff found the conditions identified in the 2022 Notice of Official Determination of Violation still existed. The structures placed in the 100-year floodplain remained.

On March 29, 2024 – Staff emailed Dominique Kostelac of Polo G LLC requesting entry to the Property to perform a thorough inspection.

On June 11, 2024 – Staff had not received any returned communication from the Mr. Kostelac. Staff conducted another site inspection from the VDOT public right-of-way. The conditions of the Property had not changed. The violations remained.

On August 19, 2024 – Staff met with the Magistrate and obtained a Zoning Ordinance Violation Inspection Warrant. (Attachment G)

On August 20, 2024 – The Zoning Ordinance Violation Inspection Warrant was executed by Michael Dellinger (Building Official), Lisa Green (Manager of Code Compliance), Jalen Boone (Property Compliance Officer), and Officer Joe George (Albemarle County Police Officer). The signed warrant and supporting affidavit was left on site as required by state code. (Attachment H).

During the investigation, the Building Official confirmed that the structures are industrialized buildings, as indicated by the Manufactured Data Plate label located on the electrical panel of one of the buildings (Attachment I). Additionally, the interiors of the buildings resembled those of a school, featuring exam rooms, an area that appeared to be designated for a bathroom, signage for a staff room, a nurse's room, artwork on the walls, and other similar elements (Attachment J).

On August 26, 2024, the second Notice of Official Determination of Violation, ZVIO-2024-019, was sent to the Current Owners (Attachment K) and the Polo G LLC registered agent. <u>This Notice is the subject of this appeal.</u>

On September 26, 2024, Dominique Kostelac filed an appeal, AP202400005 (Attachment M), of the Notice of Official Determination of Violation.

<u>Grounds for Zoning Administrator's Determination:</u>
The Zoning Official based the Notice of Official Determination of Violation (Attachment K) on the observations of the Property (Attachment I & J) by staff during the inspection on August 20, 2024.

Summary of Relevant Zoning Regulations (Attachment L)**:**
Albemarle County Code § 18-10.2 lists the permitted uses in the RA zoning district. The placement of industrialized buildings is not a use permitted by-right or special use permit.

Albemarle County Code § 18-3.1 defines Industrialized Buildings as being "a combination of one or more sections or modules, subject to state regulation, and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building." This definition does not include manufactured homes.

Albemarle County Code § 18-5.8 regulates the placement and use of temporary industrialized buildings, which may only be authorized by a zoning permit.

Albemarle County Code § 18-30.3.11 lists the permitted and prohibited uses and structures in the Flood Hazard Overlay (FH) zoning district within the 100-year floodplain. The placement of industrialized buildings is not a use permitted by-right or by special use permit.

Albemarle County Code § 18-31.3 requires a zoning permit for any structure or building not requiring an application for a building permit be obtained prior to starting, establishing, constructing, reconstructing, enlarging or altering any such building or structure.

Staff's Response to Appeal:
The question before the Board of Zoning Appeals is whether the findings identified by the Zoning administrative officer, which is presumed to be correct under Virginia Code § 15.2-2309, in the the Notice of Official Determination of Violation are correct. The appellant disputes both violations:

1. The Industrial buildings placed on this parcel is not a permitted use.
2. The industrial buildings placed in the floodplain on this parcel is not permitted.

The precise issue before the Board is whether the facts related to the actual use of the Property, as known to the Zoning Administrator, support a finding that such uses are prohibited or subject to a permit under the County's ordinances. The inquiry does not pertain to the Current Owners' plans or intentions or what the Current Owners believe the Ordinances should state. Rather, the focus is on whether the buildings subject of this appeal, industrialized or otherwise, can be placed on a Rural

Area zoned parcel within the 100-year floodplain. The storage of industrialized buildings is not a permitted use in the RA zoning district either by right or by special use permit. Structures with roofs supported by walls are prohibited within the 100-year floodplain. And zoning permits are necessary for all structures and buildings not subject to building permit requirements.

As previously noted, this determination is consistent with the County's Zoning Ordinances, is supported by the facts, and aligns with established administrative practices.

The Zoning Administrator offers the following responses to the appellant's three (3) arguments:

1. **The Appellants contend that the structures are not industrialized buildings.**

   The investigationrevealed the manufacturer's data sheet on the electrical panel, which is required for all industialized buildings. The County's Building Official confirmed that this data sheet establishes the structure as being industrial in nature.

   The term "industrialized building" refers to the fact that the structure was manufactured in a factory according to the applicable building code for its intended use rather than its actual use. The data sheet is a standard document for all manufactured industrial structures. (Attachment L).

   On Page 17 of the Appellants' rebuttal (Attachment M), the Current Owners confirm that the "parcel is not zoned industrial, and therefore cannot have buildings designated as "industrialized" placed on it. Later and more telling, they admit that "there were no activities of any kind observed in association with a building" on the site. This aligns with the inspection findings of the Zoning Administrator, which revealed that no activities or uses, including agriculture, are currently taking place on the parcel. The Current Owners are simply storing these industrialized buildings. Regardless, which are prohibited on property zoned as Rural Areas (RA) in Albemarle County and are currently not subject to any permit. Thus, they remain unpermitted buildings.

2. **The Appellants contend that the structures are permitted in the Flood Hazard Overly (FH) District.**

   This argument is plainly wrong. The zoning ordinance clearly outlines the placement of structures within the Flood Hazard Overlay (FH) District and the definition of a structure itself. According to the Albemarle County Code, for floodplain management purposes, a "structure" is defined as a walled and roofed building, which includes gas or liquid storage tanks that are primarily above ground, as well as manufactured homes. Inspection photographs demonstrate that these are structures as defined by County Code, and therefore, they are prohibited within the 100-year floodplain of the Flood Hazard Overlay District under County Code § 18-30.3.

   Even if these structures could be allowed under some interpretation of the County Code, they would need first to be permitted. No permit has been applied for and no permit exists. Therefore, as the Zoning Administrator concluded, they are unpermitted buildings.

3. **The Appellants contend that Albemarle County Staff obtained evidence without a warrant and the Zoning Administrator should not be able to consider such evidence.**

   This contention is unavailing as a matter of fact and law.

   First, staff only entered the Property either with permission or pursuant to a magistrate-issued Zoning Ordinance Violation Inspection Affidavit and Warrant was obtained (Attachment G). As stated in the chronology above, the evidence supporting the issuance of the inspection warrant was observed from the publicly owned VDOT right-of-way. Observations of private property made in plain view are legally reasonable.

   Second, observations of open fields are likewise deemed reasonable under the law.

   Finally, the Virginia Supreme Court recently ruled in Board of Supervisors of Fairfax County v. Leach-Lewis, 303 Va. 225 (2024), that the exclusionary rule, which applies in criminal cases, does not apply to a civil zoning such as this matter.

Summary of Facts:

- The Property is zoned RA.
- The Industrial Buildings placed on the Property are not permitted in that they are prohibited and/or are without any zoning or special use permit.
- These Industrial Buildings are prohibted in the 100-year floodplain.

Conclusion:

Although the Current Owners may wish to farm this property at some point, they have admitted, and photographic evidence demonstrates without any doubt, that no activities are taking place on this parcel, including agriculture. The only use of the land appears to be for the storage of industrialized buildings located within the 100-year floodplain.

The storage of industrialized structures on this Property at the time of the Notice of Official Determination of Violation was not a permitted use in the RA zoning district or in the 100-year floodplain under any circumstance.

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

Proposed Motion:

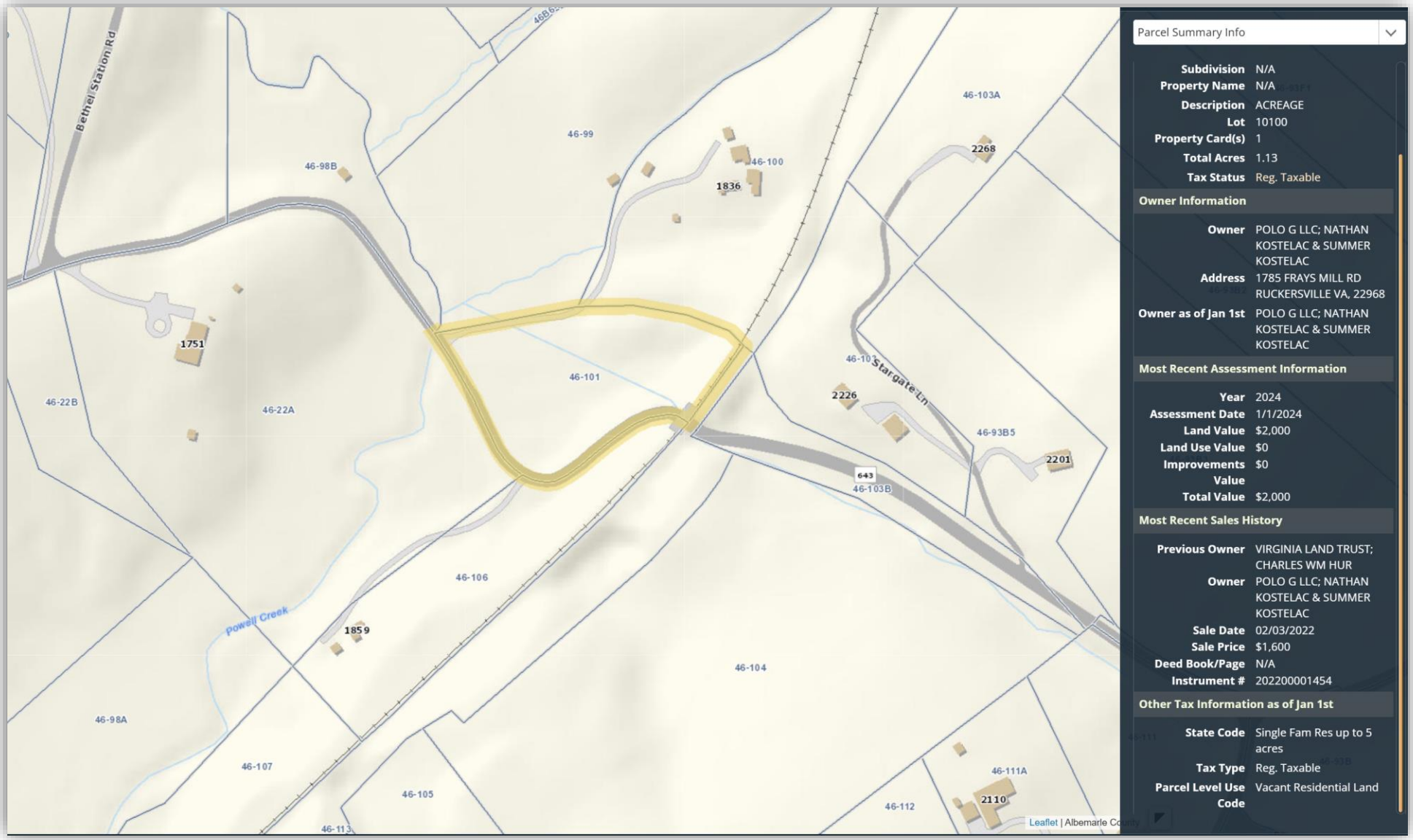
I move that the Board of Zoning Appeals affirms the determination made in the Notice of Official Determination of Violation, ZVIO-2024-019 (Attachment K).

Attachments:

Attachment A: Location Map of the Property
Attachment B: Zoning Map
Attachment C: Deed
Attachment D: Aerial/Critical Resources Overlay Map
Attachment E: VDOT Notice Issued for Unauthorized Entrance
Attachment F: Final Judgment Gen District Court without Prejudice 2024.01.22
Attachment G: Zoning Ordinance Violation Inspection Affidavit and Warrant
Attachment H: Service of Warrant 8-20-2024
Attachment I: Photo of Manufacture Data Plate 8-20-2024
Attachment J: Warrant Inspection Photos 2024-08-20
Attachment K: Notice of Official Determination of Violation 2024-08-26
Attachment L: Relevant Ordinance Regulations Excerpts
Attachment M: AP202400005 Application 2024-09-30

Location Map

ATTACHMENT A



Zoning Map

ATTACHMENT B



ATTACHMENT C

This Deed was prepared without the benefit of title examination by
Seth E. Twery, P.C. – VSB #20031
715 Court St., Second Floor
Lynchburg, VA 24504
www.sethtwery.com
Tax ID No. 04600-00-00-10100
Company Providing Title Insurance: Old Republic National Title Insurance Co.

Consideration: $1,600.00
Assessed Value: $1,600.00

THIS DEED, made and entered into this 23rd day of November, 2021, by and between **CHARLES WM. HURT and SHIRLEY L. FISHER, Trustees for the Virginia Land Trust, under the terms and provisions of a certain land trust agreement dated May 18, 1984,** parties of the first part, GRANTORS; and **POLO G LLC, a Virginia limited liability company and NATHAN KOSTELAC and SUMMER KOSTELAC**, parties of the second part, GRANTEES.

W I T N E S S E T H:

For and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties of the first part hereby grant, sell and convey to the parties of the second part with General Warranty and English Covenants of Title, as tenants in common, the following described real estate located in the County of Albemarle, Virginia, to wit:

> That certain parcel of land, together with any buildings and improvements thereon and the privileges and appurtenances thereunto belonging, situate, lying and being in Albemarle County, Virginia, on the north side of State Route 643 and on the west side of the Southern Railroad containing 1.130 acres, more or less.
>
> It being the same property conveyed unto the Grantors herein, by Deed dated December 21, 1984, of record in the Office of the Clerk, Circuit Court, Albemarle County, Virginia, in Deed Book 823, at Page 295.

ATTACHMENT C

The property hereby conveyed is conveyed subject to all valid and existing conditions, easements, reservations and restrictions heretofore imposed upon said property by recorded deed or plat and now binding thereon.

WITNESS the following signatures and seals:

_____(SEAL)
CHARLES WM. HURT, Trustee for the
Virginia Land Trust, under the terms and
Provisions of a certain land trust agreement
dated May 18, 1984

STATE OF Virginia,
~~CITY~~/COUNTY of Albemarle, to-wit:

I, Gail Breeden Watkins, a Notary Public of the State of Virginia, at large, do hereby certify that CHARLES WM. HURT, Trustee for the Virginia Land Trust, under the terms and Provisions of a certain land trust agreement dated May 18, 1984, whose name is signed to the writing above bearing date on the 23rd day of November, 2021, has acknowledged the same before me in my State aforesaid.

Given under my hand this 14th day of December, 2021.

Gail Breeden Watkins
Notary Public

My commission expires: May 31, 2025.
My registration no.: 101082.

GAIL BREEDEN WATKINS
Notary Public - Reg. # 101082
Commonwealth of Virginia
My Commission Expires May 31, 2025

ATTACHMENT C

Shirley L. Fisher (SEAL)
SHIRLEY L. FISHER, Trustee for the
Virginia Land Trust, under the terms and
Provisions of a certain land trust agreement
dated May 18, 1984

STATE OF Virginia,
~~CITY~~/COUNTY of Albemarle, to-wit:

I, Gail Breeden Watkins, a Notary Public of the State of Virginia, at large, do hereby certify that SHIRLEY L. FISHER, Trustee for the Virginia Land Trust, under the terms and Provisions of a certain land trust agreement dated May 18, 1984, whose name is signed to the writing above bearing date on the 23rd day of November, 2021, has acknowledged the same before me in my State aforesaid.

Given under my hand this 14th day of December, 2021.

Gail Breeden Watkins
Notary Public

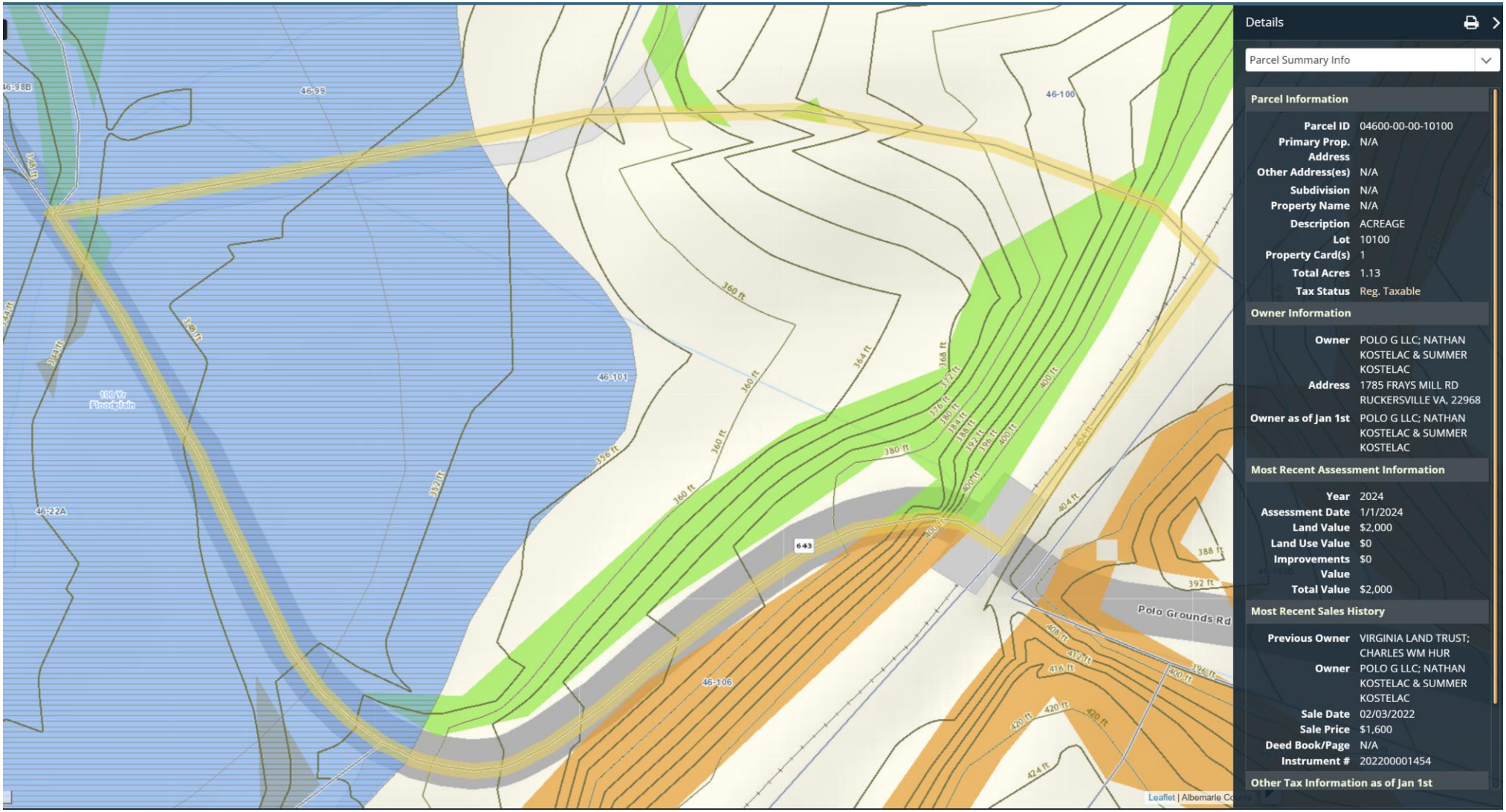
My commission expires: May 31, 2025.
My registration no.: 101082.

GAIL BREEDEN WATKINS
Notary Public - Reg. # 101082
Commonwealth of Virginia
My Commission Expires May 31, 2025

[redacted]

INSTRUMENT # 202200001454
E-RECORDED IN THE CLERK'S OFFICE OF
ALBEMARLE ON
FEBRUARY 3, 2022 AT 12:51PM
$2.00 GRANTOR TAX WAS PAID AS
REQUIRED BY SEC 58.1-802 OF THE VA. CODE
STATE: $1.00 LOCAL: $1.00
JON R. ZUG, CLERK
RECORDED BY: MEB

2024 Critical Resources Map



Legend

- Flood Hazard Overlay (100-year Floodplain)
- Steep Slopes - Preserved
- Critical Slopes

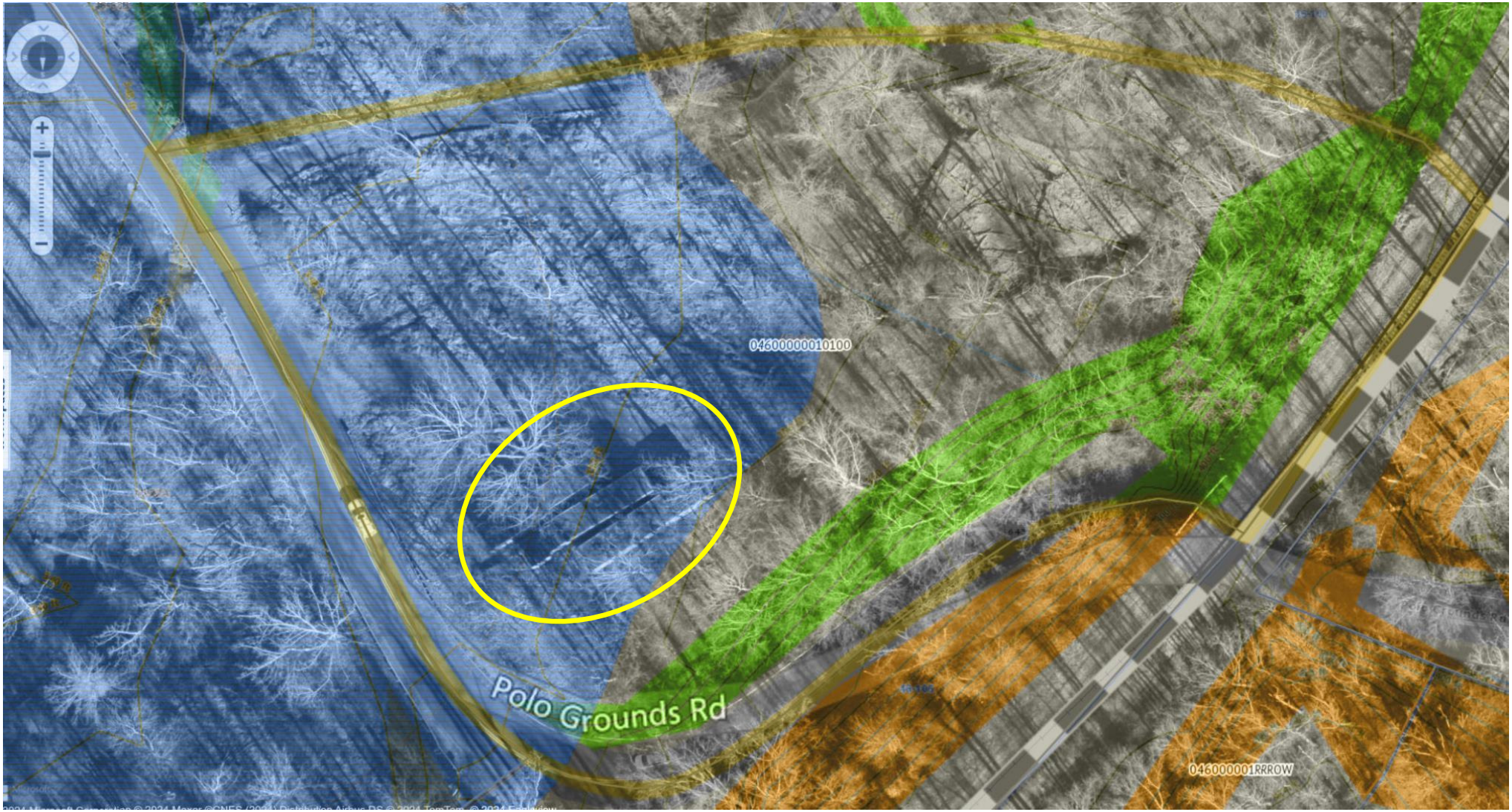
2024 Aerial Map

ATTACHMENT D



2024 Aerial/Critical Resources Overlay Map

ATTACHMENT D



Legend

- Flood Hazard Overlay (100-year Floodplain)
- Steep Slopes - Preserved
- Critical Slopes

COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

June 29, 2022

Polo G LLC
Nathan Kostelac & Summer Kostelac
1785 Frays Mill Rd
Ruckersville, VA 22968

RE: Un-Authorized Entrance Installation to TM 46-101 Albemarle County
Rte. 643 Polo Grounds Rd.

Dear Mr. Kostelac & Ms. Kostelac,

This letter is official notification that the unauthorized use of ingress/egress as shown in the attached picture has been utilized without VDOT approval and is in violation of 24VAC30-151-20 & 30 and shall be corrected immediately.

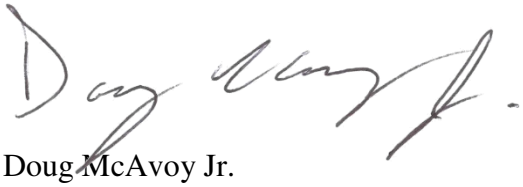
As described within the above code reference, no work of any nature shall be performed on any real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT and a permit is required to install any entrance onto a state highway. Please note: Failure to comply may hold you civilly liable to the Commonwealth for expenses and damages incurred by VDOT as a result of violation. Violators shall also be guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.2-210 (formerly § 33.1-19) of the Code of Virginia.

In effort to resolve this issue and to conform to Virginia Administrative Code, please contact us once this notification is received to inform the Department of your plan of action to restore the disturbed areas within VDOT's Right of Way within 10 days of receipt of this notice. The application of seed and straw is required to reestablish vegetation in the damaged areas.

In addition, if there is no existing entrance to your property please contact us and we will be glad to provide assistance to you in obtaining your desired entrance layout while conforming to VDOT's requirements. Additional upgrades and/or activities within VDOT maintained Right of Way shall require a valid VDOT Land Use Permit.

Thanks in advance for your cooperation to resolve this matter. You may contact me directly at (540) 718-6113, or Albemarle County Engineer Frank Pohl at (434) 296-5832 x7914.

Respectfully,



Doug McAvoy Jr.
Area Land Use Engineer
Charlottesville Residency

CC: -File
-Albemarle County Community Development


NW
N
NE
330
0
30
38.09714, -78.435592 ±49ft ▲ 244ft
1836 Polo Grounds Rd
Questionable entrance
28 Jun 2022, 09:56:45

ATTACHMENT F

WARRANT IN DEBT (CIVIL CLAIM FOR MONEY)

Commonwealth of Virginia VA. CODE § 16.1-79

Albemarle County — General District Court

CITY OR COUNTY

501 E. Jefferson Street, Charlottesville, Virginia 22902 (Telephone 434-972-4007)

STREET ADDRESS OF COURT

FILED
ALBEMARLE COUNT
2023 MAR 30 PM 3:13
GENERAL DISTRICT COURT

TO ANY AUTHORIZED OFFICER: You are hereby commanded to summon the Defendant(s).

TO THE DEFENDANT(S): You are summoned to appear before this Court at the above address on

April 24, 2023, at 1:00 PM

RETURN DATE AND TIME

to answer the Plaintiff(s)' civil claim (see below)

3/31/23

DATE ISSUED

[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

CLAIM: Plaintiff(s) claim that Defendant(s) owe Plaintiff(s) a debt in the sum of

$ ~~1,200.00~~ 600.00 net of any credits, with interest at 6.00 % from date of judgment until paid,

$ 0.00 costs and $ 0.00 attorney's fees with the basis of this claim being

[ ] Open Account [ ] Contract [ ] Note [x] Other (EXPLAIN)

On or about 9-16-2022, 12-2-2022, and 3-3-2023, as described in the attached Notice of Violation, did unlawfully (1) place, keep, or maintain unpermitted industrial buildings on TMP 46-101 and (2) did place, keep, or maintain unpermitted material (gravel) on TMP 46-101 in violation of County Code Sections 18-10.2, 18-5.1-28, and 18-36.1 et seq. The County also requests an Order of Abatement.

HOMESTEAD EXEMPTION WAIVED? [ ] YES [x] NO [ ] cannot be demanded

March 28, 2023

DATE

[ ] PLAINTIFF [x] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S EMPLOYEE/AGENT

VSB 30859

CASE DISPOSITION

JUDGMENT against [ ] named Defendant(s) [ ]

for $ ..... net of any credits, with interest at ..... % from date

of ..... until paid, $ ..... costs and $ ..... attorney's fees

HOMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] CANNOT BE DEMANDED

[ ] JUDGMENT FOR [ ] NAMED DEFENDANT(S) [ ]

[ ] NON-SUIT [ ] DISMISSED without prejudice

Defendant(s) Present? [ ] YES

[ ] NO

1/22/24

DATE

JUDGE

FORM DC-412 (PAGE ONE OF TWO) 07/04 PDF

CASE NO. GV23-1126

County of Albemarle, Virginia,

PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

a political subdivision of the Commonwealth of Virginia

V.

Kostelac, Summer; Kostelac, Nathan; AND Polo G LLC

DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

Serve Kostelacs at 1785 Frays Mill Road, Albemarle County 22968

Serve Polo G LLC c/o William Harville, Registered Agent

327 West Main Street, Suite C, Charlottesville, VA 22903

WARRANT IN DEBT

* * *

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location.

☐ To dispute this claim, you must appear on the return date to try this case.

☒ To dispute this claim, you must appear on the return date for the judge to set another date for trial.

Bill of Particulars ORDERED DUE 5/15/22

Grounds of Defense ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)

Richard A. DeLoria, VSB 30859

Telephone: 434-972-4067

ATTORNEY FOR DEFENDANT(S)

Harville (FOR FIRST NAMED)

APR 03 2023

Albemarle County Sheriff's Office

HEARING DATE AND TIME

MAM 22, LOL3

1pm

7/24/23

9/25/23 1pm

JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION

DATE 8/22

CLERK

1/22/24 1pm

DISABILITY ACCOMMODATIONS for loss of hearing, vision, mobility, etc., contact the court ahead of time.

ZONING ORDINANCE VIOLATION INSPECTION AFFIDAVIT AND WARRANT

Commonwealth of Virginia VA. CODE § 15.2-2286

To: Clerk, Albemarle County Circuit Court

I, Jalen Scott Boone (PRINT NAME), the undersigned Affiant state that there is probable cause that a zoning ordinance violation has occurred constituting violation(s) of

Cty Code Secs. 18-5.8 (Industrialized Bldgs), -10.2 (Rural Area Permitted Uses), -30.3.11 (Flood Overlay)

LIST ORDINANCE OR LAW BY CODE SECTION OR NUMBER

The material facts that support the above statement are as follows:

Please see attached statement incorporated herein by reference and titled "Attachment to Zoning Violation Inspection Affidavit and Warrant."

The dwelling to be inspected is located and described as follows:

Three buildings located on Albemarle County Tax Map Parcel Identification Number 04600-00-00-10100, which is an approximately 1.13-acre parcel of land located on the north side of Polo Grounds Road adjacent to the railway. The attached GIS map identifies the parcel. Photographs identify the structures.

[X] Continued on attached sheet

The statements above are true and accurate to the best of my knowledge and belief. I request the issuance of an inspection warrant to enter the above-described property for the purposes of determining whether the violations of the zoning ordinance exist.

Property Compliance Officer
TITLE OF AFFIANT

AFFIANT'S SIGNATURE

401 McIntire Road
ADDRESS OF AFFIANT

Charlottesville, Va 22902

Subscribed and sworn to before me this day.

8/19/2024 2:30pm
DATE AND TIME

[ ] MAGISTRATE [ ] JUDGE

TO ANY OFFICIAL AUTHORIZED TO CONDUCT THE INSPECTION AUTHORIZED BY THIS WARRANT:

I, the undersigned, find that there is probable cause to believe, based on the accompanying affidavit which is incorporated by reference, that a violation of zoning ordinance has occurred justifying an inspection of the dwelling described in the accompanying affidavit.

You are hereby authorized, in the name of the Commonwealth, to inspect the dwelling described in the accompanying affidavit to check or reveal whether the violations of the zoning ordinance exist.

8/19/2024 2:30pm
DATE AND TIME

[ ] MAGISTRATE [ ] JUDGE

FORM DC-801 (MASTER, PAGE ONE OF TWO) 07/17

ZONING ORDINANCE VIOLATION INSPECTION AFFIDAVIT AND WARRANT

Commonwealth of Virginia

In re/v.

Polo G LLC, Nathan Kostelac, Summer Kostelac (Owners)

Albemarle County TMP 04600-00-00-10100

Certified to Clerk of Albemarle County Circuit Court
CITY OR COUNTY

on 8/20/2024
DATE

Property Compliance Officer
TITLE

SIGNATURE

Original Delivered [X] in person [ ] by certified mail
[ ] by electronically transmitted facsimile
[ ] by use of filing/security procedures defined in the Uniform Electronic Transactions Act

to Clerk of Albemarle Circuit Court
CITY OR COUNTY WHERE EXECUTED

8/20/24
DATE

Clerk
TITLE

SIGNATURE

RECEIVED
AUG 20 2024 AM 10:59
CIRCUIT CLERK'S OFFICE
ALBEMARLE COUNTY, VA
JON R. ZUG, CLERK

a true copy TESTE:
JON R. ZUG, CLERK
by: _____ Deputy Clerk

Executed on the within-described location on

8/20/2024
DATE

SIGNATURE

Jalen Scott Boone
NAME AND TITLE

Property Compliance

SIGNATURE

Lisa Green, Mgr Code Compliance
NAME AND TITLE

Returned to the Clerk of

Albemarle County Circuit Court

on 8/20/2024
DATE

SIGNATURE

Jalen Scott Boone
NAME AND TITLE

Property Compliance Officer

RECEIVED
AUG 20 2024 AM10:59
CIRCUIT CLERK'S OFFICE
ALBEMARLE COUNTY, VA
JON R. ZUG, CLERK

FORM DC-801 (MASTER, PAGE TWO OF TWO) 07/14

ATTACHMENT TO ZONING ORDINANCE VIOLATION INSPECTION AFFIDAVIT AND WARRANT

In re Tax Map Parcel ID Number 04600-00-00-10100 (1.13 Acres on Polo Grounds Road)

1. I, Jalen Scott Boone, am a Property Compliance Officer employed by the County of Albemarle in the Community Development Department under the supervision of the Manager of Code Compliance and the Zoning Administrator. My duties include the inspection and enforcement of Albemarle County's zoning ordinances and regulations.

2. Tax Map Parcel ID Number 04600-00-00-10100 (TMP46-101) is a 1.13-acre parcel of land (the "Property") located on Polo Grounds Road and zoned Rural Areas District.

3. I and other Property Compliance Officers have personally witnessed the placement of three structures shown in the attached photographs on 2/26/2024 and 6/11/2024. Upon information received from neighbors to the Property, the structures remain as of this date.

4. Based upon training and experience, the structures are industrialized buildings, the placement of which is not permitted by right under the County Code and has not been approved by the Zoning Administrator or subject of a special use permit issued by the Albemarle County Board of Supervisors. Industrial buildings are required under federal law to contain an identifying placard, which is usually placed on an interior wall.

5. The structures appear also to be placed unlawfully in a flood overlay zone (100-year floodplain) in violation of Albemarle County Code § 18-30.3.11. Measurements will confirm this.

6. I requested from the landowner permission to enter the property to conduct these inspections but was denied permission.

7. I request this Inspection Warrant to search the buildings for the required placards and to determine whether they constitute industrialized buildings or some other type of building that may be either permitted or unpermitted under the Albemarle County zoning ordinances. I request this Inspection Warrant to measure the placement of the buildings to determine if they are situated in a flood overlay zone in violation of Albemarle County zoning ordinances.

Jalen S. Boone
Albemarle County Property Compliance Officer

9/19/2024
Date

Jalen Boone

From: Jalen Boone
Sent: Friday, April 12, 2024 3:48 PM
To: Nasuto LLC
Subject: RE: Request to enter property

Mr. Kosetlac,

Thank you for your email.

The County is requesting entry onto the property on Polo Grounds Road, owned by Polo G LLC, Nathan Kostelac & Summer Kostelac, to perform an inspection. The property ID is 04600-00-00-10100. The purpose of the visit is to inspect the items that have been placed on the parcel to determine the structure type and the location of these items and structures as they relate to the FEMA-identified flood plain.

To answer your questions, once the investigations have been completed, staff will be able to identify the applicable code sections. Staff has time available starting the week of Monday, April 15th, 2024. If you're not available during this week, please provide an alternative date on or before May 3rd, 2024.

Best regards,

Jalen Boone
Property Compliance Officer, CZO
County of Albemarle
Community Development Department
jboone@albemarle.org
W- 434-296-5832 x 3464
C- 434-872-3066

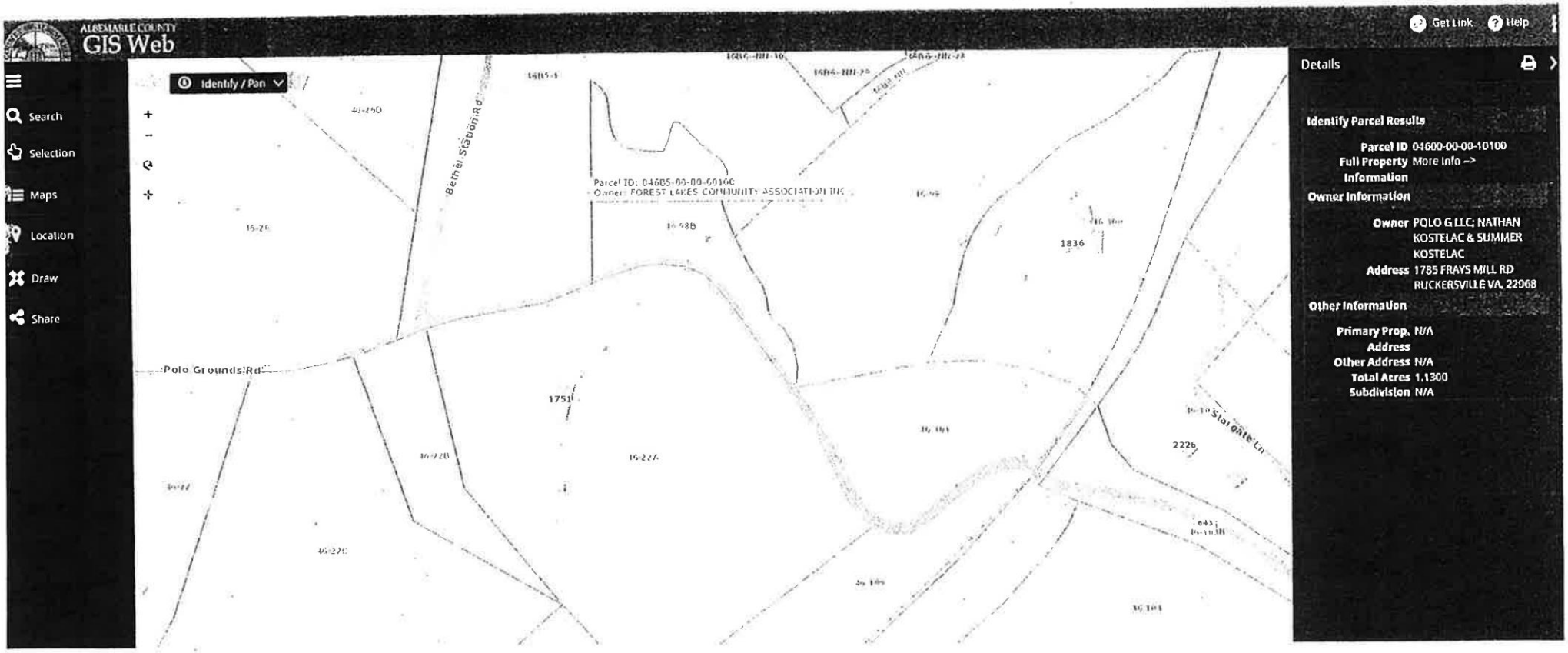
From: Nasuto LLC <nasutollc@gmail.com>
Sent: Monday, April 1, 2024 11:14 AM
To: Jalen Boone <jboone@albemarle.org>
Subject: Re: Request to enter property

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 Jaden,

Please state the specific code and violation you have are concerned about at each property. Be very specific. I will take that into consideration in my reply.
Sincerely Dominique Kostelac

On Fri, Mar 29, 2024 at 10:35 AM Jalen Boone <jboone@albemarle.org> wrote:


ALBEMARLE COUNTY
GIS Web
Get Link
Help
Identify / Pan
Search
Selection
Maps
Location
Draw
Share
Bethel Station Rd
Polo Grounds Rd
Parcel ID: 04685-00-00-60100
Owner: FOREST LAKES COMMUNITY ASSOCIATION INC
1836
1751
2226
Star Gate Ln
Details
Identify Parcel Results
Parcel ID 04600-00-00-10100
Full Property Information More Info -->
Owner Information
Owner POLO G LLC; NATHAN KOSTELAC & SUMMER KOSTELAC
Address 1785 FRAYS MILL RD RUCKERSVILLE VA, 22968
Other Information
Primary Prop. Address N/A
Other Address N/A
Total Acres 1.1300
Subdivision N/A

ATTACHMENT H

ZONING ORDINANCE VIOLATION INSPECTION AFFIDAVIT AND WARRANT Commonwealth of Virginia VA. CODE § 15.2-2286

To: Clerk, Albemarle County Circuit Court

I, Jalen Scott Boone (PRINT NAME), the undersigned Affiant state that there is probable cause that a zoning ordinance violation has occurred constituting violation(s) of

Cty Code Secs. 18-5.8 (Industrialized Bldgs), -10.2 (Rural Area Permitted Uses), -30.3.11 (Flood Overlay)
LIST ORDINANCE OR LAW BY CODE SECTION OR NUMBER

The material facts that support the above statement are as follows:
Please see attached statement incorporated herein by reference and titled "Attachment to Zoning Violation Inspection Affidavit and Warrant."

The dwelling to be inspected is located and described as follows:
Three buildings located on Albemarle County Tax Map Parcel Identification Number 04600-00-00-10100, which is an approximately 1.13-acre parcel of land located on the north side of Polo Grounds Road adjacent to the railway. The attached GIS map identifies the parcel. Photographs identify the structures.

⋈ Continued on attached sheet

The statements above are true and accurate to the best of my knowledge and belief. I request the issuance of an inspection warrant to enter the above-described property for the purposes of determining whether the violations of the zoning ordinance exist.

Property Compliance Officer
TITLE OF AFFIANT

AFFIANT'S SIGNATURE

401 McIntire Road
ADDRESS OF AFFIANT

Charlottesville, Va 22902

Subscribed and sworn to before me this day.

8/19/2024 2:30 PM
DATE AND TIME

[ ] MAGISTRATE [ ] JUDGE

TO ANY OFFICIAL AUTHORIZED TO CONDUCT THE INSPECTION AUTHORIZED BY THIS WARRANT:
I, the undersigned, find that there is probable cause to believe, based on the accompanying affidavit which is incorporated by reference, that a violation of zoning ordinance has occurred justifying an inspection of the dwelling described in the accompanying affidavit.

You are hereby authorized, in the name of the Commonwealth, to inspect the dwelling described in the accompanying affidavit to check or reveal whether the violations of the zoning ordinance exist.

8/19/2024 2:30 PM
DATE AND TIME

[ ] MAGISTRATE [ ] JUDGE

FORM DC-801 (MASTER, PAGE ONE OF TWO) 07/17

ZONING ORDINANCE VIOL... INSPECTION AFFIDAVIT AND...

Commonwealth of Vir...

In rem...

Polo G LLC, Nathan Kostelan...

Albemarle County ...

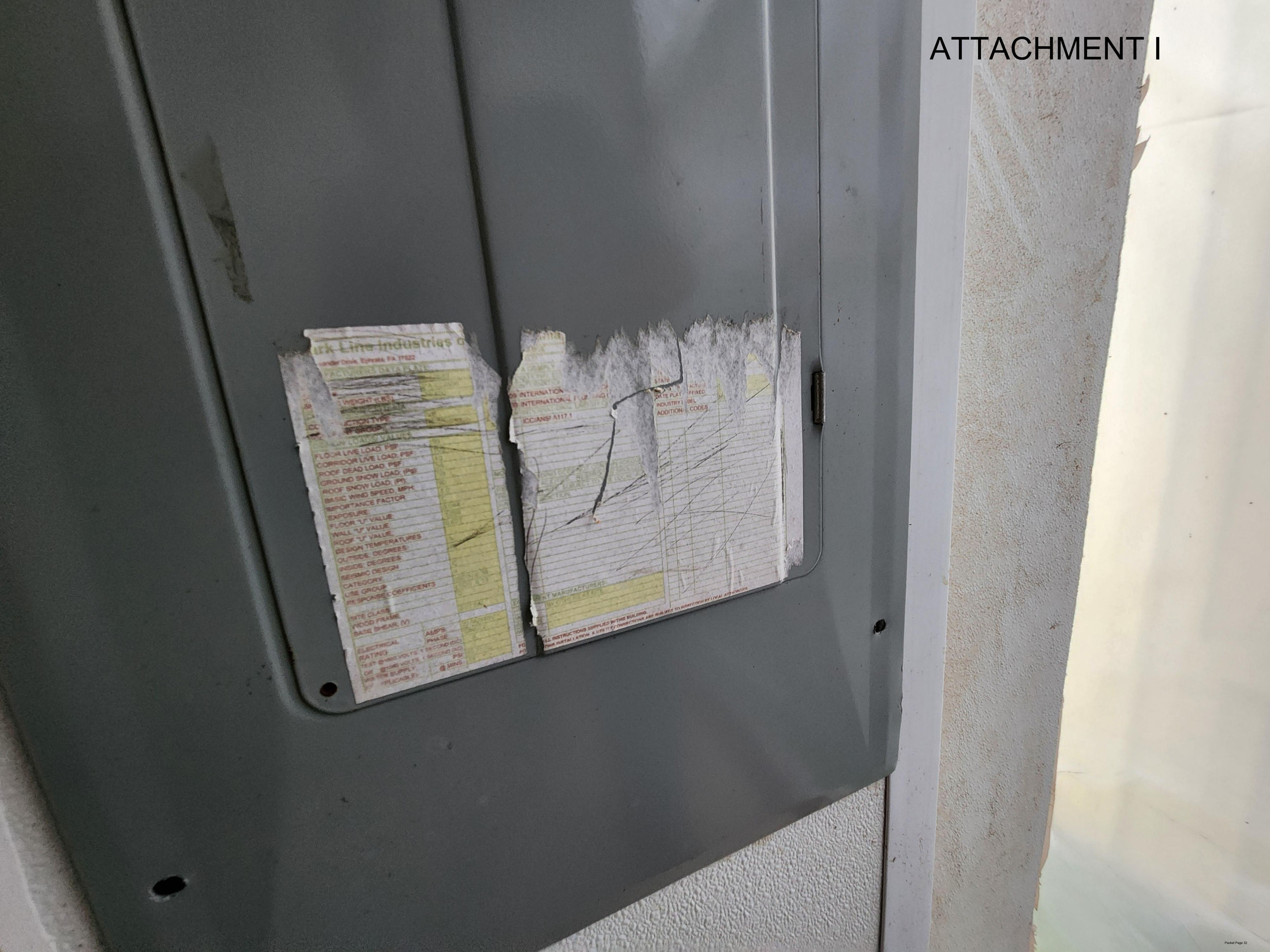
Certified to Clerk of ...
CITY OR COUNT...
on ...
TITLE

Original Delivered [ ] in ...
[ ] by ...
[ ] by ...
in ...

to Clerk of ...
CITY OR CO...
on ...
TITLE

ATTACHMENT H

ATTACHMENT I



ZVIO-2024-019
04600-00-00-10100
2024-08-20

by Jalen Boone

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23


Guided Centering
Guided Centering is our Treatment Philosophy: A psychological process with an educational emphasis
Our innovation is to integrate best practices (CBT, FFT, ART, MST) throughout our treatment milieu (guided centering)
VisionQuest Philosophy
Comes to one
Begins with two
Finds balance with three
Full circle with four
Self
Mother & Father
Staff, Kid, Management
Plan, Touch, Commitment, Control

24



25



26


Requests
Please complete request form and place in box.
HR will complete your request within 2 business days
HR paperwork
· PTO Forms
· Punch Edits
· OT Authorizations
· Workers comp packets
Finance

27


Fixed

28



29



30



31



32



33



34

County of Albemarle
COMMUNITY DEVELOPMENT DEPARTMENT

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

NOTICE OF OFFICIAL DETERMINATION OF VIOLATION

The Date this Notice of Determination is given is August 26, 2024. No: ZVIO-2024-019

CERTIFIED MAIL # 7021-0350-0000-3827-1094

Polo G LLC
c/o Nathan Kostelac & Summer Kostelac
1785 Frays Mill Road
Ruckersville, VA 22968

CERTIFIED MAIL # 7021-0350-0000-3827-1063

Polo G LLC
c/o William Harville
327 W Main St Ste C
Charlottesville, VA 22903

Property: Parcel ID 04600-00-00-10100

Zoning: Rural Area [RA] District
Airport Impact [AIA] Area
Flood Hazard Overlay [FH] District

Polo G LLC
Owner of Record

Dear Polo G LLC:

This notice is to inform you that the above-described Property is in violation of the Albemarle County Zoning Ordinance. This conclusion is based on the following observations of the above-described Property by a Code Compliance Officer on **August 20, 2024.**

1. **The industrial buildings placed on this parcel is not a permitted use.**

2. **The industrial buildings placed in the floodplain on this parcel is not permitted.**

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

1. **Albemarle County Code § 18-10.2 Permitted Uses**

2. **Albemarle County Code § 18-30.3.11 Flood Hazard Overlay; Permitted and Prohibited Uses and Structures**

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

This letter also serves to notify you to stop the activity or use outlined above immediately. Failure to comply with this notice may result in legal action being taken against you and any other owner, tenant or other responsible party. In addition, you must bring the property into compliance by **September 26, 2024** to avoid court action. Future compliance past this date does not preclude the County from pursuing legal action for existing or past violation(s).

You have a right to appeal it within thirty (30) days of this notice, in accordance with *Virginia Code* § 15.2-

2311; provided, however, that a ten (10) day appeal period applies to appeals of decisions pertaining to temporary or seasonal commercial uses, and such appeals shall be filed within ten (10) days after this decision. If you do not file a timely appeal, this determination shall be final and unappealable.

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

Applications for Appeal of the Zoning Administrator's Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at http://tinyurl.com/Appeal-Application. This form applies to appeals of decisions of the Zoning Administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are outlined in *Albemarle County Code* § 18-34.3, which may be reviewed online at http://tinyurl.com/County-Code-BZA-Appeal.

If you have any questions, please contact Jalen Boone, Property Compliance Officer, at 434-296-5832 ext. 3464

Lisa Green
Manager of Code Compliance
County of Albemarle

Attachment B

AUTHENTICATION OF RECORD/
CERTIFICATE OF MAILING
(*Code of Virginia* § 8.01-390)
(Notice of Official Determination of Violation)

I, Jalen Boone, hereby certify:

1. that I am a Code Compliance Officer and an employee of the Albemarle County Department of Community Development;

2. that on August 26, 2024, I mailed a true copy of the record attached hereto, consisting of a Notice of Official Determination of Violation dated August 26, 2024 pertaining to that property identified as Parcel ID Number(s) 04600-00-00-10100, to the recipient(s) identified thereon at the address(es) specified thereon; and

3. That the copy of such record which is attached hereto is a true copy of the record that was mailed.

Dated: 8/26/24 Signed: Boone

COMMONWEALTH OF VIRGINIA
COUNTY OF ALBEMARLE:

The foregoing *Authentication of Record/Certificate of Mailing* was signed, sworn to and acknowledged before me by Jalen Boone, Albemarle County Code Enforcement Officer, this 26 day of August, 2026.

Danielle
Notary Public

My Commission Expires: 7968799
Notary Registration No. 12/31/26

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

RELEVANT ORDINANCE REGULATIONS
EXCERPTS

Sec. 10.1 Intent, where permitted.

This district (hereafter referred to as RA) is hereby created and may hereafter be established by amendment of the zoning map for the following purposes:

- Preservation of agricultural and forestal lands and activities;
- Water supply protection;
- Limited service delivery to the rural areas; and
- Conservation of natural, scenic, and historic resources.

Sec. 10.2 Permitted uses.

Sec. 10.2.1 By right.

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

1. Detached single-family dwellings, including guest cottages and rental of the same; provided that yard, area and other requirements of section 10.4, conventional development by right, shall be met for each such use whether or not such use is on an individual lot subject to section 10.3.
2. Side-by-side two-family dwellings subject to the provisions of section 10.4; provided that density is maintained and provided that buildings are located so that each unit could be provided with a lot meeting all other requirements for detached single-family dwellings except for side yards at the common wall. Other two-family dwellings shall be permitted provided density is maintained.
3. Agriculture, forestry, and fishery uses except as otherwise expressly provided.
4. Game preserves, wildlife sanctuaries and fishery uses.
5. (Repealed 5-5-10)
6. Water, sewer, energy, communications distribution facilities (reference 5.1.12).
7. Accessory uses and buildings including major home occupations (reference 5.2A), minor home occupations (reference 5.2A), and storage buildings.
8. Temporary construction uses (reference 5.1.18).
9. Public uses (reference 5.1.12).
10. Temporary sawmill (reference 5.1.15 and subject to performance standards in 4.14).
11. Veterinary services - off-site treatment only.
12. Agricultural service occupation (subject to performance standards in 4.14).
13. Divisions of land in accordance with section 10.3.
14. Homestays (reference 5.1.48).
15. Manufactured homes, individual, qualifying under the following requirements (reference 5.6):
    a. A property owner residing on the premises in a permanent home wishes to place a manufactured home on such property in order to maintain a full-time agricultural employee.

b. Due to the destruction of a permanent home an emergency exists. A permit can be issued in this event not to exceed 12 months. The Zoning Administrator shall be authorized to issue permits in accordance with the intent of this ordinance and shall be authorized to require or seek any information which he may determine necessary in making a determination of cases "a" and "b" of the aforementioned uses.

16. Temporary manufactured home in accordance with section 5.7.
17. Farm winery uses, events, and activities authorized by section 5.1.25(a),(b), and (c)(2).
18. Borrow area, borrow pit, not exceeding an aggregate volume of 50,000 cubic yards including all borrow pits and borrow areas on any one parcel of record on the adoption date of this provision (reference 5.1.28).
19. Manufactured homes on individual lots (reference 5.6).
20. Commercial stable (reference 5.1.03).
21. Stormwater management facilities shown on an approved final site plan or subdivision plat.
22. Tier I and Tier II personal wireless service facilities (reference 5.1.40).
23. Farm worker housing, Class A (up to ten occupants and up to two sleeping structures) (reference 5.1.44).
24. County store, Class A (reference 5.1.45).
25. Small wind turbines (reference 5.1.46).
26. (Repealed 11-12-14)
27. Farm stands (reference 5.1.47).
28. Family day homes (reference 5.1.56).
29. Farm brewery uses, events, and activities authorized by section 5.1.57(a), (b), and (c)(2).
30. Events and activities at agricultural operations authorized by right under section 5.1.58(d).
31. Farm distillery uses, events, and activities authorized by section 5.1.59(a), (b), and (c)(2).
32. Group home (reference 5.1.07).
33. Farmers' markets (reference 5.1.47 a—e)
34. Religious assembly use with assembly of not more than 200 persons.

Sec. 10.2.2 By special use permit.

The following uses shall be permitted by special use permit in the RA district, subject to the applicable requirements of this chapter:

1. Community center (reference 5.1.04).
2. Clubs and lodges (reference 5.1.02).
3. Fire and rescue squad stations (volunteer) (reference 5.1.09).
4. Swim, golf, tennis or similar athletic facilities (reference 5.1.16).
5. Private schools.
6. Energy and communications transmission facilities (reference 5.1.12).
7. Child day centers (reference 5.1.06).
8. (Repealed 3-5-86)
9. Manufactured home subdivisions (reference 5.5).

10. (Repealed 11-11-92)
11. (Repealed 3-15-95)
12. Horse show grounds, permanent.
13. (Repealed 6-5-19)
14. Sawmills, planing mills and woodyards (reference 5.1.15 and subject to performance standards in 4.14).
15. (Repealed 8-9-17)
16. (Repealed 11-15-95)
17. Commercial kennel (reference 5.1.11 and subject to performance standards in 4.14).
18. Veterinary services, animal hospital (reference 5.1.11 and subject to performance standards in 4.14).
19. Private airport, helistop, heliport, flight strip (reference 5.1.01).
20. Day camp, boarding camp (reference 5.1.05).
21. Sanitary landfill (reference 5.1.14).
22. Country store, Class B (reference 5.1.45).
23. Commercial fruit or agricultural produce packing plants.
24. (Repealed 11-8-89)
25. Flood control dams and impoundments.
26. (Repealed 11-8-89)
27. Restaurants, taverns, and inns that are:
28. Divisions of land as provided in section 10.5.2.1.
29. Boat livery.
30. Permitted residential uses as provided in section 10.5.2.1.
31. (Repealed 1-12-11)
32. Cemetery.
33. Crematorium.
34. (Repealed 3-21-01)
35. Religious assembly use with assembly of more than 200 persons.
36. Gift, craft and antique shops.
37. Public garage.
38. Exploratory drilling.
39. Hydroelectric power generation (reference 5.1.26).
40. Borrow area, borrow pit not permitted under section 10.2.1.18.
41. Convent, Monastery (reference 5.1.29).
42. Temporary events sponsored by local nonprofit organizations which are related to, and supportive of the RA, rural areas, district (reference 5.1.27).
43. Agricultural Museum (reference 5.1.30).
44. Theatre, outdoor drama.

45. (Repealed 11-12-14)
46. Off-site parking for historic structures or sites (reference 5.1.38) or off-site employee parking for an industrial use in an industrial zoning district (reference 5.1.39).
47. Animal shelter (reference 5.1.11).
48. Tier III personal wireless service facilities (reference 5.1.40).
49. Historical centers, historical center special events, historical center festivals (reference 5.1.42).
50. Special events (reference 5.1.43).
51. Farm worker housing, Class B (more than ten occupants or more than two sleeping structures) (reference 5.1.44).
52. Sale of gasoline and other fuels in conjunction with a country store, Class A or Class B (reference 5.1.45).
53. Farm winery uses, events, and activities authorized by section 5.1.25(c)(3).
54. Farmers' markets (reference 5.1.47 a—d).
55. Farm brewery uses, events, and activities authorized by section 5.1.57(c)(3).
56. Events and activities at agricultural operations authorized by special use permit under section 5.1.58(d).
57. Farm distillery uses, events, and activities authorized by section 5.1.59(c)(3).
58. Solar energy systems.
59. Landscape contractors on lots three acres or more in size that do not otherwise qualify as an authorized home occupation under section 5.2A.

Sec. 5.8 Temporary industrialized building.

A temporary industrialized building may be authorized by a zoning clearance issued by the Zoning Administrator provided the industrialized building is necessary to provide additional space for employees, students or other people as an activity area, and further provided that the building is not primarily used for storage. A temporary industrialized building also shall be subject to the following:

Sec. 30.3 Flood hazard overlay district - FH.

Sec. 30.3.1 Purpose and intent.

Under the authority of Virginia Code § 15.2-2280, the purposes and intent of section 30.3 are to:

A. *Prevention of harm*. Prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base.

B. *Means used*. In order to prevent the several harms described in subsection (A), section 30.3 establishes an overlay zoning district to: (i) regulate uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies; (ii) restrict or prohibit certain uses, activities, and development from locating within areas subject to flooding; (iii) require all of those uses, activities, and developments that do occur in areas subject to flooding to be protected or flood-proofed, or both, against flooding and flood damage; and

(iv) protect individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

C. *Flood insurance*. Address a local need for flood insurance and to participate in the National Flood Insurance Program.

State law reference(s)—Va. Code § 15.2-2280.

Federal law reference—44 CFR §§ 59.22(a)(1), (a)(2).

Sec. 30.3.11 Permitted and prohibited uses and structures.

The uses and structures permitted by right and by special use permit, and the uses and structures expressly prohibited, in the flood hazard overlay district are as follows:

Use or Structure	Regulatory Floodway	Floodway Fringe
Agricultural, Natural Resources, and Recreational Uses and Structures*		
Agricultural uses, limited to field crops, pasture, grazing, livestock, raising poultry, horticulture, viticulture and forestry; provided that no primary or accessory structures are permitted under this classification	BR	BR
Structures accessory to a permitted agricultural use; provided that no accessory structures having habitable space are permitted	N	BR
Recreational uses including, but not limited to, parks, swimming areas, golf courses and driving ranges, picnic areas, wildlife and nature preserves, game farms, fish hatcheries, hunting, fishing and hiking areas, athletic fields, and horse show grounds; provided that no primary or accessory structures are permitted under this classification	BR	BR
Structures accessory to a permitted recreational use; provided that no accessory structures for human habitation are permitted	N	BR
Sod farming	SP	SP
Topsoil, sand, and gravel removal	SP	SP
Flood and Water Related Uses and Structures*		
Flood warning aids and devices, water monitoring devices, and similar uses	BR	BR
Flood control, stormwater conveyance, or environmental restoration projects which: (i) are designed or directed by the county, a soil and water conservation district, or a public agency authorized to carry out flood control or environmental restoration measures; or (ii) are reviewed and approved by the department of community development in accordance with the Water Protection Ordinance and with no changes to the base floodplain elevation or horizontal limits to the flood plain	BR	BR
Dams, levees and other structures for flood control or for the public drinking water supply	SP	SP

Engineered structures, including, but not limited to, retaining walls and revetments made of non-natural materials such as concrete which are constructed along channels or watercourses for the purpose of water conveyance or flood control	SP	SP
Water related uses such as boat docks and boat liveries	SP	SP
Hydroelectric power generation (reference 5.1.26)	SP	SP
Public Utility and Telecommunications Uses and Structures*		
Electric, gas, oil and communications facilities, including poles, lines, pipes, meters and related facilities for distribution of local service and owned and operated by a public utility, but excluding tower structures	BR	BR
Water distribution and sewage collection lines and appurtenances owned and operated by the Albemarle County Service Authority, but excluding pumping stations and holding ponds; public water and sewer transmission lines, main or trunk lines, and interceptors, but excluding treatment facilities and pumping stations, owned and/or operated by the Rivanna Water and Sewer Authority	BR	BR
Pump stations for water or wastewater, including power supply and control devices, holding ponds and other appurtenances	SP	SP
Electrical transmission lines and related towers; microwave and radio-wave transmission and relay towers	SP	SP
Tier I and Tier II personal wireless service facilities that are attached to an existing structure	N	BR
Tier III personal wireless service facilities	N	N
Stream Crossings and Grading Activities*		
Stream crossings for a driveway serving only one single-family dwelling and pedestrian trails, including, but not limited to, pedestrian and multi-use paths that are within county-owned or operated parks and greenways, and any footbridges necessary to cross tributary streams, watercourses and swales, that: (i) meet the applicable requirements of sections 17-406 and 17-604; (ii) demonstrate, in a floodplain impact plan, to the floodplain administrator's satisfaction, that construction of the crossing will have no impact on the elevations or limits of the floodplain; and (iii) will serve one dwelling unit that could not be accessed by any other means.	BR	BR
Bridges, ferries and culverts not serving single-family dwellings	SP	SP
Grading activities in compliance with the Water Protection Ordinance; provided that it is demonstrated, in a floodplain impact plan that the grading will have no impact on the elevations or limits of the floodplain and further provided that any cut or fill shall be only to level areas for playfields, correct erosion problems, build trails, or other fine grading activities which will have no impact on	N	BR

the floodplain. For purposes of this provision, fine grading is defined as a balanced site (cut/fill) with no changes to the base floodplain elevation or horizontal limits to the floodplain.		
Grading activities, including cut or fill, in compliance with the Water Protection Ordinance, but for which the floodplain administrator determines will or may cause the base flood elevation to rise or the horizontal limits of the floodplain to expand	N	SP
Miscellaneous Structures*		
Aircraft landing strips; provided that structures other than the landing strip, aircraft parking, and aircraft storage are prohibited	SP	SP
Fences	BR	BR
Structures accessory to uses permitted by right in the regulatory floodway, excluding structures having habitable space; provided that any such structure permitted shall be flood-proofed and anchored per section 30.3.15.	N	SP
Structure having habitable space, including any manufactured home, regardless of the structure's proposed use, whether it qualifies as a dwelling unit, and whether it is a primary or accessory structure	N	N
Storage as a Primary or Accessory Use*		
Storage of gasoline, kerosene and other petroleum products	N	N
Storage of flammable liquids, dynamite, blasting caps and other explosives	N	N
Storage of pesticides and poisons and other similar materials	N	N
Storage of machinery and motor vehicles except as accessory to a use allowed by right or by special use permit	N	N
Storage of junk	N	N

*Heading is for organizational purposes only and is not a use classification.

**Heading denotes that the use classifications are prohibited as either primary or accessory uses.

BR: The use is permitted by right, provided that the use or structure satisfies all applicable requirements of this chapter, including, but not limited to, the permitting requirements of section 30.3.12 and the encroachment and construction standards in sections 30.3.13 through 30.3.15.
SP: The use is permitted by special use permit, provided that the use or structure satisfies all applicable requirements of this chapter. including, but not limited to, the permitting requirements of section 30.3.12 and the encroachment and construction standards in sections 30.3.13 through 30.3.15.
N: The use is not permitted.

Sec. 31.3 Zoning permits.

The zoning administrator shall review requests for zoning permits for those buildings and structures not required to file a building permit application, as follows:

a. *When required*. Prior to starting, establishing, constructing, reconstructing, enlarging or altering any buildings or structures for which a building permit application is not required under the building code, the applicant shall request a zoning permit.

13VAC5-91-245. Manufacturer's data plate.

A. All of the following information shall be placed on a permanent manufacturer's data plate in the vicinity of the electrical distribution panel or in some other location that is readily accessible for inspection. The compliance assurance agency shall approve the form and location of the data plate and shall ensure that the data plate is complete:

1. Manufacturer's name and address.

2. Compliance assurance agency certification number.

3. Serial number of each module of the building.

4. Serial number of the Virginia registration seal.

5. Date of manufacture of the building.

6. List of codes and standards under which the building was evaluated and constructed and the type of construction and occupancy classification under those codes and standards.

7. Design live roof load, design floor live load, design wind speed, and design ground snow load.

8. Thermal resistance ("R") values.

9. Special conditions or limitations concerning the use of the building under the codes and standards applicable to the building; however, a list of such conditions or limitations that are furnished separately with the building shall satisfy this requirement.

10. Special instructions for handling, installation and erection of the building; however, a list of such instructions that are furnished separately with the building shall satisfy this requirement.

11. Designation of electrical service ratings, directions for water and drain connections and, where applicable, identification of permissible type of gas for appliances.

12. Name of manufacturer and model designation of major factory installed appliances.

B. The manufacturer shall maintain copies of the data plate and reports of inspection, tests and any corrective action taken for a minimum period of 10 years from the date of manufacture of the building.

Statutory Authority

§ 36-73 of the Code of Virginia.

Virginia Administrative Code
Title 13. Housing
Agency 5. Department of Housing And Community Development
Chapter 91. Virginia Industrialized Building Safety Regulations

13VAC5-91-260. Registration seal for industrialized buildings.

A. Registered industrialized buildings shall be marked with approved registration seals issued by the SBCO. The seals shall be applied to a registered industrialized building intended for sale or use in Virginia prior to the shipment of the building from the place of manufacture. The seals shall be applied by the compliance assurance agency or by the manufacturer when authorized to do so by the compliance assurance agency.

B. Registered industrialized buildings shall bear one registration seal on each manufactured section or module, or, as an alternative, the registration seal for each manufactured section or module may be placed in one location in the completed building.

C. Closed panel construction shall require one registration seal for every 600 square feet, or part thereof, of floor area.

D. Approved registration seals shall be purchased by the compliance assurance agency from the SBCO in advance of use. The fee for each registration seal shall be $75. Fees shall be submitted by checks made payable to "Treasurer of Virginia" or shall be submitted by electronic means. Payment for the seals must be received by the SBCO before the seals can be sent to the user. The compliance assurance agency shall maintain permanent records of seals purchased, including a record of any manufacturers receiving such seals.

E. To the extent practicable, the registration seal shall be installed so that it cannot be removed without destroying it. The seal shall be applied in the vicinity of the electrical distribution panel or in another location that is readily accessible for inspection and shall be installed near the certification label.

F. In accordance with § 36-85.1 of the Code of Virginia, any person or corporation having paid the fee for an approved registration seal that it will not use may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such fee, apply to the administrator for a refund, in whole or in part, of the fee paid; provided that no payment shall be recovered unless the approved registration seal is returned unused and in good condition to the administrator. Additionally, as a requirement of this chapter, an administrative and processing fee of 25% of the amount of the refund due shall be deducted from the refund; however, such deduction shall not exceed $250.

Statutory Authority
§36-73 of the Code of Virginia.

FOR OFFICE USE ONLY AP # _____ SIGN # _____ ATTACHMENT M

ZONING ORDINANCE SECTION: _____

Fee Amount $ 599.00 Date Paid 9/26/24 By who? Koste Lake LLC Receipt # 127336 Ck# 2240 By: Alysia

Application for
Appeal of Zoning Administrator's Determination

☑ **Appeal of Zoning Administrator's Determination = $364.00**
Application $350 + Technology surcharge $14.00

☑ **Initial notice fee to be provided in conjunction with an application, for preparing and mailing notices and published notice = $235**

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

Contact Person (Who should we call/write concerning this project?): Dominique Kostelac

Address 1785 Frays Mill Rd City Ruckersville State VA Zip 22968

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

Owner of Record Polo G LLC, Nathan Kostelac, Summer Kostelac

Address (See Exhibit A) City (See Exhibit A) State (See Exhibit A) Zip (See Exhibit A)

Daytime Phone (____) exh a Fax # (____) (exh a E-mail (See Exhibit A)

Applicant (Who is the Contact person representing?): Polo G LLC, Nathan Kostelac, Summer Kostelac

Address (See Exhibit A) City (See Exhibit A) State (See Exhibit A) Zip (See Exhibit A)

Daytime Phone (____) (exh a Fax # (____) exh a E-mail exh a

County of Albemarle Department of Community Development
401 McIntire Road Charlottesville, VA 22902 Voice: (434) 296-5832 Fax: (434) 972-4126

Project Name: Polo Grounds Rd tax parcel 46-101

Tax map and parcel: 46-101 **Zoning:** RA

Physical Street Address (if assigned):
none assigned

Location of property (landmarks, intersections, or other):
West of and abutting railroad tunnel on polo grunds rd north of polo grounds rd.

The following information shall be submitted with the application and is to be provided by the applicant:

1) Completed application including subject of appeal. (See Exhibit B, E)
2) Justification for applicant's position, including error in Zoning Administrators determination. You may use the space below to provide this information or submit an attached sheet. (See Exhibit B)
3) If applicable, a copy of the latest deed for the property involved, and the approved and recorded plat (See Exhibit C)
4) If applicable, the appropriate drawings showing all existing and proposed improvements on the property and any special conditions for the situation that may justify the appeal. (See EXHIBIT D)
5) Reference to the relevant Zoning Ordinance section or other applicable regulations or case precedence to justify the appeal.
6) Appropriate fee made payable to the County of Albemarle. (See Exhibit B, E)

Explanation of error in determination and justification of applicant's position:

(SEE EXHIBIT B, C, D, E)

Owner/Applicant Must Read and Sign

I hereby certify that the information provided on this application and accompanying information is accurate, true and correct to the best of my knowledge and belief.

Signature of Owner or Contract Purchaser, Agent

September 26 2024
Date

Dominique Kostelac
Print Name

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

Board of Zoning Appeals Action/vote:

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

Zoning Determination Appeal Polo Grounds RD Tax Parcel 46-101 Albemarle County, VA

EXHIBIT A

Contact list:

Polo G LLC
Registered Agent for service or legal notices:
William Harville Esq.
327 W. Main St. Ste. C Charlottesville VA, 22903-5551

Street address:
1785 Frays Mill Rd Ruckersville VA 22968,
Ph 434 825 6117
Fax 434 212 1022
nasutollc@gmail.com

Nathan Kostelac
1785 Frays Mill Rd Ruckersville VA 22968

Summer Kostelac
1785 Frays Mill Rd Ruckersville VA 22968

Zoning Determination Appeal Polo Grounds RD Tax Parcel 46-101 Albemarle County, VA

EXHIBIT B

Subject of appeal:

Polo G LLC received a certified Notice of Determination letter c/o William Harville dated August 26, 2024. This timely filed appeal is responsive to that letter.

Justification for applicant's position including error:

The staff at Albemarle County including Bart Zaboda, Zoning administrator and Jodi Filardo, Community Development Director and Compliance Officer Lisa Greene have met with me on previous occasion having sent determination letters. In those letters we were cited for:

On August 5, 2022

1. **The industrial buildings placed on this parcel is not a permitted use.**
2. **The material (gravel) that has been placed on this parcel is not considered clean earth fill.**

    1. **Albemarle County Code § 18-10.2; Permitted Uses**
    2. **Albemarle County Code § 18-5.1.28; Clean Earth Fill**

On March 3 2023

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

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

Charges 2 and 4 were rejected and charges 1 and 3 are still in civil court.

On August 26 2024

1. **The industrial buildings placed on this parcel is not a permitted use.**

2. **The industrial buildings placed in the floodplain on this parcel is not permitted.**

1. **Albemarle County Code § 18-10.2 Permitted Uses**

2. **Albemarle County Code § 18-30.3.11 Flood Hazard Overlay; Permitted and Prohibited Uses and Structures**

Although Bart Zvodoba stated he would be inclined to withdraw the determination following meetings and correspondence circa 2022 the County pursued the case after withdrawing the charges related to clean earth fill.

This entire case was dismissed for lack of property notice which was made clear to them immediately upon becoming aware of the matter circa 2022 after the appeal period had lapsed due to a failure to notice the owners.

Following this engagement as well as numerous other zoning determinations on other Albemarle County properties owned or controlled by Dominique Kostelac and family wherein evidence was gathered by warrantless searches, Dominique Kostelac notified Albemarle County zoning that a list of named properties owned or controlled by members of the Kostelac family would require a warrant before any search was initiated by Zoning officials. These previous searches included groundless violations such as conducting interstate commerce, illegally operating a food truck, creating a junk yard, water in excess of 1 inch, and storing industrial buildings on their property.

Although the requirement to obtain a warrant to search a property when an owner articulated a denial for access was clearly established in training material as well as state and federal law the county continued to use warrantless searched to gather evidence. In cross examination the head of zoning stated that the constitution was only an advisory document. The notice or bar was given to Zoning official Lisa Greene in person for 1785 Frays mill Rd on or about 2010. Another email was sent to Bart Svodoba and County staff March 6 2023 barring entry to the following Albemarle County properties without a warrant. Here below is an excerpt with named properties on the March 6 2023 email:

Our farm properties in Albemarle County supplement hundreds of other acres in adjacent counties. The list of these agricultural properties in Albemarle County are:

2 acres on Polo Grounds Rd (appx 1850 Polo Grounds Rd) Tax map 46-101
33 aces at 1785 Frays Mill Rd
Appx 40 acres at Shadwell Rd (appx 1046 Shadwell Rd) tax map 79-C1

Although we have formally ordered Albemarle County zoning officials off 1785 Frays Mill Rd. and now require a court order for entry on that property, ***I am herein ordering all Albemarle County officials barred from entry to all our properties without a court order***. Ofc Lisa Green, representing Albemarle County, was personally ordered off our property. She affirmed this several times in different court proceedings. Officers did admit under oath that they did search beyond the clearly demarcated curtilage in these searches without regard to numerous Supreme Court verdicts and Albemarle County zoning Policy.

I must also look into the possibility that a trespass has occurred on the Shadwell property wherein, once again, County officials moved through a gate and numerous no trespassing signs deep into our private property in their search.

To the degree that any evidence presented by Albemarle County was obtained without a warrant, it is the "fruit of the tainted tree" and is inadmissible as evidence.

Notwithstanding the above clearly articulated barment the County has entered this and other property on numerous occasions as recorded on cameras and is legally a willful serial trespasser on the Kostelac's properties subject to prosecution.

Additionally, the County may have colluded with VDOT and neighbors to trespass on the property to gather evidence and destroy our entry to the parcel and obstructed our lawful use. On or about August 22, 2022, VDOT illegally entered the subject property and dug a large hole outside their right of way to prevent the Kostelac's entry to the parcel. This case is in litigation at present and the Kostelac's have not recovered their losses. VDOT made no attempt to repair the property entryway for nearly a year causing the Kostelac's to lose their term financing to move the equipment and place it on a higher elevation or make it suitable for agricultural use. Since VDOT and numerous County administrations acted on or about the same date there appears to be clear coordination between parties, shared liability and exposure to civil RICO charges.

As regards industrial buildings

My defense of industrialized buildings was submitted to Bart Zbodoba on September 12, 2022 (See Exhibit E)

As regards objects and or equipment and buildings in flood zones and flood ways

Per chap 18 Art III section 30

Sec. 30.3.11 - Permitted and prohibited uses and structures.

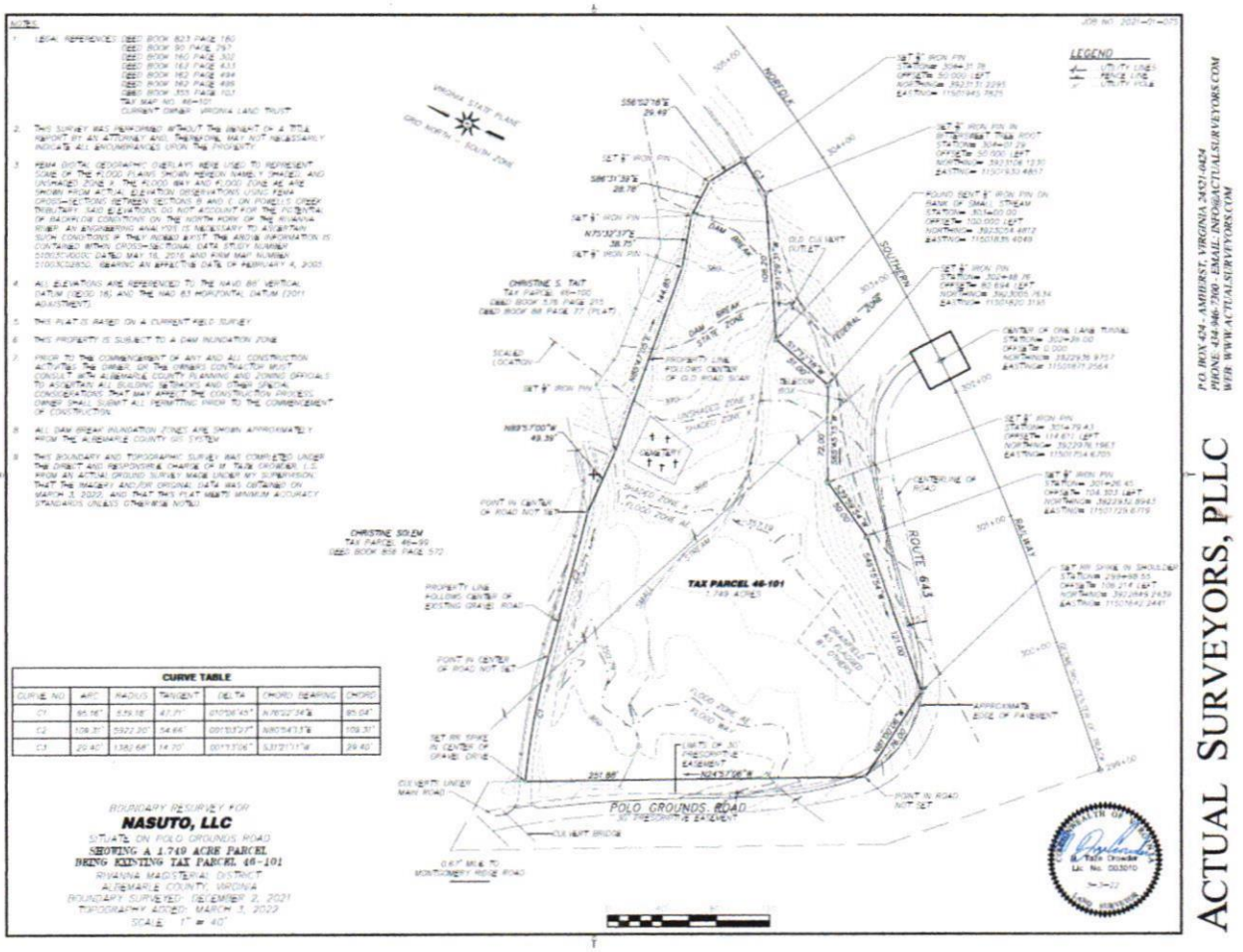
The following are by-right uses in the floodway fringe, zone (AE) -

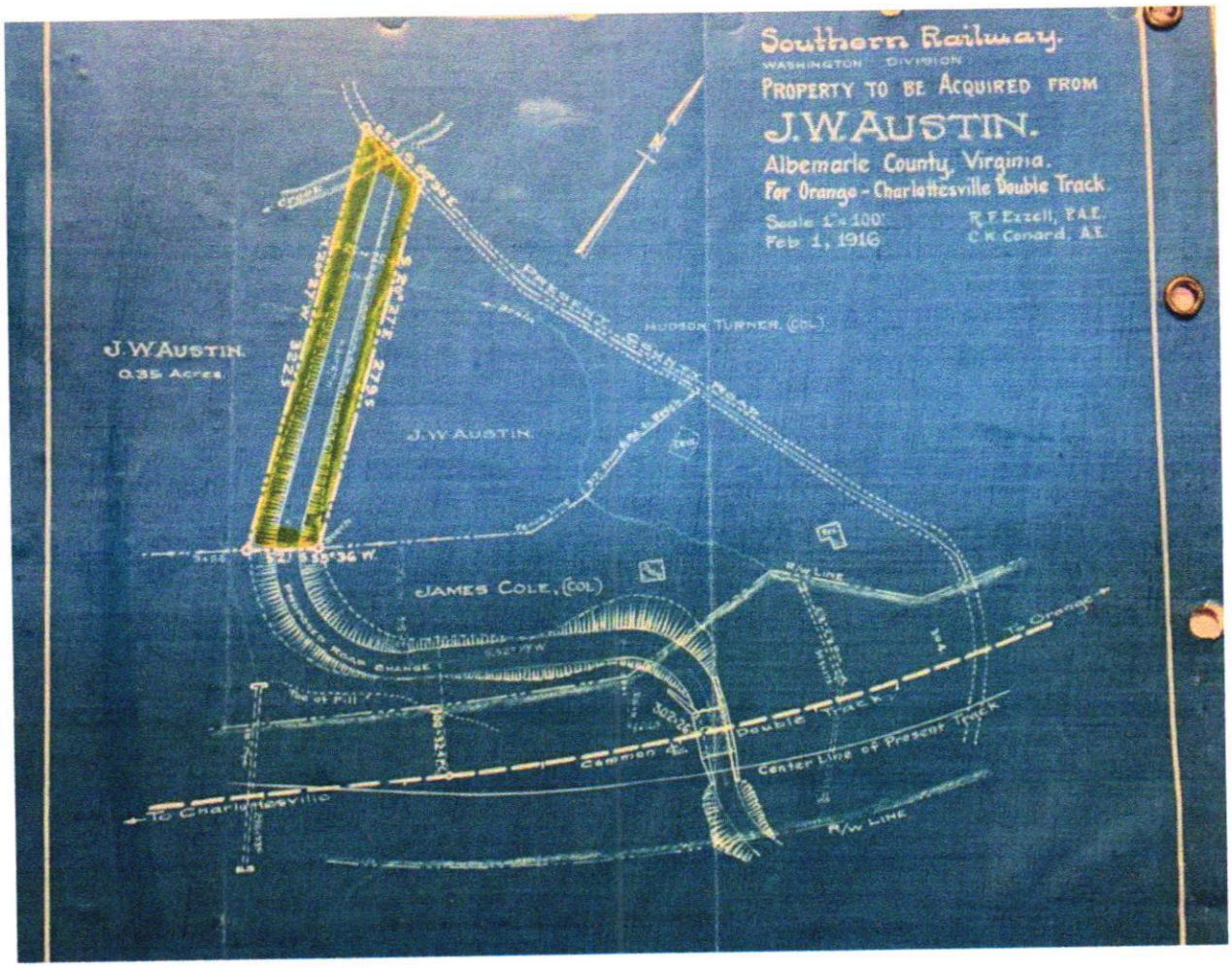
Agricultural uses, limited to field crops, pasture, grazing, livestock, raising poultry, horticulture, viticulture and forestry; provided that no primary or accessory structures are permitted under this classification

Structures accessory to a permitted agricultural use; provided that no accessory structures having habitable space are permitted

Zoning Determination Appeal Polo Grounds RD Tax Parcel 46-101 Albemarle County, VA

EXHIBIT C




Southern Railway.
WASHINGTON DIVISION
PROPERTY TO BE ACQUIRED FROM
J.W.AUSTIN.
Albemarle County, Virginia.
For Orange - Charlottesville Double Track.
Scale 1"=100'
Feb 1, 1916
R.F.Ezzell, P.A.E.
C.K.Conard, A.E.
J.W.AUSTIN
0.35 Acres
HUDSON TURNER, (COL.)
J.W.AUSTIN
JAMES COLE, (COL)
R/W LINE
To Orange
Double Track
Center Line of Present Track
To Charlottesville
R/W LINE

Shirley L Fisher (SEAL)
SHIRLEY L. FISHER, Trustee for the
Virginia Land Trust, under the terms and
Provisions of a certain land trust agreement
dated May 18, 1984

STATE OF Virginia,
~~CITY~~/COUNTY of Albemarle, to-wit:

I, Gail Breeden Watkins, a Notary Public of the State of Virginia, at large, do hereby certify that SHIRLEY L. FISHER, Trustee for the Virginia Land Trust, under the terms and Provisions of a certain land trust agreement dated May 18, 1984, whose name is signed to the writing above bearing date on the 23rd day of November, 2021, has acknowledged the same before me in my State aforesaid.

Given under my hand this 14th day of December, 2021.

Gail Breeden Watkins
Notary Public

My commission expires: May 31, 2025.
My registration no.: 101082.

GAIL BREEDEN WATKINS
Notary Public - Reg. # 101082
Commonwealth of Virginia
My Commission Expires May 31, 2025

The property hereby conveyed is conveyed subject to all valid and existing conditions, easements, reservations and restrictions heretofore imposed upon said property by recorded deed or plat and now binding thereon.

WITNESS the following signatures and seals:

_____(SEAL)
CHARLES WM. HURT, Trustee for the
Virginia Land Trust, under the terms and
Provisions of a certain land trust agreement
dated May 18, 1984

STATE OF Virginia,
~~CITY~~/COUNTY of Albemarle, to-wit:

I, Gail Breeden Watkins, a Notary Public of the State of Virginia, at large, do hereby certify that CHARLES WM. HURT, Trustee for the Virginia Land Trust, under the terms and Provisions of a certain land trust agreement dated May 18, 1984, whose name is signed to the writing above bearing date on the 23rd day of November, 2021, has acknowledged the same before me in my State aforesaid.

Given under my hand this 14th day of December, 2021.

Gail Breeden Watkins
Notary Public

My commission expires: May 31, 2025.
My registration no.: 101082.

GAIL BREEDEN WATKINS
Notary Public - Reg. # 101082
Commonwealth of Virginia
My Commission Expires May 31, 2025

This Deed was prepared without
the benefit of title examination by
Seth E. Twery, P.C. – VSB #20031
715 Court St., Second Floor
Lynchburg, VA 24504
www.sethtwery.com
Tax ID No. 04600-00-00-10100
Company Providing Title Insurance: Old Republic National Title Insurance Co.

Consideration: $1,600.00
Assessed Value: $1,600.00

THIS DEED, made and entered into this 23rd day of November, 2021, by and between **CHARLES WM. HURT and SHIRLEY L. FISHER, Trustees for the Virginia Land Trust, under the terms and provisions of a certain land trust agreement dated May 18, 1984,** parties of the first part, GRANTORS; and **POLO G LLC, a Virginia limited liability company and NATHAN KOSTELAC and SUMMER KOSTELAC**, parties of the second part, GRANTEES.

WITNESSETH:

For and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties of the first part hereby grant, sell and convey to the parties of the second part with General Warranty and English Covenants of Title, as tenants in common, the following described real estate located in the County of Albemarle, Virginia, to wit:

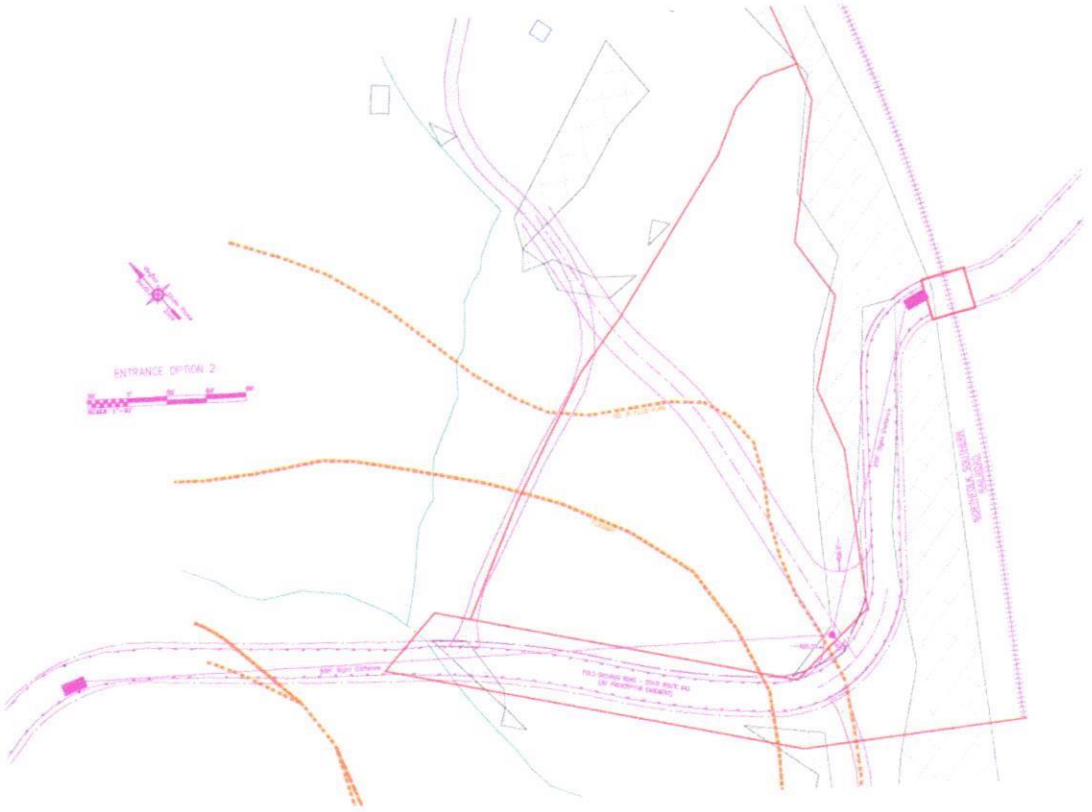
> That certain parcel of land, together with any buildings and improvements thereon and the privileges and appurtenances thereunto belonging, situate, lying and being in Albemarle County, Virginia, on the north side of State Route 643 and on the west side of the Southern Railroad containing 1.130 acres, more or less.
>
> It being the same property conveyed unto the Grantors herein, by Deed dated December 21, 1984, of record in the Office of the Clerk, Circuit Court, Albemarle County, Virginia, in Deed Book 823, at Page 295.

Zoning Determination Appeal Polo Grounds RD Tax Parcel 46-101 Albemarle County, VA

EXHIBIT D



13


ENTRANCE OPTION 2

Zoning Determination Appeal Polo Grounds RD Tax Parcel 46-101 Albemarle County, VA

EXHIBIT E

Letter to Bart Svoboda re industrialized buildings sept 13 2022

Hello Mr. Svoboda,

Thank you for providing the definitions that were the foundation of your position of the determination letter in question.

The term "industrialized building" is not used in the determination letter. The letter uses only the words "industrial building" as excerpted below. As you know definitions in the VA codes and regulations are very specific and cannot be interchanged with similar words nor do they equate with similar words as used in common language. The definition of an "industrialized building" as it appears in the code is not part of the communication and is should not be included in any rebuttal of the determination letter.

1. **The industrial buildings placed on this parcel is not a permitted use.**

Your definition:

Industrialized building. "Industrialized building" means a combination of one or more sections or modules, subject to state regulation, and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. For purposes of this definition, a manufactured home is not an industrialized building.

Additionally, the farm equipment on the property is not subject to state regulation as required in the definition "Industrialized buildings" ... ***subject to state regulation***...

As per § 36-99. Provisions of Code; modifications.

"***Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code***....."

If we were to describe the ***farm equipment*** on the property as ***farm buildings*** the following definition would apply:

§ 36-97. Definitions.

"Farm building or structure" means a building or structure ***not used for residential purposes, located on property where farming operations take place***, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm;

2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products;

3. Business or office uses relating to the farm operations;

4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm;

5. Storage or use of supplies and materials used on the farm; or

6. Implementation of best management practices associated with farm operations.

Additionally as per § 3.2-301. Right to farm; restrictive ordinances.

No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens.

In addition to storing of equipment used to improve the land the equipment

As I said in my draft letter to Jodi

"Regarding the Determination letter as written:

The first statement of determination is that:

"1. The industrial Buildings placed on this parcel is not a permitted use"

There are no industrial buildings on the site and I cannot understand the legal framework for such an observation. There is no definition for an industrial building I can find that would be appropriate for any observation made by an informed official.

This is simply an administrative harassment to accommodate the neighborhood's political will. Our governments are not empowered to protect the majority. They are created exclusively to protect individual rights and to intervene when a powerful majority attacks the rights of a minority. The majority needs no defense as they have power in numbers. There are no collective rights. There are only individual rights as acknowledged and protected in the constitution. Pretending there is an industrial building violation without any foundation in law is yet another example of harassment.

The Polo Grounds Rd parcel is not an industrially zoned property and therefore cannot have buildings designated as industrial upon a passing observation. The natural conclusion of a building on a parcel zoned agriculture should be that such buildings are most likely farm or residential buildings barring other facts. There are no codified legal stylistic demarcations of an industrial building. Industrial buildings, warehouses, canneries and manufacturing plants are routinely repurposed as residential buildings. Farm and residential buildings are routinely repurposed to manufacture goods for a purely industrial use.

Further, there are no activities happening on the property that can in any way be construed as industrial in nature. In fact, there is so little activity on the property it's safe to say there were no activities of any kind observed in association with a building let alone industrial activities when the unnamed official visited the site.

Please clarify your assertion that anything legally defined as industrial is occurring on the property and cite the specific laws.

As to further clarification as to the definition of industrial activities- Zoning chapter 18 Article IV Section 31.5 clarifies
"e. *Commercial and industrial uses defined*. For the purposes of this section 31.5, production agriculture, production silviculture, and agricultural operations are neither commercial nor industrial uses; a home occupation is a commercial use."

There is agricultural equipment situated on the parcel right now. It is not a building as per the definition of a building in the county zoning code.

Chapter 18 zoning

- **SECTION 3 - DEFINITIONS**
- **Sec. 3.1 - Definitions.**

Building. "Building" means any structure having a roof supported by columns or walls.

It is important to note that the code does not classify a car, truck or RV as a building. These three types of personal property do have roofs and walls but are supported by wheels and axels as made clear in:
Chapter 18, **Sec. 30.3.15 - Construction standards.**

"..... For the purposes of this subsection, a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions."

What any observer would have noted is that all the agricultural equipment is on wheels and axels, is unattached to the land and does in fact travel on Virginia Highways as apparent through turn signal lights, electrically activated brakes, and VDOT compliant tow hitches.

In short there are no industrial buildings on the property and there are no industrial uses on the property that could have been observed by any official.

Please indicate what has been observed on the property in detail and who will be put forward for cross examination s the observer and on what dates."

In response to your inclusion of inoperable vehicle:

"Inoperable vehicle. "Inoperable vehicle" means any motor vehicle, trailer or semitrailer, as those vehicles are defined in Virginia Code § 46.2-100 , which has one or more of the following characteristics: (i) it is not in operating condition; (ii) it does not display valid license plates if the vehicle is required by State law to display valid license plates; (iii) it does not display an inspection decal if the vehicle is required by State law to display a valid inspection decal; or (iv) it displays an inspection decal that has been expired for more than 60 days."

It is long standing state policy that farm vehicles are exempt from registration as per code §46.2-665. ***Vehicles used for agricultural or horticultural purposes***.

A. No person shall be required to obtain the registration certificate, license plates, or decals for or pay a registration fee for any motor vehicle, trailer, or semitrailer used exclusively for agricultural or horticultural purposes on lands owned or leased by the vehicle's owner.

When my vandalized farm road is restored, I anticipate modifying the equipment in part to house animals as well as store equipment as is common on numerous farms in the nation. Here are some examples:

ATTACHMENT M







I look forward to our meeting tomorrow.

Sincerely Dominique Kostelac

AP2024-005 Polo G, LLC

Information submitted by the appellant is included in the staff report as **Attachment M**.

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

Board Members:	Edward (Bo) Carrington, Chair Kurt Burkhart, 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 Burkhart; 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.

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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.

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

Mr. Burkhart 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. Burkhart 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. Jospeh'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.

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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. Burkhart 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

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