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, JANUARY 7, 2025 at 2:00 P.M
LANE AUDITORIUM

1. Call to Order

2. Establish a Quorum

3. Annual Organizational Meeting
   A. Election of Officers
   B. Review and Re-Adopt Rules of Procedure
   C. Review and Adopt 2025 Meeting Schedule

4. Public Hearings:
   A. Project: VA2024-00003 654 Clarks Tract Lot Size Reduction {Sign #15}
      Applicant/Property Owner: Andrew C Lynn
      Subject Property: Parcel ID: 08100-00-00-015B2, 7.01 acres
      Location: 654 Clarks Tract
      Staff: Francis MacCall

5. Approval of Minutes
   A. December 3, 2024

6. Old Business

7. New Business
   A. Budget Discussion
   B. Upcoming Meeting Information

8. 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.

Instructions 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;*
- *There is a **3-minute time limit for each speaker** during public comment; minutes may not be shared or ceded to other speakers;*
- *Each speaker will have one opportunity to address the BZA;*
- ***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.

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
RULES OF PROCEDURE

The Albemarle County Board of Zoning Appeals, under the authority of Virginia Code § 15.2-2308 and Albemarle County Code § 18-34.1, establishes the following rules of procedure:

1. Officers

A. *Chair.* At its annual meeting, the Board of Zoning Appeals ("BZA") shall elect a Chair who, if present, shall preside at the meeting and at all other meetings during the year for which elected. On any application or appeal, the Chair may administer oaths and compel the attendance of witnesses.

B. *Vice-Chair.* At its annual meeting, the BZA shall elect a Vice-Chair, who, if present, shall preside at meetings in the absence of the Chair and shall discharge the duties of the Chair during the Chair's absence or disability.

C. *Secretary*. At its annual meeting, the BZA shall elect a Secretary. The Secretary may be either a member of the BZA or another person. The duties of the Secretary shall include keeping and maintaining custody of the records of the BZA, drafting and signing all correspondence necessary for the execution of the duties and functions of the BZA, and such other duties as these rules may provide and the BZA may, from time to time, assign.

D. *Recording Secretary*. The Zoning Administrator (or designee) may serve the BZA as its Recording Secretary. The duties of the Recording Secretary shall include keeping the minutes of the BZA's meetings and such other duties as these rules may provide and the BZA may, from time to time, assign.

E. *Other Offices*. At any of its meetings, the BZA may create and fill any other offices as it deems necessary.

F. *Term of Office.* The Chair and Vice-Chair shall be elected for one-year terms, and until their respective successors take office. Either or both officers may be re-elected for one or more additional terms.

G. *Vacancies in Office*. Vacancies in office shall be filled as soon as practicable using the election procedures provided herein.

H. *Absence of Chair and Vice-Chair.* If the Chair and Vice-Chair are absent from any meeting, a present member shall be chosen to act as Chair.

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2. Meetings

A. *Annual Meeting*. The first meeting of each year shall be known as the annual meeting. At the annual meeting, the BZA shall establish the day, time, and place for regular meetings of the BZA for that year, and shall elect the Chair, the Vice-Chair and the Secretary.

B. *Regular Meetings*. The BZA shall meet in regular session at the time and place and on the day or days established for regular meetings. The BZA may subsequently establish a different day, time, or place to conduct its regular meetings by passing a resolution to that effect.

If the Chair, or the Vice-Chair if the Chair is unable to act, finds and declares that weather or other conditions are such that it is hazardous for BZA members to attend a regular meeting, the meeting shall be continued to the next regular meeting date. This finding shall be communicated to the members of the BZA and to the press as promptly as practicable.

Without further public notice, a regular meeting may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the BZA is complete.

C. *Special Meetings*. The BZA may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the BZA finds necessary and convenient.

A special meeting shall be held when called by the Chair or requested by two or more members of the BZA. The call or request shall be made to the Recording Secretary and shall specify the matters to be considered at the meeting. Upon receipt of the call or request, the Recording Secretary, after consultation with the Chair, shall immediately notify each member of the BZA and the County Attorney's Office. The notice shall be in writing and shall be mailed or delivered to all BZA members or to their places of residence or business or by electronic communication at least five (5) days prior to the special meeting. The notice shall state the time and place of the special meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at the meeting unless a quorum of members is present. The notice may be waived if the time of the special meeting was fixed at a regular meeting, if a quorum of members is present at the special meeting, or if all members sign a waiver for the notice.

Whenever state law requires public notice of a special meeting of the BZA, the Recording Secretary shall provide such notice in accordance with *Virginia Code* §15.2-2204.

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3. Order of Business

A. *Agenda Established by Secretary*. The agenda for each regular meeting shall be established by the Secretary in consultation with the Chair.

B. *Organization of the Agenda*. The agenda of each regular meeting shall be organized in substantially the following order, subject to change at the request of the Chair and with the consensus of the other members of the BZA:

(1) Call to order.

(2) Establish quorum.

(3) Matters deferred from previous meetings.

(4) Scheduled matters: hearings on special use permits, variances and appeals.

(5) Work sessions.

(6) Review and approval of minutes of previous meetings.

(7) Old business.

(8) New business.

(9) Adjournment.

C. *Time Limits for Applicants, Appellants and Other Speakers*. The BZA shall offer an equal amount of time in a hearing to the applicant/appellant and County staff. The applicant/appellant and County staff shall each be allowed a total of fifteen (15) minutes to present its respective case at the outset of the hearing, and five (5) additional minutes to present rebuttal or closing remarks at the close of the hearing. Each person other than parties to the case or their legal representative(s) shall be allowed one appearance not to exceed three (3) minutes. A speaker may not reserve any initial speaking time for rebuttal or transfer any time to another speaker. The time limits set forth herein shall not include any time during which the applicant or other speaker is responding to questions asked by the BZA. The Recording Secretary shall act as the timekeeper. The BZA Chair may set alternate time limits to those listed herein at the Chair's discretion, provided that they are identified at the BZA meeting prior to the meeting at which these new limits would be used.

D. *Deferrals*. The BZA may defer any matter at the request of a member of the BZA, the County staff, or the applicant or appellant. The request may be made either orally at the meeting, or in writing, and may be made at any time prior to the vote on the matter. The person making the request shall state the reasons therefor.

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In considering a request for a deferral of a hearing of an appeal or an application for a variance pertaining to a zoning violation, the BZA shall consider the reasons for the deferral if the request is submitted by the appellant or applicant, the recommendation of staff, and the members of the BZA. In making its decision to grant or deny a request, the BZA shall consider the following factors: (1) whether the deferral would promote fairness in the process; (2) whether the deferral would be solely for the convenience or personal benefit of the appellant or applicant; (3) whether the deferral would delay the enforcement or abatement of a violation that is adversely affecting an abutting property, a neighbor, the neighborhood or the public; (4) whether the deferral would allow the appellant or applicant to resolve the underlying issues so that BZA action might be unnecessary; and (5) whether the deferral would allow the BZA to make its decision within ninety days of the filing of the application or appeal, in conformance with *Virginia Code* § 15.2-2312.

A motion to defer shall either specify the date to which the matter is deferred or defer the matter indefinitely. If the motion to defer pertains to a matter for which a noticed public hearing is required and the motion is to defer the matter to a specific date, the Chair shall either close the public hearing or, if the public hearing was not opened, open and then close the public hearing, before the BZA votes on the motion.

4. Quorum

A majority of the members of the BZA shall constitute a quorum for any meeting of the BZA. A majority of the members of the BZA present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning the meeting from day to day or from time to time. A meeting may not be adjourned to a date and time beyond the date fixed for the next regular meeting.

If, during a meeting, less than a majority of the members of the BZA remains present, no action can be taken except to adjourn the meeting. If, prior to adjournment, a quorum is again established, the meeting shall continue.

If disqualifications under the State and Local Government Conflict of Interests Act (Virginia Code § 2.2-3100 *et seq*.) leave less than a quorum, the remaining member or members of the BZA shall have authority to act for the BZA by a unanimous vote.

5. Voting Procedures

A. *Approval of Motion.* Except as otherwise provided in subparagraphs (1) and (2) and in paragraph (H), each decision of the BZA shall be made by approval of a majority of the members present and voting on a motion properly made by a

member and properly seconded by any other member. Any motion that is not seconded shall not be further considered.

1. *Variances, Special Use Permits and Other Matters*. At least three (3) affirmative votes shall be required to grant a variance, to grant a special use permit, or to decide in favor of an applicant on any other matter upon which the BZA is required to act upon under the Zoning Ordinance.

2. *Appeals*. At least three (3) affirmative votes shall be required to reverse any appeal from an order, requirement, decision or determination of an administrative officer.

B. *Time for Vote*. Any matter before the BZA requiring a public hearing shall not be decided by the BZA until the public hearing has been held. The BZA may, however, in its discretion, defer the holding of a public hearing or consideration of such matter, in conformance with paragraph 3(D) above.

C. *Manner of Vote*. The vote on a motion pertaining to any variance, special use permit, appeal, or application for interpretation of the district map shall be by roll call vote. Any other matter may be either by roll call vote or voice vote, in the discretion of the Chair; provided that a roll call vote on such a motion shall be required if requested by a member of the BZA. For each roll call vote, the Recording Secretary shall record the name of each member voting and how the member voted on the motion. For each voice vote, the Recording Secretary shall record the result of the vote.

D. *Tie Vote*. A tie vote shall defeat the motion voted upon.

E. *Effect of Defeat of Motion to Deny*. The defeat of a motion to deny a matter shall not be deemed to be approval of the matter. In such a case, the Chair shall call for another motion.

F. *Abstention*. Any member(s) abstaining from voting on any motion shall state their abstention(s). The abstention(s) shall be announced by the Chair and recorded by the Recording Secretary.

G. *Motion to Amend*. A motion to amend a motion before the BZA shall be discussed and voted by the BZA before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the BZA for its consideration. If the motion to amend is not approved, the original motion is again before the BZA for its consideration.

H. *Previous Question*. The discussion of any motion may be terminated by any member moving the "previous question." Upon a proper second, the Chair shall call for a vote on the motion of the previous question. If approved by a two-thirds majority of those voting, the Chair shall immediately call for a vote on the original

motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

I. *Motion to Reconsider*. Any decision made by the BZA may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.

J. *Motion for Rehearing*. Any decision made by the BZA may be reheard upon the granting of a motion for rehearing approved by at least three affirmative votes. The motion may be made only after consideration of a written application by the person requesting rehearing, which shall be filed within thirty (30) days after the date of the BZA's original final decision. The BZA may grant the motion if it finds that the decision has not already been appealed to the Circuit Court and: (1) new evidence can be presented that, in the opinion of the BZA, is relevant and material to the decision but could not have been presented at the original hearing; or (2) in the opinion of the BZA, one or more relevant and material conditions or situations have changed so as to bear on the BZA's original decision. If the BZA grants the motion, it shall set the date for rehearing. Notice of the rehearing shall be provided as otherwise required for the matter being reheard.

6. Final Decision

A. *Date of final decision*. For the purpose of calculating the time in which an aggrieved party may submit a petition for writ of certiorari in Circuit Court requesting the court to review the decision of the BZA, the date of the BZA's final decision shall be the date on which the BZA took its final vote on the merits of the matter.

B. *Deferral of final decision*. If the BZA elects to defer its final decision, nothing in this rule prevents the BZA from obtaining a consensus of its members on the matter to be decided and requesting one or more of the parties to prepare a proposed written decision to be considered when a final vote is taken.

C. *Effect if written decision adopted after final decision*. The date of the BZA's final decision shall not be extended if the BZA later adopts a written decision.

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7. Remote Participation Policy

A. *Applicability of Policy.*

1. *Purposes.* Pursuant to *Virginia Code* § 2.2-3708.3, the following policy:

   a. describes the circumstances under which remote participation will be allowed and the process the BZA will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and

   b. fixes the number of times remote participation for personal matters can be used per calendar year, not to exceed the limitations set forth in *Virginia Code* § 2.2-3708.3(B)(4).

2. *Application.* This policy will be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member(s) requesting remote participation or the matters that will be considered or voted on at the meeting.

B. *Non-Emergency Individual Participation.* Except as provided elsewhere in this policy, individual members may use remote participation instead of attending a public meeting in person only pursuant to and in compliance with the following rules:

1. *Grounds for Remote Participation; Advance Notice of the Chair.* Individual members may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the member notifies the Chair that:

   a. *Personal Medical Condition.* The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;

   b. *Family Member's Medical Condition.* A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;

   c. *Distant Meeting Location.* The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or

   d. *Identified Personal Matter; Limitation on Use.* The member is unable to attend the meeting due to a personal matter (such as a family event or business commitment) and identifies with

specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

2. *Minutes.* If participation by a member through electronic communication means is approved pursuant to this Rule, the BZA shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description.

   a. *Medical Condition.* If participation is approved pursuant to Rules 7(B)(1)(a) or 7(B)(1)(b), the BZA shall also include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance.

   b. *Distant Meeting Location.* If participation is approved pursuant to Rule 7(B)(1)(c), the BZA shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location.

   c. *Identified Personal Matter.* If participation is approved pursuant to Rule 7(B)(1)(d), the BZA shall also include in its minutes the specific nature of the personal matter cited by the member.

   d. *Disapproval.* If a member's participation from a remote location pursuant to Rule 7(B) is disapproved because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity.

3. *When Chair Requests to Participate Electronically.* In the event the Chair seeks to participate through electronic communication means from a remote location, the Chair must notify the Vice-Chair or other presiding officer and should notify the Secretary on or before the day of the meeting.

C. *During a Declared Emergency or When a Continuity of Government Ordinance is in Effect.* The BZA may meet by electronic communication means without a quorum of the BZA physically assembled at one location when a state of emergency is declared pursuant to *Virginia Code* § 44-146.17 or a local

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emergency is declared pursuant to *Virginia Code* § 44-246.21, subject to the provisions and requirements of *Virginia Code* § 2.2-3708.2. The BZA also may meet by electronic communication means when an ordinance adopted pursuant to *Virginia Code* § 15.2-1413 to ensure the continuity of County government is in effect.

8. Amendment of Rules of Procedure

Any of these Rules of Procedure may be amended by a majority vote of the BZA at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

9. Suspension of Rules of Procedure

These Rules of Procedure may be suspended by the majority vote of the members of the BZA present and voting. The motion to suspend a rule may be made by any member of the BZA. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the BZA; provided, however, approval of a motion to suspend the rule shall not permit the BZA to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law including the Albemarle County Zoning Ordinance.

10. Rules of Procedure not Covered by These Rules of Procedure

Any rules of procedure not covered by these Rules of Procedure shall be governed by the current Robert's Rules of Order.

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(Adopted: 1-5-2016)
(Amended: 04-02-2019, 01-03-2023)
(Re-adopted: 01-07-2020, 01-05-2021, 03-01-2022, 01-09-2024, 01-07-2025)
~~(Amended: 01-03-2023)~~

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Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

§ 15.2-2311. Appeals to board

A. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the locality affected by any decision of the zoning administrator or from any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this article, any ordinance adopted pursuant to this article, or any modification of zoning requirements pursuant to § 15.2-2286. Notwithstanding any charter provision to the contrary, any written notice of a zoning violation or a written order of the zoning administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The zoning violation or written order shall include the applicable appeal fee and a reference to where additional information may be obtained regarding the filing of an appeal. The appeal period shall not commence until the statement is given and the zoning administrator's written order is sent by registered or certified mail to, or posted at, the last known address or usual place of abode of the property owner or its registered agent, if any. There shall be a rebuttable presumption that the property owner's last known address is that shown on the current real estate tax assessment records, or the address of a registered agent that is shown in the records of the Clerk of the State Corporation Commission. The appeal shall be taken within 30 days after the decision appealed from by filing with the zoning administrator, and with the board, a notice of appeal specifying the grounds thereof. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. A decision by the board on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided notice of the zoning violation or written order of the zoning administrator in accordance with this section. The owner's actual notice of such notice of zoning violation or written order or active participation in the appeal hearing shall waive the owner's right to challenge the validity of the board's decision due to failure of the owner to receive the notice of zoning violation or written order. For jurisdictions that impose civil penalties for violations of the zoning ordinance, any such civil penalty shall not be assessed by a court having jurisdiction during the pendency of the 30-day appeal period.

B. An appeal shall stay all proceedings in furtherance of the action appealed from unless the zoning administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the board or by a court of record, on application and on notice to the zoning administrator and for good cause shown.

C. In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date

of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the attorney for the governing body, modification is required to correct clerical errors.

D. In any appeal taken pursuant to this section, if the board's attempt to reach a decision results in a tie vote, the matter may be carried over until the next scheduled meeting at the request of the person filing the appeal.

1975, c. 521, § 15.1-496.1; 1983, c. 12; 1993, c. 780; 1995, c. 424;1997, c. 587;2005, cc. 625, 677; 2008, c. 378;2010, c. 241;2011, c. 457;2012, cc. 400, 550, 606;2017, c. 665;2019, c. 387.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

2025 Submission and Review Schedule

Board of Zoning Appeals

Deadline for Filing (3 P.M.)	First Advertisement (unless publishing dates are revised by the publisher)	Second Advertisement (unless publishing dates are revised by the publisher)	Board of Zoning Appeals Meeting COB Auditorium (2 P.M.)
Monday	**Thursday**	**Thursday**	**Tuesday - unless otherwise indicated**
Nov 04 2024	Dec 26 2024	Jan 02 2025	Jan 07 2025
Dec 02 2024	Jan 23	Jan 30	Feb 04
Jan 06 2025	Feb 20	Feb 27	Mar 04
Feb 03	Mar 20	Mar 27	Apr 01
Mar 03	Apr 24	May 01	May 06
Mar 31	May 22	May 29	Jun 03
May 05	Jun 19	Jun 26	Jul 01
Jun 02	Jul 24	Jul 31	Aug 05
Jun 30	Aug 21	Aug 28	Sep 02
Aug 04	Sep 25	Oct 02	Oct 07
Sep 2 Tuesday	Oct 31	Nov 07	***Nov 12 Wednesday***
Oct 06	Nov 20	Nov 27	Dec 02
Nov 03	Dec 25	Jan 1 2026	Jan 06 2026
Dec 01	Jan 22 2026	Jan 29 2026	Feb 03 2026
Jan 05 2026	Feb 19 2026	Feb 26 2026	Mar 03 2026
Feb 02 2026	Mar 26 2026	Apr 2 2026	Apr 07 2026

Please note, these deadlines apply only to variance applications and special use permit applications for offsite and electric message signs. These deadlines do not apply to appeals of any order, requirement, decision, or determination of a zoning official. Such appeals shall be filed in accordance with State Code Section 15.2-2311. They shall be filed in a timely manner or the decision shall become final and unappealable. Such appeals will be scheduled for the next appropriate meeting after filing.

Bold italics = submittal/meeting day is different due to a holiday/election, etc.

Dates with shaded background are not 2025.

2026 dates are tentative.

VA 2024-00003
Staff Report
Submitted by Staff

STAFF: Francis H. MacCall
PUBLIC HEARING: January 7, 2025

STAFF REPORT: VA2024-00003 654 Clarks Tract

OWNER/APPLICANT: Andrew C. Lynn
PARCEL ID: 08100-00-00-015B2
ZONING: Rural Areas (RA)
ACREAGE: 7.01 acres
LOCATION: The subject Property is at 654 Clarks Tract in eastern Albemarle County. One dwelling is located on the Property. See Attachment A for a map and plat of the Property.

TECHNICAL REQUEST AND EXPLANATION: The applicant seeks a variance from the required 2.00-acre minimum lot size to allow the creation of a 1.3867-acre parcel. (Attachment B). Albemarle County Code § 18-10.4 provides that the minimum lot size for a Rural Areas parcel is 2.00 acres. The applicant proposes to adjust the boundary line between Parcel 15 and Parcel 15B2, the subject Property. The adjustment would reduce the Property from 7.01 to 1.3867 acres, a variance of 0.6133 acres from the required minimum, with the remaining 5.6247 acres of the current Property added to Parcel 15. (Attachment B)

BACKGROUND:
The parcel of record, as it existed on December 10, 1980 (the effective date of the Zoning Ordinance), measures 7.01 acres. Albemarle County Code § 18-10.3 and 10.4 (Attachment C) requires that if a lot less than 21 acres is created, it must be at least 2.00 acres and use a development right (DR). Because the 7.01-acre parcel existed on the ordinance's effective date, it theoretically could use three DRs. One is currently used for the dwelling unit on the Property. See Attachment D for more information on DRs. The request proposes to adjust the Property line to create a 1.3867-acre parcel, which is less than the required 2.00 acres.

Parcel Background
Albemarle County Real Estate records indicate the dwelling was built in 1973.

On June 14, 1974, the 7.01-acre subject parcel was created, as shown on the plat recorded in Deed Book 530, Page 434.

On July 23, 1998, the applicant acquired the Property.

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

The following are (a) the definition of a variance found in *Virginia Code* § 15.2-2201 and (b) the standards for a variance found in § 15.2-2309(2), which are repeated in Albemarle County Code § 18-34.4(i) (Attachment F).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Virginia Code § 15.2-2201
Definition: A variance is defined as a reasonable deviation from the provisions regulating the location of a building or structure when all of the following four standards are met:

1. *The strict application of the ordinance would unreasonably restrict the utilization of the property, and*
   Analysis: The applicant already has reasonable use of the Property with an existing single-family dwelling. The strict application of the two-acre minimum lot size would not unreasonably restrict the Property's utilization.

2. *Such need for a variance would not be shared generally by other properties, and*
   Analysis: No other properties in the area generally share the need for a similar variance.

3. *Provided such variance is not contrary to the purpose of the ordinance.*
   Analysis: Granting the variance would not be contrary to the Zoning Ordinance purposes outlined in *County Code* § 18-1.4.

4. *It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.*
   Analysis: There would be no change in the use of the Property if the BZA granted the variance, as the Property already contains a dwelling, which is a use permitted by right in the RA district.

County Code § 18-34.4(i)
Standard: *The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property; or*

Analysis: The applicant already has reasonable use of the Property with an existing single-family dwelling. The strict application of the two-acre minimum lot size would not unreasonably restrict the Property's utilization.

Standard: *Granting the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance;*

Analysis: No physical condition relating to the Property creates any hardship that would justify a variance.

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

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

3. *The condition or situation of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.*
   Analysis: This application meets this standard. The Property's condition is not so general or recurring that the regulations must be updated by an amendment to the ordinance.

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

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

STAFF RECOMMENDATION:
Because the strict application of the two-acre lot size would not unreasonably restrict the utilization of the Property, staff cannot recommend the approval of this variance application. Furthermore, although the five additional criteria for granting a variance have been met, granting the variance would not alleviate a hardship due to a physical condition relating to the Property or improvements as of the ordinance's effective date.

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

To deny this variance application (as staff recommends):

I move to deny variance application VA2024-00003 654 Clarks Tract for the reasons stated in the staff report.

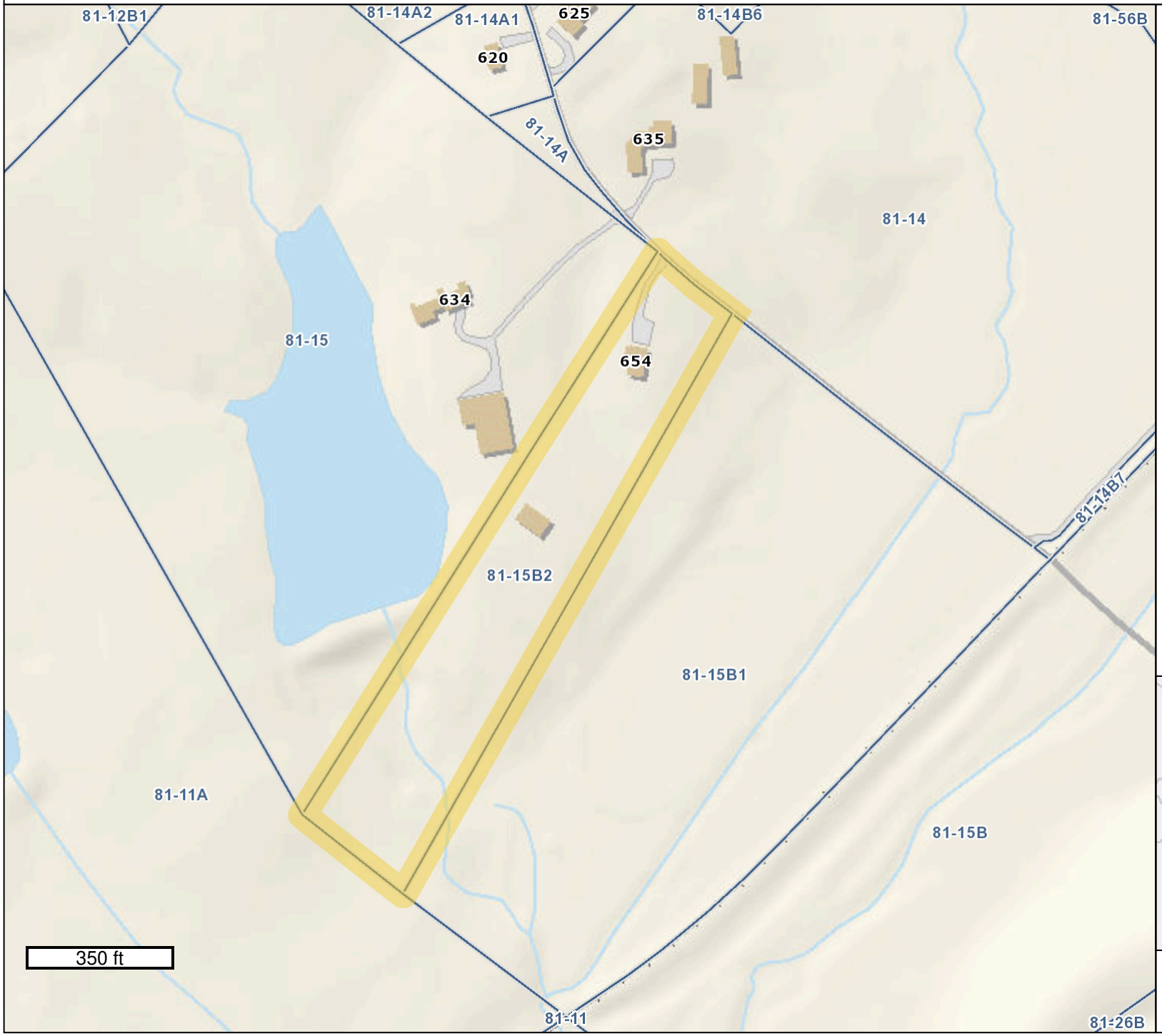
To grant this variance:

Based on [state legal grounds for granting variance], I move to grant variance application VA2024-00003 654 Clarks Tract to permit Parcel 81-15B2 to be approximately 1.3687 acres, a variance of approximately 0.6133 acres.

Attachments:

Attachment A: Map and Plat of the Property
Attachment B: Variance Application VA2024-00003 654 Clarks Tract
Attachment C: County Code § 18-10.3 and 10.4
Attachment D: Land Use Law Handbook Chapter 20 - Development Rights
Attachment E: Virginia Code § 15.2-2309(2)
Attachment F: County Code § 18-34.4(i)

VA2024-003 - TMP 81-15B2



Legend

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

Parcel Info

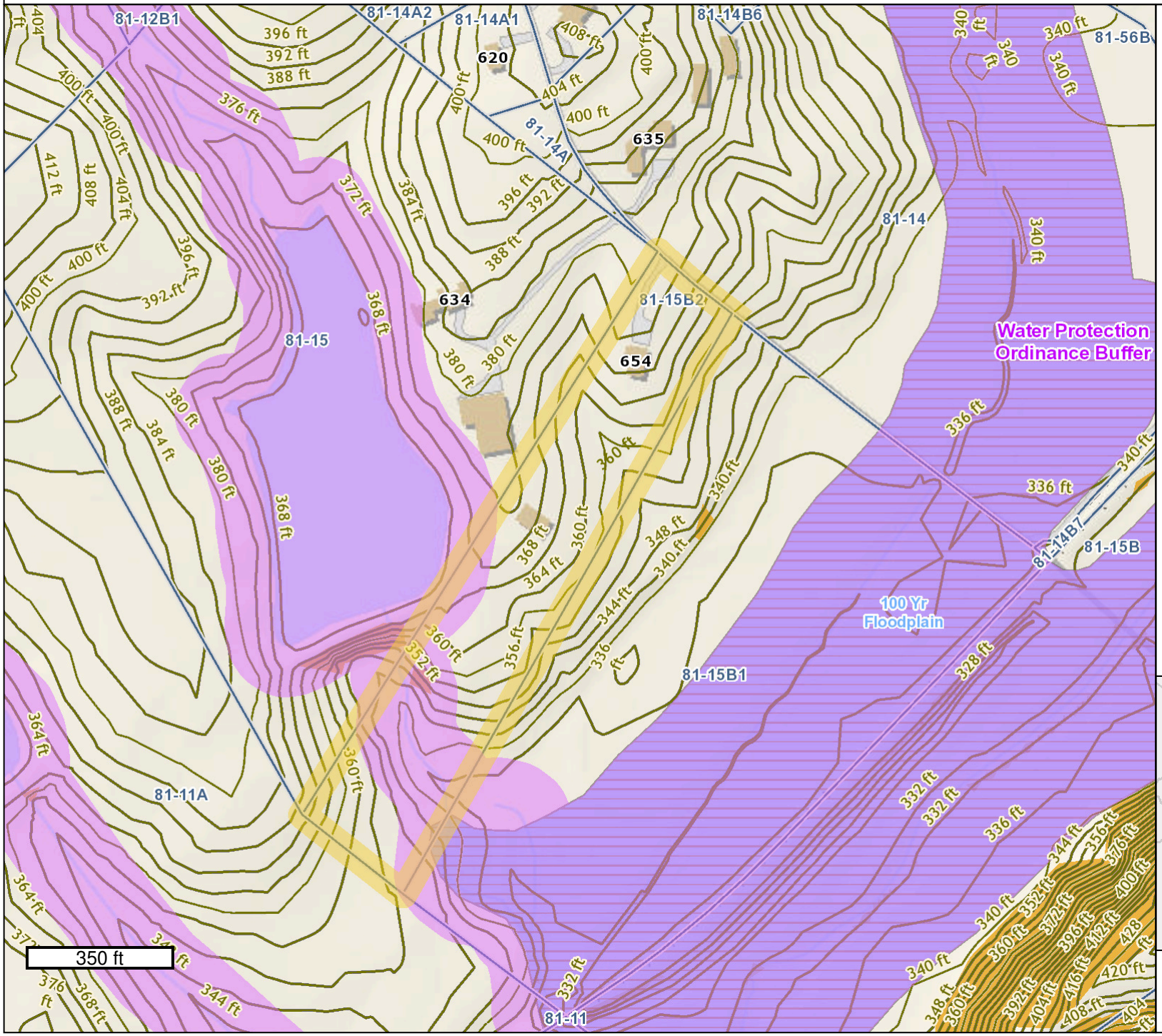
- ☐ Parcels



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

Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.
Map elements may scale larger than GIS data measured in the map or as provided on the data download page due to the projection used. Map Projection: WGS84 Web Mercator (Auxiliary Sphere) (EPSG 3857)

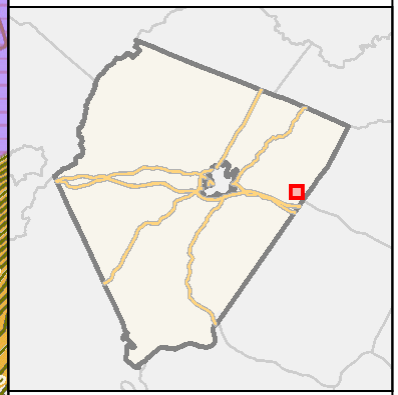
VA2024-003 - TMP 81-15B2



Legend

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

- Overlays
  - Water Protection Ordinance Buffers
- Parcel Info
  - Parcels
- Elevation
  - Y2018 Elevation Contours
    - Y2018 Elevation Contours (100 ft)
    - Y2018 Elevation Contours (60 ft)
    - Y2018 Elevation Contours (40 ft)
    - Y2018 Elevation Contours (20 ft)
    - Y2018 Elevation Contours (4 ft)
- Zoning Info
  - Flood Hazard Overlay (100 Year Flo
- Steep Slopes Overlay
  - Critical Slopes
  - Steep Slopes - Managed
  - Steep Slopes - Preserved

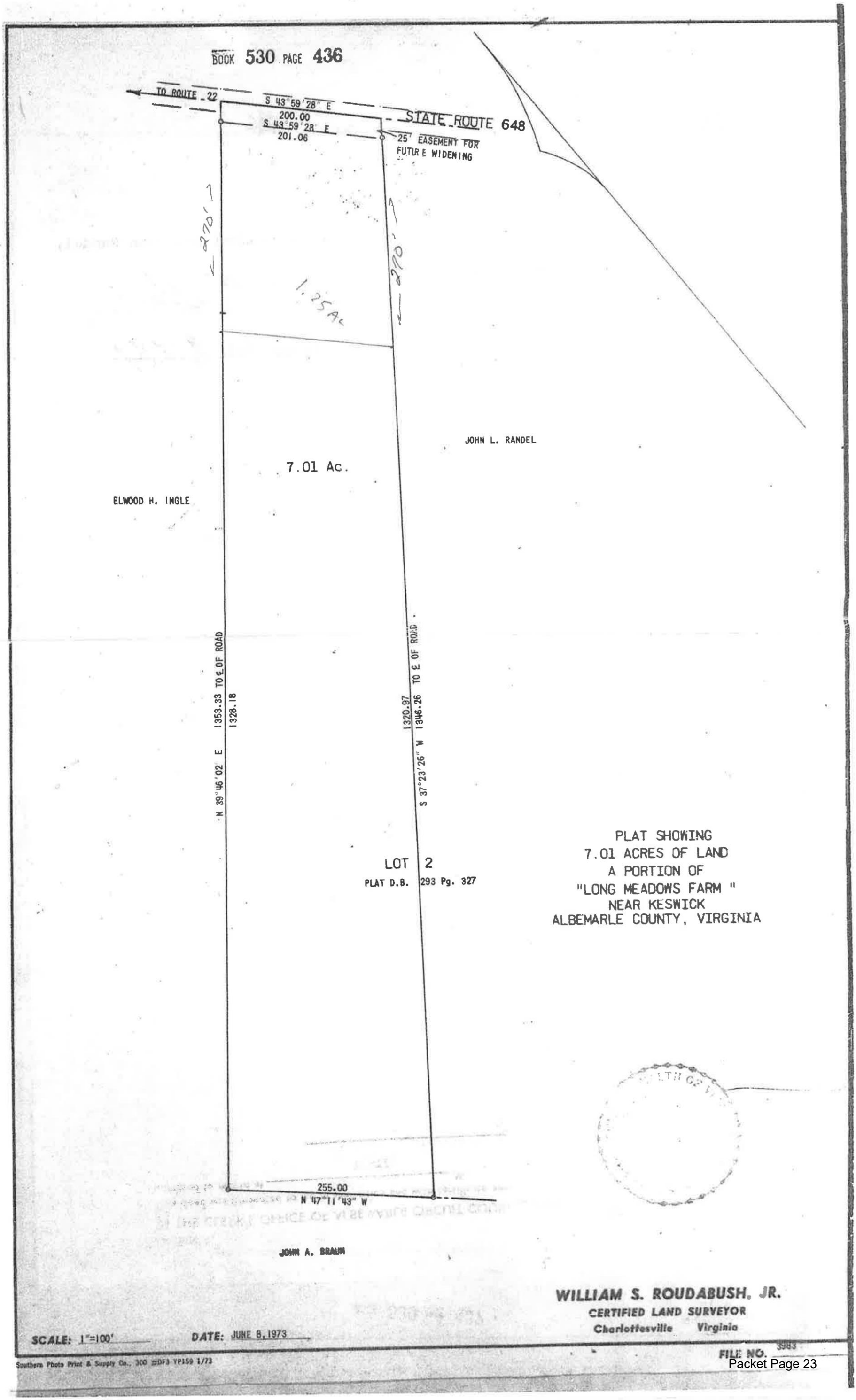


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Map elements may scale larger than GIS data measured in the map or as provided on the data download page due to the projection used. Map Projection: WGS84 Web Mercator (Auxiliary Sphere) (EPSG 3857)

December 11, 2024

BOOK 530 PAGE 436



PLAT SHOWING
7.01 ACRES OF LAND
A PORTION OF
"LONG MEADOWS FARM "
NEAR KESWICK
ALBEMARLE COUNTY, VIRGINIA

WILLIAM S. ROUDABUSH, JR.
CERTIFIED LAND SURVEYOR
Charlottesville Virginia

SCALE: 1"=100' DATE: JUNE 8, 1973 FILE NO. 3983

Southern Photo Print & Supply Co., 300 #DF3 YP159 1/73

ATTACHMENT B

Z Variance

Albemarle County
Community Development
401 McIntire Rd, North Wing
Charlottesville, VA 22902
Phone 434.296.5832

FOR OFFICE USE ONLY	Variance Number:	
Fee Amount: $1063.68 to be paid once the application is deemed complete	Date Paid:	By:
Application $592 + Technology Surcharge $23.68 + Initial Notice Fee $235		
Receipt #:	Check #:	By:

Applicant - Fill out the entire page below
Upload the completed document and all attachments/additional information to the Digital Submissions Page HERE

Name:	ANDREW C. LYNN	**E-Mail Address:**	ACLYNN@CENTURYLINK.NET
Mailing Address:	634 CLARKS TRACT KESWICK VA 22947	**Phone #:**	434 242 6144

Property Information

Tax Map and Parcel Number:	81-15B2
Physical Address: (if applicable)	654 CLARKS TRACT KESWICK
~~**Total Acreage:**~~	7
Zoning: (staff will fill out if unknown)	RA
Other Info/Notes: (if applicable)	

Owner of Record:	ANDREW C. LYNN	**E-Mail Address:**	ABOVE
Mailing Address:	ABOVE	**Phone #:**	

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

- [x] One (1) copy of any and all plans or additional information.
- [x] One (1) copy of a recorded plat or boundary survey of the property. If there is no recorded plat or boundary survey, please provide legal description of the property and the Deed Book and page number or Plat Book and page number, or and any recent surveys of the property.
- [x] Drawings showing all existing and proposed improvements on the property, with all dimensions and distances to property lines, and any special conditions on the property that may justify the request.
- [x] Written description of your request (include dimensions, measurements or sizes in feet). **This is to also include evidence as noted on Page 2.**
- [x] As the owner/applicant I certify that any delinquent real estate taxes, nuisance charges, stormwater management utility fees, and any other charges that constitute a lien on the subject property, which are owed to the County of Albemarle and have been properly assessed against the subject property, **have been paid.**

REMEMBER TO upload the completed document and all attachments/additional information to the Digital Submissions Page HERE

ATTACHMENT B

Z Variance

Albemarle County
Community Development
401 McIntire Rd, North Wing
Charlottesville, VA 22902
Phone 434.296.5832

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

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

That granting the variance would alleviate a **hardship due to**

a physical condition relating to the property or

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

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

and

All of the following:

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

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

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

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

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

Please be aware that the evidence required above needs to be provided by the applicant and should be provided with the written description as noted on Page 1.

***REMEMBER to upload the completed document and all attachments/additional information to the* Digital Submissions Page HERE**

Review cannot begin until the application is deemed complete and all applicable documents and fees are submitted.

Once an application is deemed complete, you will be contacted to pay the noted fees and a hearing before the Board of Zoning Appeals will be scheduled per the published submittal and review schedule.

If you have any questions feel free to contact Zoning Staff at (434) 296-5832.

I hereby certify that I own the subject property, or have the legal power to act on behalf of the owner in filing this application. If you are not the owner then you must complete the **CERTIFICATION THAT NOTICE OF THE APPLICATION HAS BEEN PROVIDED TO THE LANDOWNER** on the last page. I also certify that the information provided on this application and accompanying information is accurate, true, and correct to the best of my knowledge. By signing this application I am consenting to written comments, letters and or notifications regarding this application being provided to me or my designated contact via or email. This consent does not preclude such written communication from also being sent via first class mail.

Signature Andrew C Ly Printed _____

Date 10-7-24

Andrew C. Lynn
634 Clarks Tract
Keswick, Va 22947

Board of Zoning Appeals
Albemarle County

Date: October 7, 2024
Ref: Request for Variance

I am submitting this variance request to the BZA to adjust my property lines on adjoining parcels 81-15 and 81-15B2. I want to adjust the boundary lines on 15-B2 295 feet from centerline of State Rt 648 Clarks Tract creating a 1.3867 acre parcel containing an existing four bed room house with septic and well. Remaining 5.6247 parcel will be consolidated with 81-15, proposed plat enclosed.

VDH permit 101-92-0131 dated 4-06-1992 shows reserve drain field within 1.3867 parcel

Reasons for the variance are as follows:

To save a pastoral sight line

Create a lot that conforms to the size of adjacent properties

Protect 81-15 view shed from potential future, by right uses of 1/2 acre +/- ie out buildings, abandoned vehicles, excess noises, unsightly debris

Trying to improve 81-15 with more pasture / paddocks for on going horse operation; best grazing happens to be on 15-B2 section and really do not want to give it up.

Plan is to sell off existing house at 654 with 1.3867 acres

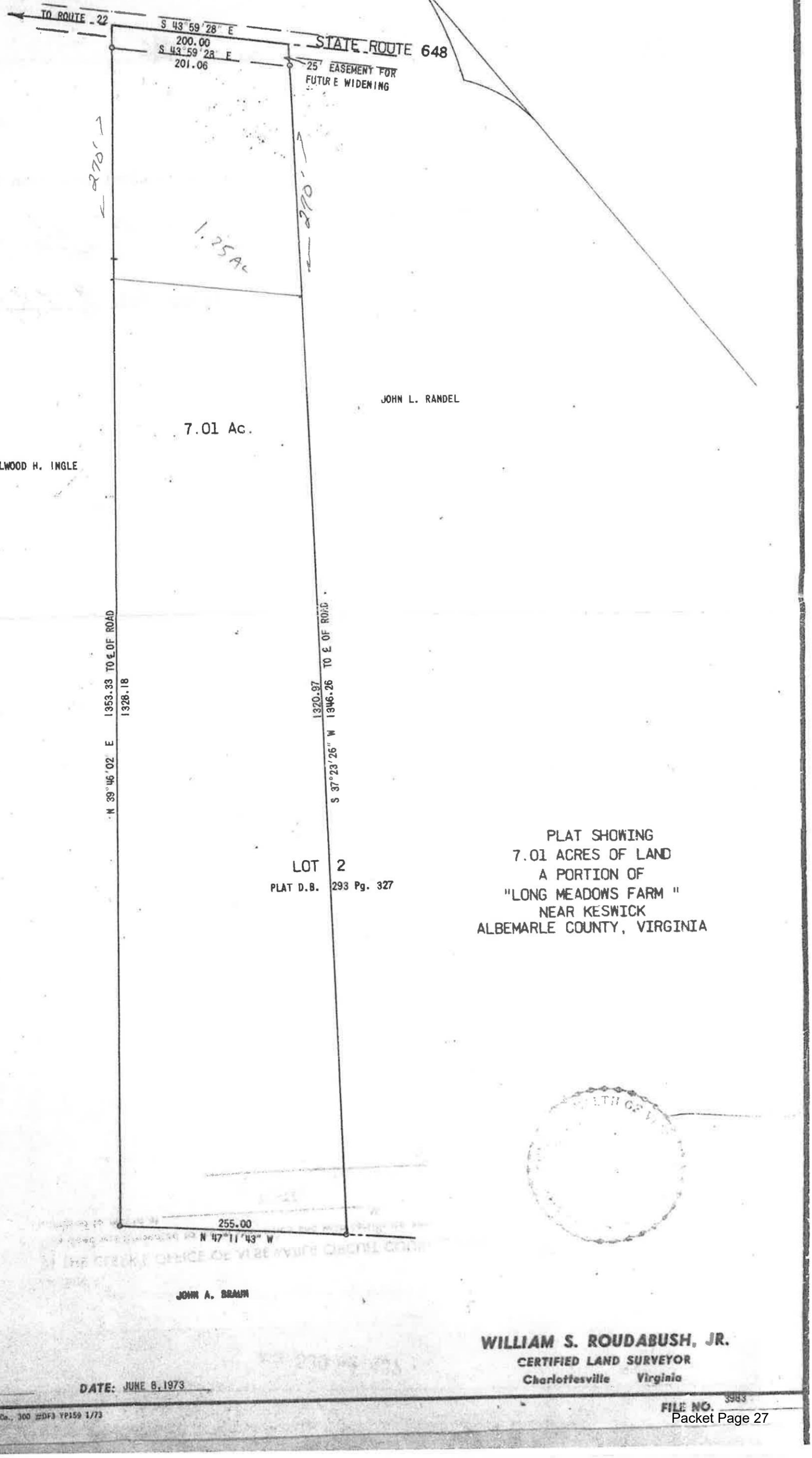
Thanking you in advance for your attention to this matter

Respectfully Submitted,

Andrew C. Lynn
434-242-6144
aclynn@centurylink.net

ATTACHMENT B

BOOK 530 PAGE 436



PLAT SHOWING
7.01 ACRES OF LAND
A PORTION OF
"LONG MEADOWS FARM "
NEAR KESWICK
ALBEMARLE COUNTY, VIRGINIA

WILLIAM S. ROUDABUSH, JR.
CERTIFIED LAND SURVEYOR
Charlottesville Virginia

SCALE: 1"=100' DATE: JUNE 8, 1973

FILE NO. 3983

Southern Photo Print & Supply Co., 300 #DF3 YP159 1/73

PERMIT TO INSTALL ☒ REPAIR ☐ REASONS FOR REJECT

WATER SUPPLY ☐ SEWAGE DISPOSAL SYSTEM ☒

(1)

(2)

(3)

(4)

(5)

684



TRIPLICATE

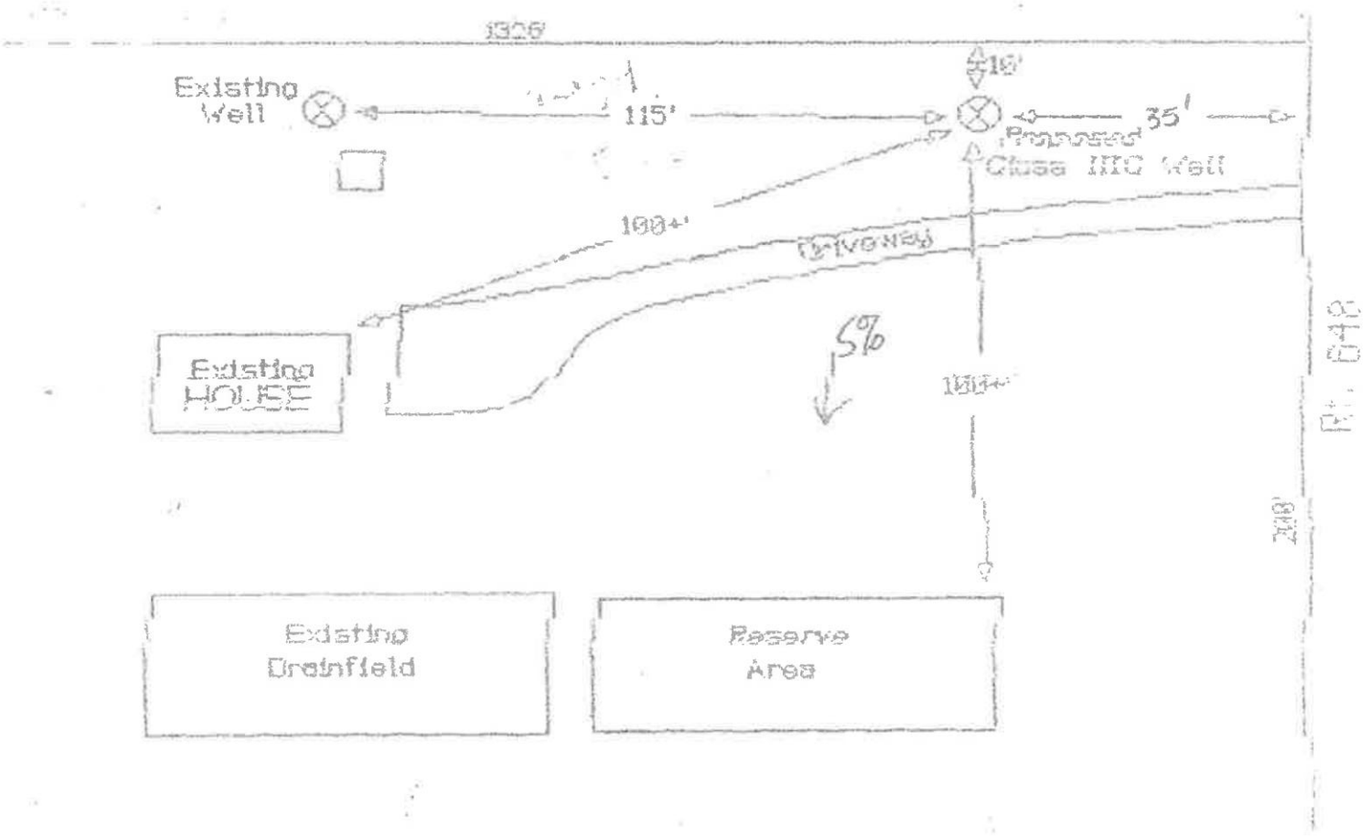
Health Department Identification Number 191-92-012

Schematic drawing of sewage disposal and/or water supply system and topographic features.

- Show the lot lines of the building site, sketch of property showing any topographic features which may impact on the design of the well or sewage disposal system, including existing and/or proposed structures and sewage disposal systems and wells within 200 feet. The schematic drawing of the well site or area and/or sewage disposal system shall show sewer lines, pretreatment unit, pump station, conveyance system, and subsurface soil absorption system, reserve area, etc. When a nonpublic drinking water supply is to be permitted, show all sources of pollution within 200 feet.

☐ *The information required above has been drawn on the attached copy of the sketch submitted with the application.*

Attach additional sheets as necessary to illustrate the design



This sewage disposal system and/or water supply is to be constructed as specified by the permit V or attached plans and specifications ____.

This sewage disposal system and/or well construction permit is null and void if (a) conditions are changed from those shown on the application (b) conditions are changed from those shown on the construction permit.

No part of any installation shall be covered or used until inspected, corrections made if necessary, and approved, by the local health department or unless expressly authorized by the local health dept. Any part of any installation which has been covered prior to approval shall be uncovered, if necessary, upon the direction of the Department.

Date: 3/27/92 Issued by: [signature] Sanitarian

Date: 4/6/92 Reviewed by: [signature] Supervisory Sanitarian

This Construction Permit Valid until 3/27/[illegible]

FHA or VA financing

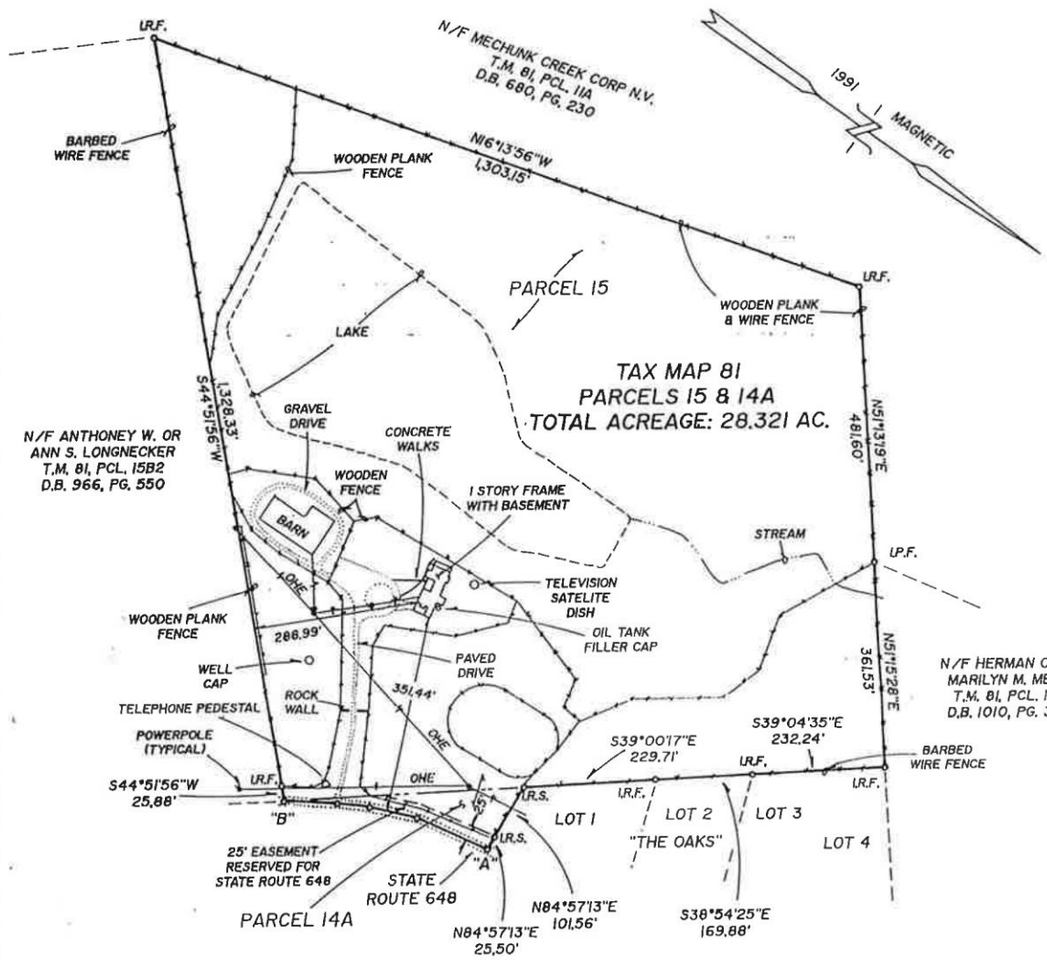
Reviewed by Date ____ Supervisory Sanitarian

Date ____ Regional Sanitarian

CHS 2028

ATTACHMENT B

COURSES FROM "A" TO "B" ALONG ℄ STATE ROUTE 648	
S11°49'47"E	136.10'
S22°35'36"E	84.66'
S28°56'05"E	56.85'
S32°33'34"E	92.92'



NOTES:
1. NO TITLE REPORT FURNISHED.
2. OWNER: ANDREW C. & CLAUDIA S. LYNN.
3. DEED BOOK REFERENCES:
   D.B. 1036, PG. 280
   D.B. 948, PG. 52.
   D.B. 466, PG. 349
   D.B. 496, 328 V.T. & T. CO. EASEMENT
4. THIS PROPERTY DOES NOT LIE IN AN AREA DESIGNATED AS ZONE "A" (100 YEAR FLOOD PLAIN) AS SHOWN ON FEDERAL FLOOD RATE INSURANCE MAPS DATED DEC. 16, 1980. COMMUNITY PANEL # 510006 0275 B.
5. I.R.F.= IRON ROD FOUND.
6. I.R.S.= IRON ROD SET.
7. I.P.F.= IRON PIPE FOUND.
8. OHE= OVERHEAD ELECTRIC.

PLAT SHOWING A PHYSICAL SURVEY OF 28.321 ACRES

TAX MAP 81, PARCELS 15 & 14A
LOCATED ON STATE ROUTE 648
RIVANNA DISTRICT
ALBEMARLE COUNTY, VA.

150 50
200 100 0 100 200 400
SCALE: 1"= 200' DATE: DEC. 12, 1991

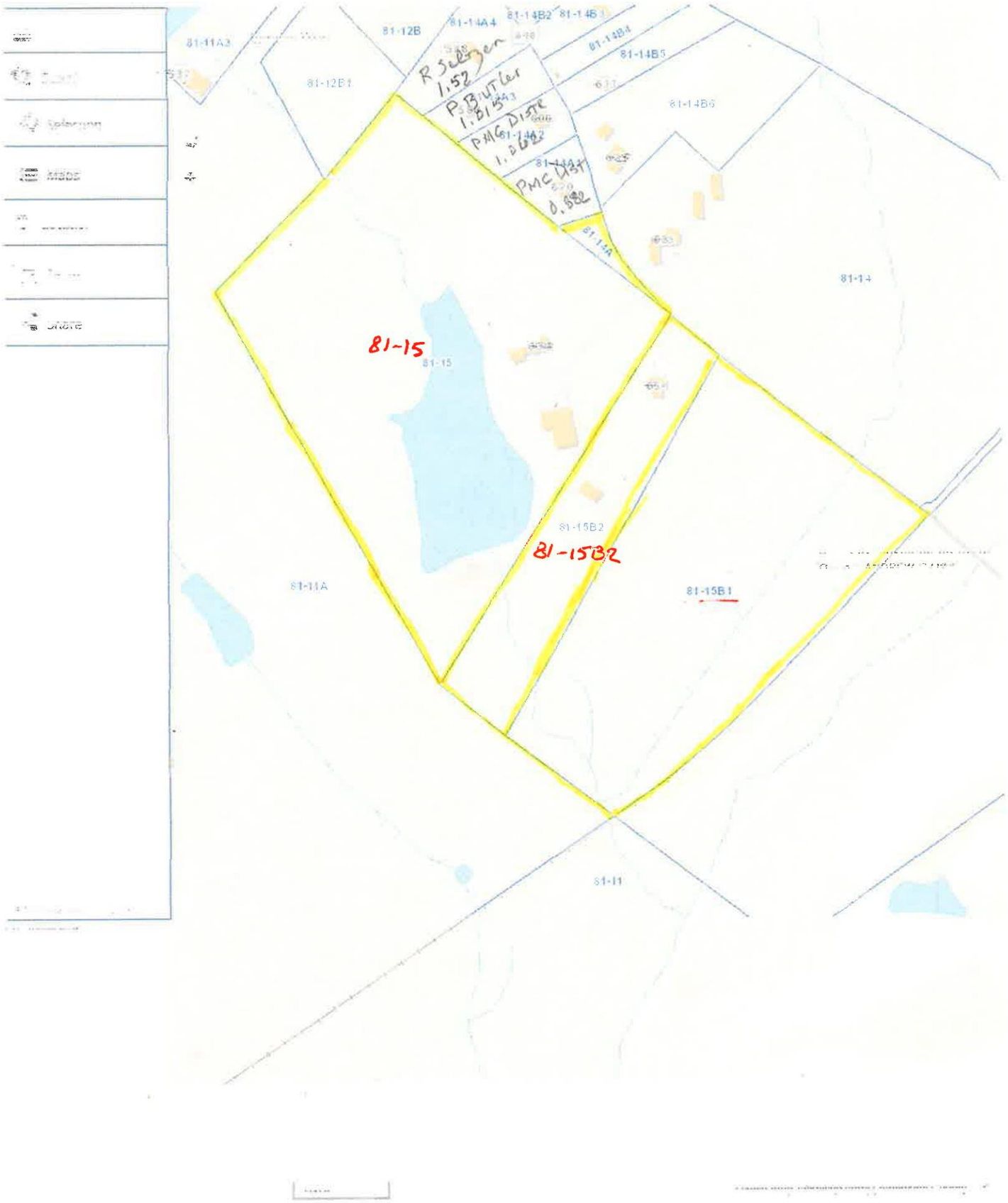
COMMONWEALTH OF VIRGINIA
STEVEN L. KEY
No. 1566
12/13/91
LAND SURVEYOR

KEY
INCORPORATED
LAND SURVEYORS
&
LAND PLANNERS
P.O. Box 1346
Charlottesville, Va 22902
(804)971-8339

Surveyors Statement;
On Dec. 4, 1991 I made a field survey of the property shown on this plat. To the best of my knowledge and belief this is a true and accurate plat.

L.S. 12/13/91

91-219-00


81-11A3
81-12B
81-14A4
81-14B2
81-14B3
81-14B4
81-14B5
81-14B6
81-12B1
R Selzer
1.52
P.B Butler
1.81
PMG Distr
1.062
PMC Last
0.882
81-14A
81-14
81-15
81-15
81-15B2
81-15B2
81-11A
81-15B1
81-11



NOTE:
SKETCH PREPARED WITHOUT BENEFIT OF TITLE REPORT.
THIS SKETCH AS SHOWN DOES NOT REFLECT A CURRENT BOUNDARY SURVEY AND IS BASED UPON PLATS AND/OR DEEDS OF RECORD.
REF: DB 966/550, DB 1036/280 AND OTHERS
NO BUILDINGS, STRUCTURES, DRAINFIELDS, WELLS, &c LIE WITHIN 15' OF THE PROPOSED NEW PROPERTY LINE (A-B)

COMMONWEALTH OF VIRGINIA
WILLIAM H. LYNN
Lic. No. 001950
LAND SURVEYOR

SKETCH of PROPOSED PROPERTYLINE ADJUSTMENT
TAX MAP 81 PARCELS 15 and 15B2

CURRENTLY IN THE NAME OF
ANDREW C. LYNN

RIVANNA DISTRICT ALBEMARLE COUNTY, VIRGINIA
24 SEPTEMBER, 2024
surveyed for ANDREW C. LYNN JOB No : al 81-15 Lynn

Wilderness Surveys 31435 Indiantown Road Locust Grove, Virginia 22508 540.854.5281

Sec. 10.3 Application of regulations for development by right.

The following provisions shall apply to any parcel of record at 5:15 p.m., the tenth day of December, 1980 (reference 6.5).

(§ 20-10.3, 12-10-80; 11-8-89; § 18-10.3, Ord. 98-A(1), 8-5-98)

Sec. 10.3.1 Conventional development.

Regulations in section 10.5 governing development by right shall apply to the division of a parcel into five or fewer lots of less than 21 acres in area and to the location of five or fewer dwelling units on any parcel in existence at the time of adoption of this ordinance (reference section 1.3). The aggregate acreage devoted to such lots or development shall not exceed 31 acres, except in such case where this aggregate acreage limitation is precluded by other provisions of this ordinance. The second sentence of this provision shall not be applicable to land divided between the effective date of this ordinance (reference section 1.3) and November 8, 1989.

(§ 20-10.3.1, 12-10-80; 11-8-89; 9-9-92; § 18-10.3.1, Ord. 98-A(1), 8-5-98; Ord. 00-18(4), 6-14-00)

Sec. 10.3.2 In addition to the foregoing, there shall be permitted by right any division of land into parcels each of which shall be 21 acres or more in area. No such parcel shall be included in determining the number of parcels which may be created by right pursuant to section 10.3.1; provided that (a) no such division shall affect the number of parcels which may be divided pursuant to section 10.3.1; (b) there may be located not more than one dwelling unit on any parcel created pursuant to this section; (c) at the time of any such division, the owner of the parcel so divided shall designate the number of parcels into which each parcel so divided may be further divided pursuant to section 10.3.1 together with aggregate acreage limitations in accordance with section 10.3.1; and (d) no such division shall increase the number of parcels which may be created pursuant to section 10.3.1.

(§ 20-10.3.2, 12-10-80; 11-8-89; 9-9-92; § 18-10.3.2, Ord. 98-A(1), 8-5-98; Ord. 01-18(6), 10-3-01)

Sec. 10.3.3 Rural preservation development.

Sec. 10.3.3.1 (Repealed 6-5-19)

Sec. 10.3.3.2 Intent; design standards.

The rural preservation development option is intended to encourage more effective land usage in terms of the goals and objectives for the rural areas as set forth in the comprehensive plan than can be achieved under conventional development. To this end, application for rural preservation development shall be reviewed for:

a. Preservation of agricultural and forestal lands and activities;

b. Water supply protection; and/or

c. Conservation of natural, scenic or historic resources.

More specifically, in accordance with design standards of the comprehensive plan and where deemed reasonably practical by the commission:

d. Development lots shall not encroach into prime, important or unique agricultural or forestal soils as the same shall be shown on the most recent published maps of the United States Department of Agricultural Soil Conservation Service or other source deemed of equivalent reliability by the Soil Conservation Service;

e. Development lots shall not encroach into areas of critical slope or flood plain and shall be situated as far as possible from public drinking water supply tributaries and public drinking water supply impoundments;

f. Development lots shall be so situated and arranged as to preserve historic and scenic settings deemed to be of importance to the general public and natural resource areas whether such features are on the parcel to be developed or adjacent to such parcel;

g. Development lots shall be confined to one area of the parcel and shall be situated so that no portion of the rural preservation tract shall intrude between any development lots;

h. All development lots shall have access restricted to an internal street in accordance with Chapter 14 of the Code of Albemarle;

i. Nothing stated herein shall be deemed to obligate the commission to approve a rural preservation development upon finding in a particular case that such proposal does not forward the purposes of rural preservation development as set forth hereinabove and that the public purpose to be served would be equally or better served by conventional development.

(§ 20-10.3.3.2, 11-8-89; § 18-10.3.3.2, Ord. 98-A(1), 8-5-98)

Sec. 10.3.3.3 Special provisions.

In addition to design standards as set forth in section 10.3.3.2 and other regulation, the following special provisions shall apply to any rural preservation development:

a. The maximum number of lots within a rural preservation development shall be the same as may be achievable pursuant to section 10.3.1 and section 10.3.2 and other applicable law. Each rural preservation tract shall count as one lot. In the case of any parcel of land which, prior to application for rural preservation development, has been made subject to a conservation, open space or other similar easement which restricts development on the parcel, the total number of lots available for rural preservation development shall not exceed the number available for conventional development as limited by any such previously imposed easement or easements;

b. Section 10.3.3.3.a notwithstanding, no rural preservation development shall contain more than 20 development lots;

c. Provisions of section 10.3.3, rural preservation development, shall be applied to the entire parcel. Combination of conventional and rural preservation development within the parcel shall not be permitted, provided that the total number of lots achievable under section 10.3.1 and section 10.3.2 shall be permitted by authorization of more than one rural preservation tract. Nothing contained herein shall be deemed to preclude the director of current development and zoning from approving a rural preservation development for multiple tracts of adjoining land, or on land divided or otherwise altered prior to the effective date of this provision; provided that, in either case, the provisions of section 10.3.3 shall be applicable;

d. The area devoted to development lots together with the area of roadway necessary to provide access to such lots shall not exceed the number of development lots multiplied by a factor of six expressed in acres;

e. No rural preservation development shall contain less than one rural preservation tract. The director of current development and zoning may authorize more than one rural preservation tract in a particular case pursuant to the various purposes of rural preservation development as set forth in section 10.3.3.2 or in accord with section 10.3.3.3.c, as the case may be;

f. No rural preservation tract shall consist of less than 40 acres. Except as specifically permitted by the director of current development and zoning at time of establishment, not more than one dwelling unit shall be located on any rural preservation tract or development lot. No rural preservation tract shall be diminished in area. These restrictions shall be guaranteed by perpetual easement accruable to the County of Albemarle and the public recreational facility authority of Albemarle County in a form acceptable to the board. In accordance with Chapter 14 of the Code of Albemarle, the director of planning and community development shall serve as agent for the board of supervisors to accept such easement. Thereafter, such easement may be modified or abandoned only by mutual agreement of the grantees to the original agreement;

g. Each application for a rural preservation development is subject to the review and approval of the director of current development and zoning.

(§ 20-10.3.3.3, 11-8-89; § 18-10.3.3.3, Ord. 98-A(1), 8-5-98; Ord. 04-18(1), 5-5-04 effective 7-1-04)

Sec. 10.4 Area and bulk regulations.

Area and bulk regulations within the RA, rural areas, zoning district are as follows:

REQUIREMENTS	DIVISIONS BY RIGHT	DIVISIONS BY SPECIAL USE PERMIT
Gross density	0.5 du/ac	0.5 du/ac
Minimum lot size	2.0 acres	2.0 acres
Minimum frontage existing public roads	250 feet	250 feet
Minimum frontage internal public or private roads	150 feet	150 feet
Yards, minimum:		
Front (existing public roads)	75 feet	75 feet
Front (internal public or private road)(Amended 11-13-91)	25 feet	25 feet
Side	25 feet	25 feet
Rear	35 feet	35 feet
Maximum structure height	35 feet	35 feet

(§ 20-10.4, 12-10-80; 8-14-85; § 18-10.4, Ord. 98-A(1), 8-5-98; Ord. 08-18(7), 11-12-08)

Chapter 20

Development Rights in the Rural Areas Zoning District in Albemarle County

20-100 Introduction

This chapter reviews the regulations and many of the key issues pertaining to development rights in the rural areas zoning district in Albemarle County and, in particular, how they may be used and how their use may be limited.

20-200 What is a development right?

Up to five development rights were allocated to each *parcel of record* in the rural areas zoning district existing at 5:15 p.m. on December 10, 1980[1], when the current zoning ordinance was adopted by the Albemarle County board of supervisors. *Albemarle County Code § 18-10.3*. A *parcel of record* is synonymous with *lot of record*, which is defined to be a "lot shown on a subdivision plat or other lawful plat or legal description which is lawfully recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia." Notwithstanding that definition, those lots approved by the County before December 10, 1980, including those approved on a preliminary subdivision plat, but not put to record until after December 10, 1980, are deemed to be parcels of record for the purpose of determining development rights. *Albemarle County Code § 18-6.5.3 (former)*. As will be examined more closely in the following sections, development rights permit the creation of lots less than 21 acres in size in the rural areas zoning district.

In a series of official determinations, the zoning administrator has determined that a parcel of record must be one that was originally established as a lot that could be developed for, most typically, residential purposes. Special lots, such as well lots, cemeteries, and narrow strips of land created for the purpose of providing access, are not parcels of record with development rights.

The board of supervisors may grant a special use permit to allot additional development rights to parcels of record outside of the reservoir watersheds, provided that the additional development rights are compatible with the neighborhood and specified goals and objectives are satisfied. *Albemarle County Code § 18-10.5.2.1*. Special use permits to attain additional development rights are rarely sought.

In this chapter, the term *parcel of record* refers to the original lot that was allocated development rights; the term *lot* refers to each lot created from a parcel of record.

20-300 What a development right allows

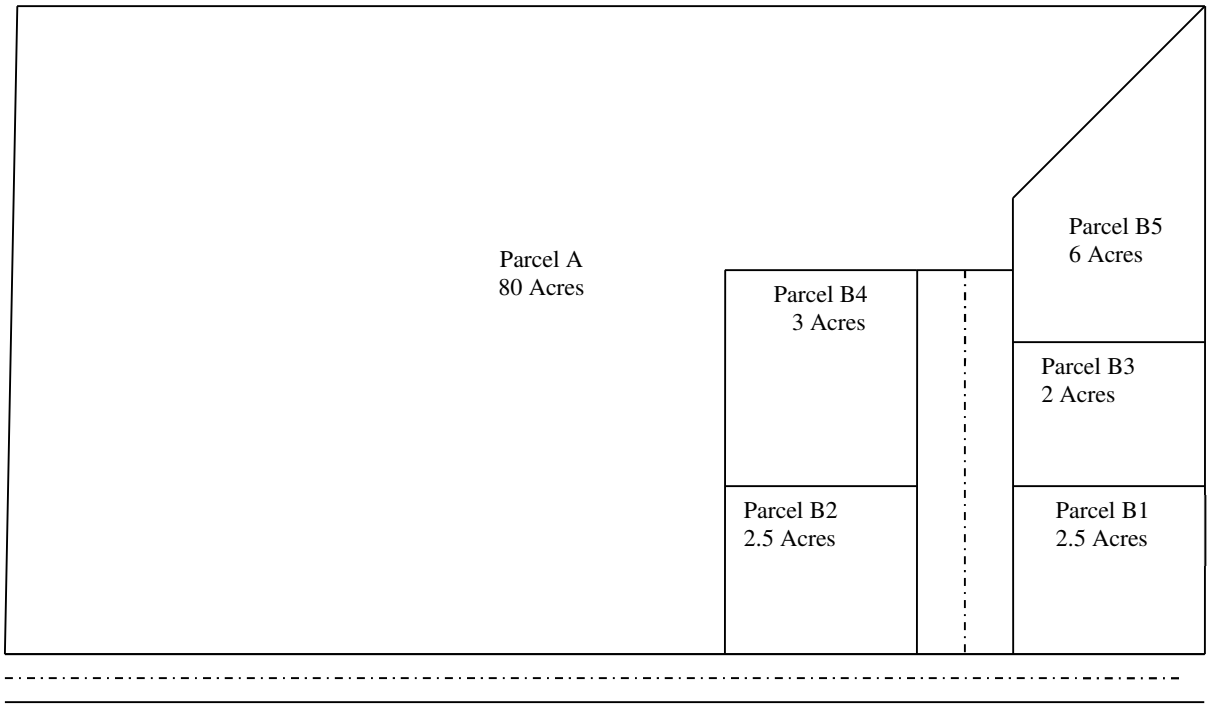
Development rights have a dual nature – they identify not only the number of lots that may be theoretically created by the subdivision of a parcel of record, but also the number of single-family dwellings that may be established. A parcel of record may be divided into up to five lots that are at least two acres in size, but less than 21 acres, in addition to as many 21-plus acre lots that can be created. *Albemarle County Code §§ 18-10.3.1 and 18-10.3.2*. The table below explains how development rights would be allocated:

Parcel Size	Number of Theoretical Development Rights
≥ 10 acres	5
≥ 8 acres, but < 10 acres	4
≥ 6 acres, but < 8 acres	3

[1] Six development rights were conferred by the ordinance adopted December 10, 1980. The number of development rights was reduced from 6 to 5 by a zoning text amendment adopted March 18, 1981.

Parcel Size	Number of Theoretical Development Rights
≥ 4 acres, but < 6 acres	2
< 4 acres	1

The following illustration shows how a 96-acre parcel of record could be subdivided using its 5 allocated development rights:



The 80-acre residue in this illustration could then be subdivided into a total of three lots, because that is the maximum number of 21-acre lots that could be created from it. If the development right lots were reduced in size so that the residue was 84 acres or more, then the residue could be divided into four lots.

Development rights also identify the number of single-family dwellings that may be established on a single lot less than 21 acres in size in the rural areas. Up to five single-family dwellings may be established on a single lot. *Albemarle County Code § 18-10.5.1.* Multiple dwellings on a single lot must be located so that if the lot were subdivided, each dwelling could be located on a separate lot that satisfied all the requirements of the zoning and subdivision ordinances. The location of three or more dwellings on a single lot is permitted only with an approved site plan. *Albemarle County Code § 18-32.2(a).*

20-400 Theoretical and usable development rights

The development rights allocated by Albemarle County Code § 18-10.3 are *theoretical.* They may be usable only if the lot being created contains a building site meeting the requirements of the zoning ordinance. The requirements for a building site are in Albemarle County Code § 18-4.2.1.

The use of development rights also may be limited by other zoning and subdivision regulations, conditions of approval, private covenants, or easements. *See sections 20-700 through 20-1000 for more discussion of the limitations on the use of development rights.*

20-500 How the number of development rights is determined

The number of theoretical development rights is determined in a variety of ways. Typically, the number of

development rights is determined by staff in the department of community development in the course of their review of subdivision plats and is based on the information supplied by the landowners, surveyors, or engineers. Landowners, or more often, their engineers or surveyors, show the usable development rights on the subdivision plat.

On occasion, the number of theoretical development rights is determined by the zoning administrator in an *official determination*. Official determinations issued by the zoning administrator are made with the assistance of the county attorney. These determinations require research through the land records to identify the parcel of record existing immediately prior to December 10, 1980, and then analyzing the history of the lot since December 10, 1980 to determine whether any development rights have been off-conveyed from the original parcel of record. Official determinations are often requested by landowners who believe that their land may be comprised of multiple parcels of record, or by prospective buyers, appraisers, or auditors seeking to fully understand the value of the land. It is fairly common for a single *tax parcel* identified on the county's tax maps to consist of multiple parcels of record under Albemarle County Code § 18-10.3. The administrative practice of the county's assessor's office through the 1970s was to consolidate adjoining parcels under the same ownership into a single tax parcel so that the county could mail fewer tax bills and track fewer tax parcels. The determination of the number of parcels of record requires a thorough examination of the deeds and plats in the chain of title, sometimes back to the late 1800s.

Official determinations also are made by the zoning administrator for applications under the county's acquisition of conservation easements ("ACE") program. The number of theoretical and usable development rights is used to rank the property under the criteria in the ACE ordinance and for appraising the value of the open-space easement (for those development rights that will be extinguished by the easement).

Official determinations of development rights become binding on the land if they are not timely appealed to and reversed or modified by the board of zoning appeals ("BZA").

20-510 Parcels separated by roads: 1980 to 1990

From the adoption of the current Zoning Ordinance in 1980 until the Albemarle County Circuit Court's 1990 decision in *Sanford v. Board of Zoning Appeals of Albemarle County, Virginia*, the zoning administrator and the BZA consistently determined that a public road did not divide a parcel into multiple parcels of record.

20-520 Parcels separated by roads; physical separation sufficient: 1990 to 2002

In *Sanford*, the trial court overturned the BZA's decision that the Inglecress property was a single parcel. The court held that a 10-acre piece of the property (identified as "Parcel X") was not only physically separated from its parent parcel when Garth Road was realigned in 1958, but it also was *legally* separated before December 10, 1980 and, therefore, was a parcel of record by a probated will. With respect to the physical separation resulting from the realignment of Garth Road, the *Sanford* court cited *City of Winston-Salem v. Tickle*, 53 N.C.App. 516 (1981), a North Carolina eminent domain case, for this rule: "It is generally held that parcels of land separated by an established city street, in use by the public, are separate and independent as a matter of law." *Tickle, supra.*

After *Sanford*, the practice of the zoning administrator was to determine that parcels physically separated by a public road were separate parcels of record under Albemarle County Code § 18-10.3.

20-530 Parcels separated by roads; legal separation required: 2002 to present

In late 2001, the Virginia Supreme Court decided *County of Chesterfield v. Stigall*, 262 Va. 697, 554 S.E.2d 49 (2001), in which the Court considered whether a taking by eminent domain triggered the property tax roll-back provisions under Virginia Code § 58.1-3241, applicable to separated or split-off parcels under land use valuation. The Court concluded that the roll-back provisions were not triggered by the mere *physical separation* of the taxpayer's land caused by the taking of right-of-way for construction of the Powhite Parkway. Rather, the Court concluded that the statutory language required that the roll-back provisions be triggered by a *legal separation* initiated by the owner – and this required, at a minimum, "a change in the legal description of the property, either by metes and bounds or

by plat, which is duly recorded in the appropriate land records." *Stigall*, 262 Va. at 705, 554 S.E.2d at 54.

Stigall instructs that there is a significant distinction between parcels that are physically separated and those that are legally separated, and that the applicable law determines the applicable standard in a particular situation. As a result, county staff re-examined its application of *Sanford* and the *Tickle* rule.

In light of *Stigall*, and in the context of a parcel physically separated by a public road, the county concluded that Albemarle County Code § 18-10.3's requirement that a parcel be a "parcel of record" required *legal separation* of the land, established by a recorded plat or other legal description delineating, describing, and establishing each piece separated by the road as a separate parcel. Thus, a proper parcel determination in such a case had to be based on whether the parcel was *legally* separated based upon plats or other legal descriptions of record, rather than merely be *physically* separated by a public road, at 5:15 p.m. on December 10, 1980.

The Albemarle County Circuit Court upheld this new interpretation in 2004 in *Scruby v. Board of Zoning Appeals of Albemarle County*, 65 Va. Cir. 89 (2004). The Virginia Supreme Court's decision in *W & W Partnership v. Prince William County Board of Zoning Appeals*, 279 Va. 483, 689 S.E.2d 739 (2010) re-affirms the application of the principles considered in *Stigall* to zoning matters.

20-600 Development rights and 21-acre lots

As noted in section 20-300, development rights identify the number of lots less than 21 acres in size that may be theoretically created by the subdivision of a parcel of record. The rural areas zoning district regulations also allow as many 21-acre or greater sized lots to be created as possible. *Albemarle County Code § 18-10.3.2*. The table below shows the number of lots that could be created from parcels of various sizes:

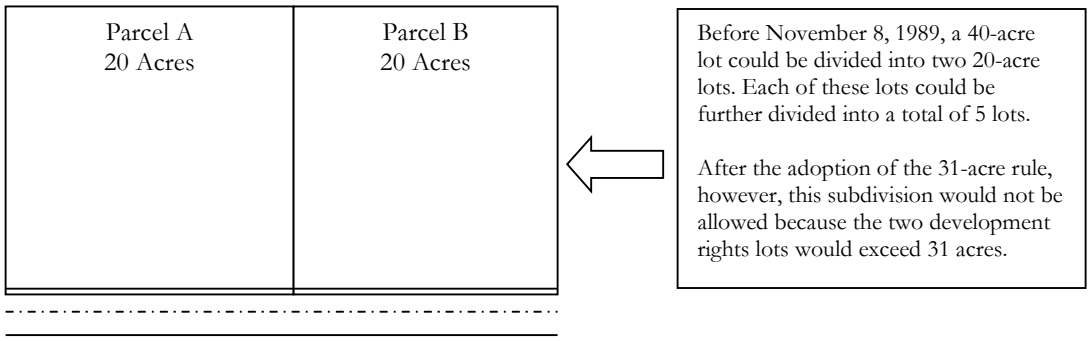
Potential Development of Various Sized Parcels of Record			
Size of the Parcel of Record	**Theoretical Development Right Lots**	**21-Acre Lots**	**Total Number of Lots That May Be Created**
38 acres	5	1	6
84 acres	5	3	8
167 acres	5	7	12
220 acres	5	10	15

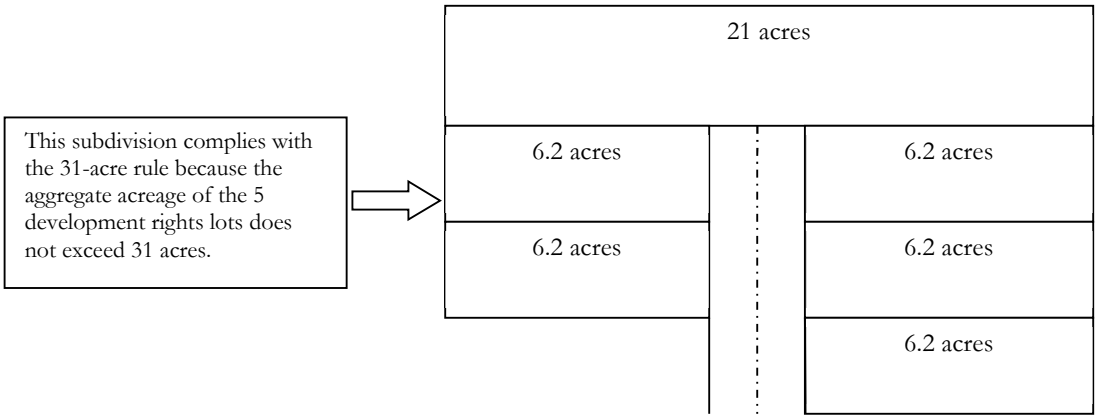
As noted in section 20-400, the actual number of lots may be less if building sites and other zoning and subdivision requirements cannot be satisfied.

20-700 The 31-acre rule

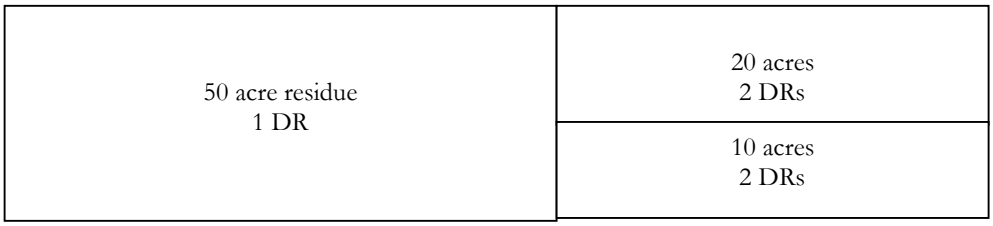
Subdivisions occurring after November 8, 1989 are subject to what is commonly known as the *31-acre rule*. The rule provides that the "aggregate acreage devoted to such lots or development shall not exceed thirty-one (31) acres, except in such case where this aggregate acreage limitation is precluded by other provisions of this ordinance." *Albemarle County Code § 18-10.3.1*. In other words, the rule limits the aggregate acreage consumed by development right lots to 31-acres.

Although development right lots may be as small as 2 acres, the regulations allow a development right lot to be as large as just less than 21 acres. The 31-acre rule minimizes the acreage consumed by development right lots and requires the balance of the property to be lots of at least 21 acres in order to better preserve Albemarle County's rural character. The illustrations below show how the 31-acre rule would apply in two situations shown on the following page.





The following illustration shows how development rights can be encumbered by the operation of the 31-acre rule on an 80-acre parcel.



In this illustration, two lots, containing 20 acres and 10 acres respectively, are divided from the original parcel. The off-conveyances are assigned a total of 4 development rights and contain a total of 30 acres. The 50-acre residue retains 1 development right. However, the development right cannot be used because a 2-acre lot, divided from the residue, would result in an aggregate of 32 acres being devoted to development lots.

The 31-acre rule comes with several quirks that arise in its application, depending on the site of the parcel of record. Following are some of those quirks:

- 31-acre parcel: The area available for DR lots is the entire 31-acre parcel; the average lot size for the 5 DR lots is 6.2 acres.

- 31.01-acre parcel: The area available for DR lots is 10.01 acres, because a residue of at least 21 acres must be maintained; the average lot size for the 5 DR lots is 2.002 acres.

- 41-acre parcel: The area available for DR lots is 20 acres, because a residue of at least 21 acres must be

maintained; the average lot size for the 5 DR lots is 4 acres.

- 52-acre parcel: The area available for DR lots is 31 acres and a residue of at least 21 acres must be maintained; the average lot size for the 5 DR lots is 6.2 acres.

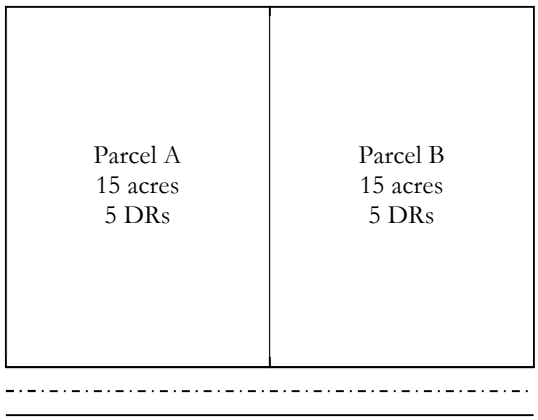
20-800 Development rights must be used within the boundaries of the parcel of record; the "kernel rule"

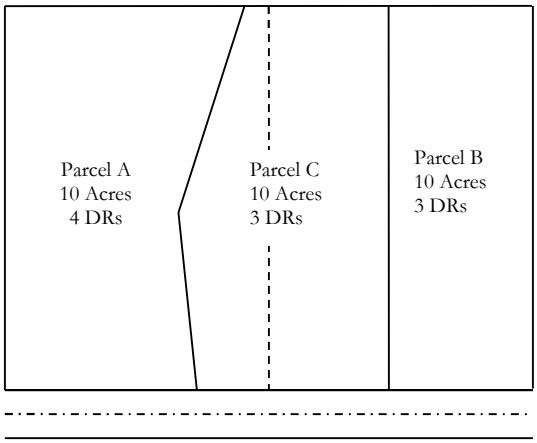
The general rule is quite simple – development rights must be used within the boundaries of the parcel of record. *Albemarle County Code § 18-10.3.1.*

Over time, lots may be created from a parcel of record or their boundary lines may be adjusted. The requirement that development rights be used within the boundaries of the parcel of record – sometimes referred as the *kernel rule* – requires that each development right lot created contain a *kernel* from the original parcel of record. The rule prevents the transfer of development rights from one parcel of record to another. By doing so, the rule prevents landowners from assembling development rights from other parcels of record, a practice that could result in large suburban-scale subdivisions and development at a much greater density than otherwise allowed in the rural areas zoning district.

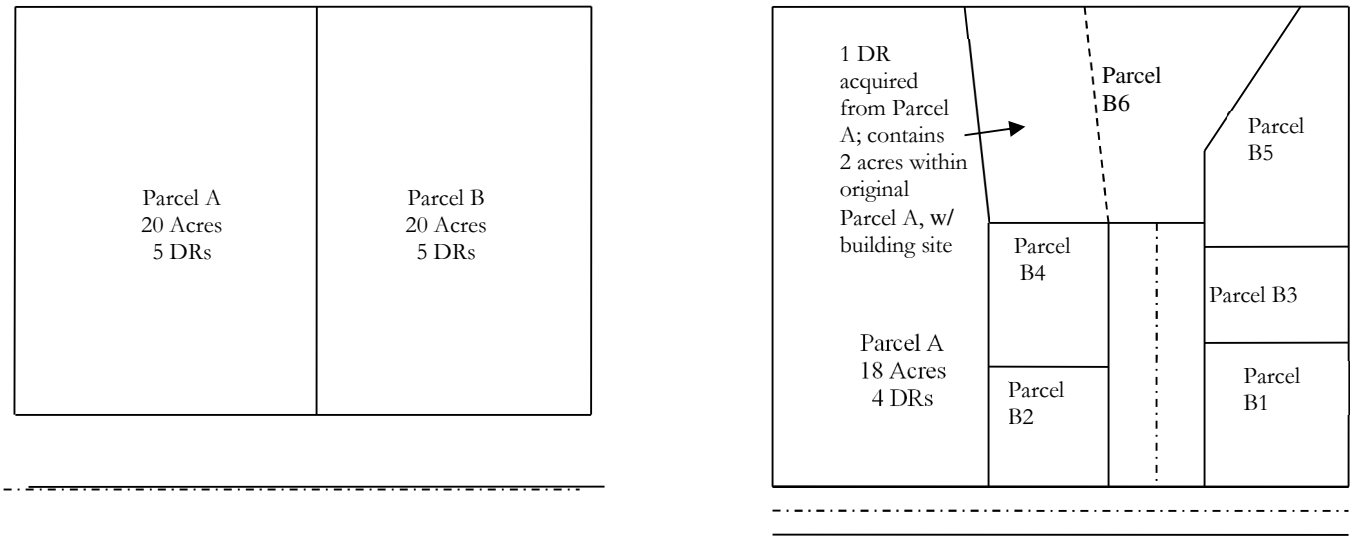
A kernel must consist of: (1) a minimum two-acre piece of land; (2) a building site; and (3) a development right. Although a kernel must have a building site and a development right, a dwelling itself need not be established within the kernel. A 3 ½ acre lot could not add one-half acre and divide because the one-half acre added could not be a kernel meeting all three of these requirements.

The illustrations below show how the kernel rule would be applied in two situations:





Parcel C contains 1 DR acquired from Parcel A, which contains 2+ acres within the portion that came from Parcel A, including a >30,000 square foot building site and contains 2 DRs acquired from Parcel B, each with at least 2 acres and a >30,000 square foot building site within the portion that came from Parcel B. Note that a dwelling using the 1 DR from Parcel A need not necessarily be established within the portion of Parcel C that came from Parcel A.



The kernel rule does not prevent development rights from being transferred among lots created from a single parcel of record. The kernel rule also does not apply to the creation of 21-acre lots. Finally, the kernel rule does not apply to rural preservation developments established under Albemarle County Code § 18-10.3.3.

20-900 Allotment of development rights upon subdivision

Both the zoning ordinance and the subdivision ordinance require that development rights be allocated to the several lots created (including the residue) when a parcel of record or a lot is subdivided. *Albemarle County Code § 18-10.3.2; Albemarle County Code § 14-302(A)(10).* The subdivision ordinance also requires that the subdivision plat identify the number of acres consumed by development right lots to allow the county and the public to monitor compliance with the 31-acre rule. *Albemarle County Code § 14-302(A)(10).*

Occasionally, a subdivision plat, particularly those approved in the early 1980s when the concept of development rights was still new, fails to allot all the development rights. This omission does not extinguish the development rights. There have been several occasions where the landowners of lots created from a parcel of record sought to "claim" a development right that had not been allocated.

In one case, the landowners of all the lots created from the original parcel of record who might otherwise have been eligible to use the additional development right (*e.g.*, their lots had been allocated only one development right though the lots were larger than 4 acres) agreed to allow one of the eligible landowners to have it.

In another case, the landowner of one of the eligible lots asked the county about available development rights, was informed that there was an unallocated available development right and used it before the landowner of the other eligible lot was aware of the situation. In the end, the landowner who missed the unallocated development right did not appeal the decision that allowed the other landowner to claim the development right. A development rights determination of the landowner's lot revealed that it had more development rights than the landowner thought.

The department of community development now has procedures in place to ensure that unallocated development rights are not used without the knowledge of the landowners of the other eligible lots.

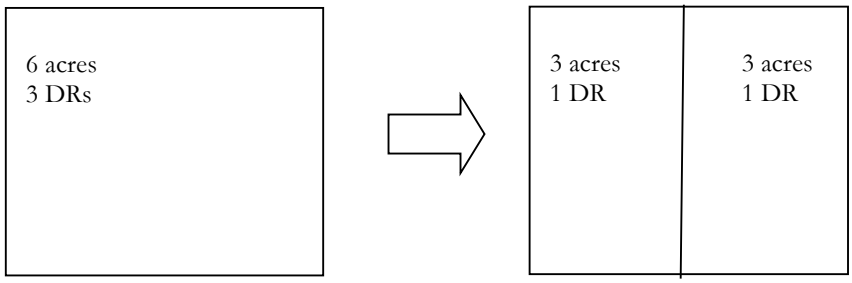
20-1000 Other limitations on the use of development rights

Development rights are part of the zoning of a rural areas lot and, because those rights were created by a legislative action, they may be extinguished only by a legislative action, *i.e.*, a rezoning to another zoning district or a comprehensive downzoning of the rural areas by, for example, reducing the number of development rights. Thus,

the failure of a landowner to allot all development rights as discussed in section 20-900, or to use all development rights in a project, does not extinguish those development rights that are not allotted or used. For example, a landowner who subdivides a 63-acre parcel into a 21-acre lot and a 42-acre lot does not extinguish the right to further subdivide the 42-acre lot into two 21-acre lots, or to use the 5 development rights allocated to the original parcel of record. As another example from a different zoning district, there is no doubt that a landowner who subdivides a 1-acre lot zoned R-4 (4 dwellings per acre) into 3 lots does not waive the right to further create the fourth lot and dwelling to achieve the zoning density allowed under the R-4 zoning district regulations, assuming that all applicable zoning and subdivision regulations can be satisfied.

Nonetheless, there are ways by which the use of development rights may be limited:

- Subdivision – lot acreage precludes full use of development rights: In this situation, the development right lots are sized in a way that prevents all the development rights from being used. For example, a six-acre lot has three development rights and it is divided into two three-acre lots. Because each three-acre lot may use only one development right, the third development right is unusable while the lots are in this configuration.



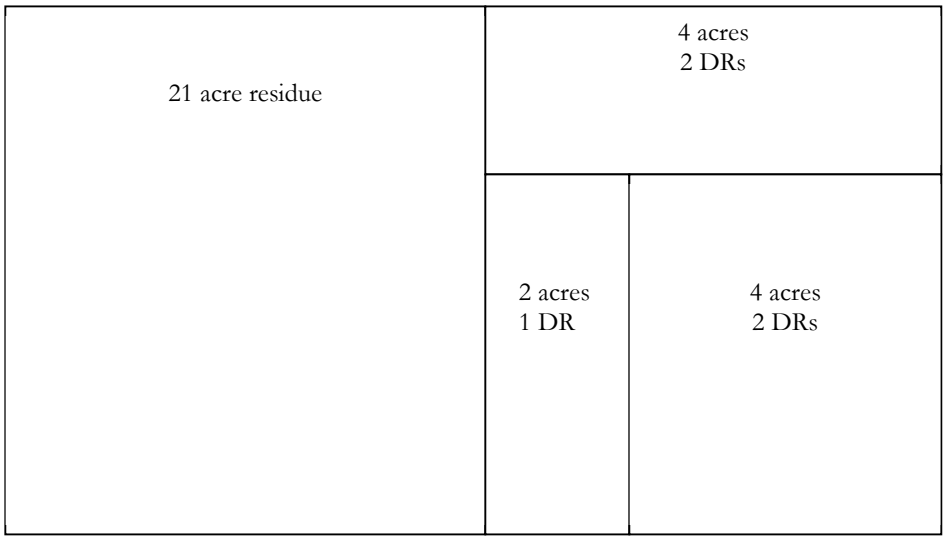
- Subdivision – acreage consumes 31-acres before all development rights used: In this case, the area consumed by the development right lots reaches the 31-acre limit before all the development rights are used. For example, a 70-acre parcel of record has five development rights and, in the first subdivision, a 20-acre lot and a 10-acre lot are created. Because the aggregate area of these two lots is 30 acres, and the minimum size of a development right lot is two acres, no further development right lots may be created from the parcel of record. However, the lots could be resubdivided and resized and, of course, the 20-acre lot and the 10-acre lot could be further subdivided if they were allocated additional development rights.

- Condition of approval restricts further subdivision or additional dwellings without a new permit: The most likely scenario in this situation is a private street approval that is conditioned on the lots not being further subdivided without further approval. The justification for the condition is to ensure that the approved private street is adequate for a particular number of dwellings, and that additional dwellings would require further review to assure that the private street is adequate for the additional traffic. This kind of condition does not extinguish the development rights. The condition would apply only so long as the lots are served by a private street (*i.e.*, the condition could be avoided by constructing a public street). The condition also could be amended or eliminated by a future county action. Even assuming that there was authority and justification to impose a condition that prohibited a private street from being converted to a public street, the development rights would not be extinguished because, as noted before, the condition could be amended or eliminated.

- Proffers: In one of the less likely scenarios, proffers could encumber the use of development rights. For example, their use could be encumbered in an owner-initiated rezoning from rural areas to rural areas with a proffer prohibiting subdivision or more dwellings.

- Restrictive covenants: Restrictive covenants – privately imposed and privately enforced restrictions on land use – may limit the full use of development rights. For example, a subdivision consisting of two four-acre lots and one two-acre lot, with a recorded restrictive covenant expressly prohibiting further subdivision of any of the lots, would prevent the additional development rights allocated to the two four-acre lots from being used. The county does not enforce restrictive covenants.

The following illustration shows how development rights can be encumbered by private covenant.



In this illustration, the original parcel contained 31 acres. Three lots containing two acres, four acres, and four acres respectively have been divided from the original parcel. These lots were assigned the five development rights associated with the original parcel. The zoning ordinance would permit the use of the two development right assigned to the four-acre lots resulting in their further division. However, the subdivider may restrict the further division of these lots by the recordation of a restrictive covenant. This covenant would be enforced as a private civil matter.

- Open-space and similar easements: Open-space easements that restrict the number of lots that may be created or the number of dwellings that may be established limit the use of development rights. In essence, the landowner has either sold the development rights (such as under the ACE program as part of the county's purchase of the easement) or has agreed to not use them. In either case, the easement holder, such as the county, the Virginia Outdoors Foundation, and the county's acquisition of conservation easements authority, may enforce the terms of the easement to ensure that the development rights surrendered are not used.

- *Development rights allocated to a lot with a limited number of building sites*: In this situation, development rights are allocated to a lot where the conditions of the lot will prevent the full number of development rights from being used. For example, by allotting four development rights to an eight-acre lot, all but one acre of which lies in the flood plain, three of the four development rights may not be used because no more than one 30,000 square foot building site will exist on the lot.

None of the examples above extinguish development rights. Development rights for lots under open-space easements exist, but they cannot be used either because the landowner no longer owns them or has agreed not to use them; conditions of approval can be amended or eliminated; lots can be resubdivided, restrictive covenants can expire, and standards of development can be changed.

Code of Virginia
Title 15.2. Counties, Cities and Towns
Subtitle II. Powers of Local Government
Chapter 22. Planning, Subdivision of Land and Zoning
Article 7. Zoning

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Section 34.4 - Variances.

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

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

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

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

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

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

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

VA 2024-00003
Information Submitted by Applicant is included as Attachment B of the Staff Report

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, 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.

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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 Virgnia 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.

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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.

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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,

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John Shepherd, Secretary Board of Zoning Appeals

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