

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
REGULAR MEETING
TUESDAY, DECEMBER 3, 2024—2:00 P.M.

Board Members: John Shepherd
Marcia Joseph - **absent**
Edward (Bo) Carrington
Kurt Burkhart
Ronald Rosenberg - **absent**

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
Richard DeLoria, Interim Deputy 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 Carrington.

2. Establish a Quorum

Mr. Carrington established a quorum.

The following members were present: John Shepherd; Kurt Burkhart; and Edward Carrington.

The following members were absent: Marcia Joseph and Ronald Rosenberg.

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

3. Public Hearings

A. AP2024-00005 Polo G, LLC; Nathan Kostelac & Summer Kostelac

Dominique Kostelac, the appellant, requested a deferral to February 4, 2025. He explained that his children and co-owners of the property, Summer Kostelac and Nathan Kostelac, had not had time to prepare for the public hearing.

The Chair opened the matter for comments from the public.

David Schmitt, 2308 Walnut Ridge Lane, said that the request for deferral was disrespectful to the County and to the neighbors. He said that the appellant had violated County zoning regulations, used the property as a dump, and abused the legal system through requests for deferrals and postponements.

Lettie Bien, 2308 Walnut Ridge Lane, expressed concern that the structures were within the floodplain, that a gravel driveway was installed, and that the trailers on the property had been exposed to the elements

for the past two and a half years. She asked that the BZA deny the deferral request and uphold the Zoning Administrator's determination.

Christine Reilly, 1859 Polo Grounds Road, expressed concerns about the state of the trailers on the property and their location within the 100-year floodplain. She said that the installation of the driveway had damaged the underground cable service line to her house. She said that the appellant had told her son that his intentions with the property were to teach his children how to flip homes.

Christin Solem, abutting property owner, said that she was not opposed to how the property was being used for chicken coops. She said that the appellant had the right to use the property as he saw fit.

Joseph Noonan expressed concerns about the property because it was visible from the road. He said that he was concerned about the conditions for raising chickens, because the site lacked power, water, and adequate shelter, and the debris from the chickens would have environmental impacts.

Anna Chytala said that the application and appeal were made in bad faith as there was no agricultural activity on the property and no indication there would be any in the future. She said that the appeal should be denied along with the request for deferral.

Fred Gerke, a nearby resident, expressed concerns about the appellant's intended use of the property.

Given that there were no others wishing to speak, the Chair closed the public comment portion of the meeting.

The Chair asked the appellant and property owners to clarify on the record their request as it related to the date in the deferral request.

Dominique Kostelac addressed the BZA and requested a deferral to the February 4, 2025 BZA meeting.

The Chair asked the County to provide its response.

Richard DeLoria, Interim Deputy County Attorney, provided the County's arguments. He stated that the County opposed the request for deferral. He said that the deferral would not promote fairness in the process, and the County supported the public's stance that this was a delay tactic. He said that the deferral was requested solely for the convenience and personal benefit of the appellant, would delay the enforcement of a violation adversely affecting abutting property, would not allow the appellant to resolve the underlying issues, and would not allow the BZA to make a decision within 90 days.

Mr. DeLoria said that Mr. Kostelac was not able to represent Polo G LLC or the interests of his son or daughter, who were co-owners of the property, because he was not an attorney. He requested that the BZA not grant the deferral. He also requested that Summer Kostelac and Nathan Kostelac make the request for deferral individually.

The Chair asked the property owners to make a deferral request on the record.

Nathan Kostelac, co-owner of the subject property, requested a deferral to February 4, 2025, because he was not prepared for the hearing.

Summer Kostelac, co-owner of the subject property, requested a deferral to February 4, 2025.

The Chair brought the matter back before the BZA for consideration of the deferral request.

There was discussion relating to the notice of the public hearing date and the standing of Mr. Kostelac to appeal on behalf of and represent the LLC.

Mr. Carrington said that his opinion is that Mr. Kostelac is a managing member of Polo G, LLC which gives him standing to appeal. He noted that he believes that the determination of unlicensed practice of law should be determined by licensed attorneys and the Virginia Bar. He stated that the deferral would delay the enforcement or abatement of a violation adversely affecting an abutting property, neighbor, neighborhood, or the public.

Mr. Burkhart agreed with Mr. Carrington.

MOTION: Mr. Shepherd motioned for the BZA to deny the request to defer the hearing. Mr. Burkhart seconded the motion, which carried unanimously (3-0). (Ms. Joseph and Mr. Rosenberg were absent).

The Chair stated that they would proceed with the public hearing for the appeal AP2024-005.

Lisa Green, Manager of Code Compliance, presented the staff report. She stated that the structures on the property were determined to be industrialized buildings according to County Code § 3.1, and they were located within the 100-year floodplain. She explained that the industrialized structures on the property were not permitted according to the County's ordinance; furthermore, no structures were permitted under any circumstance to be constructed within the 100-year floodplain. She said that the appellant had not provided any evidence to demonstrate that the industrialized buildings on the property supported farming activities, and he admitted in the appeal documents that no farming activities were taking place on the parcel.

Mr. DeLoria said that two issues were presented to the BZA: first, if there were buildings in the flood hazard overlay district on August 20, 2024, then they were prohibited; second, if the buildings present on the property as of August 20, 2024 were industrialized buildings, then they were not permitted according to County Code § 18-5.8. He said that any building on the property would require either a zoning permit or a building permit, and the appellant had neither applied for nor obtained one. He said that the County requested the BZA to affirm the Zoning Administrator's determination of violation dated August 24, 2024.

The Chair provided the appellants the opportunity to present their arguments.

Mr. Kostelac, representing the appellant, stated that his children had requested to cede their time to his presentation. He said that the equipment on the property was for agricultural uses, and VDOT had certified the driveway as legal. He noted that in July 2023, the BZA ruled that the equipment on the property was not a structure or a manufactured home, so it could not be classified as an industrialized building.

Mr. Kostelac said that wheeled equipment would be exempt from building code and zoning regulations if it were used for agricultural uses. He explained that the equipment on the property fit the definition for a trailer, and the utility equipment, including plumbing, electrical, and HVAC, had been removed. He noted that wheels and axles had been installed on the equipment to make them suitable for highway transport. He said that the equipment was currently being used as a chicken coop, and it housed chickens and pigs. He continued that since the equipment was mobile, it was allowed to be stored within the floodplain.

The Chair opened the hearing for comments from the public.

Joseph Noonan said that the property owners were rarely at the property. He said that the property was clearly visible from the road and covered in trash. He said that he had never seen the property owners on the parcel.

David Schmitt said that the appellant had left dilapidated structures on the property unaddressed for nearly three years, and he had only recently begun to deconstruct them so that they would not meet the definition of an industrialized building. He expressed concerns about the appellant's intentions for the property.

Lettie Bien requested that the BZA recognize the matter as a zoning violation.

Christin Solem expressed concerns about precedent.

Christine Riley expressed concerns about the conditions of the livestock. She said that the appellant had several intentions for the property over the years but had not followed up on any of them.

Catherine Otterbein said that the appellant had not obtained a permit for any of the development done on the parcel, and she had not noticed the appellant or property owners visit the property until recently.

The Chair provided the County five minutes for rebuttal.

Mr. DeLoria said that the Zoning Administrator determined that the buildings on the parcel were not permitted and required a zoning permit to be established on the property. He said that on August 20, 2024, the buildings were located in the flood hazard overlay district where no building was permitted. He said that according to the evidence presented by staff, the buildings met the criteria for industrialized buildings. He said that the applicant had not shown, based on the preponderance of evidence, that the Zoning Administrator's determination was incorrect. He requested that the BZA affirm the Zoning Administrator's determination.

The Chair provided the appellant five minutes for rebuttal.

Mr. Kostelac said that the BZA had previously taken the position that the buildings on the parcel were not structures. He said that he would continue to work with the County to abate any nuisances on the property.

The Chair closed the public hearing and brought the matter before the BZA for deliberation.

Mr. Shepherd said that his analysis was focused on the condition of the property at the time of the Zoning Administrator's August 26, 2024 determination. He said that the buildings on the property met the definition for industrialized buildings, and they were located within the floodplain, so they were required to be permitted. He said that based on those facts, he supported upholding the Zoning Administrator's determination.

Mr. Carrington noted that the definitions for a manufactured home and an industrialized building were different. He said that the buildings on the parcel qualified as industrialized buildings.

MOTION: Mr. Shepherd motioned the BZA to uphold the Zoning Administrator's determination of August 26, 2024. Mr. Burkhart seconded the motion, which carried unanimously (3-0). (Ms. Joseph and Mr. Rosenberg were absent)

4. Approval of Minutes

A. November 12, 2024

MOTION: Mr. Burkhart motioned to adopt the minutes for the November 12, 2024 meeting as presented. Mr. Shepherd seconded the motion, which passed unanimously (3-0). (Ms. Joseph and Mr. Rosenberg were absent)

5. Old Business

There were no items to discuss.

6. New Business

A. Upcoming Meeting Information

Bart Svoboda, Zoning Administrator, stated that the next meeting in January was the annual organizational meeting, and there was a variance hearing scheduled as well.

Mr. Shepherd asked if they were within the appropriate timeframe to make a budget request regarding compensation for legal counsel.

Mr. Svoboda replied that the County departments had been requested to submit information for the budget, and the preliminary figures had been submitted. He said that if the BZA wanted to officially request an increase for legal counsel compensation, then the January meeting would be an appropriate time. He said that action could be taken via consensus or a roll call vote. He said that they could then review the compensation package around August after they had determined the budget allocation for the fiscal year.

Mr. Carrington asked if it would be appropriate for the BZA to make the request now.

Mr. Svoboda said that it would be appropriate.

MOTION: Mr. Burkhart motioned for the BZA to request the Zoning Administrator to include an additional \$1,000 for legal counsel compensation in preparation of the next fiscal year budget and for it to be included in the initial presentation to the Board of Supervisors. Mr. Shepherd seconded the motion, which carried unanimously (3-0). (Ms. Joseph and Mr. Rosenberg were absent)

B. Update on the Request for Alternates

Mr. Burkhart asked for an update regarding the request for alternate appointments to the BZA.

Mr. Svoboda replied that as part of the request to increase the budget allocation, they would also request an update on the alternate appointment request and the state of pending applications to fill Ms. Joseph's seat on the BZA.

Ms. Alley said that regarding the upcoming vacancy on the BZA, the Board of Supervisors' Clerk's Office would be officially advertising the vacant seat in March, as Ms. Joseph's term ends in May.

7. Adjournment

MOTION: Mr. Burkhart motioned to adjourn. Mr. Shepherd seconded the motion, which passed unanimously (3-0). (Ms. Joseph and Mr. Rosenberg were absent)

The meeting adjourned at 3:58 p.m.

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

Respectfully Submitted,



John Shepherd, Secretary Board of Zoning Appeals