

**BOARD OF ZONING APPEALS PETITION**

Please return to: City of Charlottesville
Department of Neighborhood Development Services
PO Box 911, City Hall
Charlottesville, Virginia 22902
Telephone (434) 970-3182

RECEIVED
MAY 20 2024
NEIGHBORHOOD DEVELOPMENT SERVICES

Please submit six (6) copies of this application and all attachments. For an appeal, please include \$100 fee. For a variance, please include \$250 fee. Checks payable to the City of Charlottesville. All petitioners must pay \$1.00 per required mail notice to property owners, plus the cost of the required newspaper notice. Applicants will receive an invoice for these notices, and project approval is not final until the invoice has been paid.

Project Name Notice of Violation Appeal

Physical Street Address/Location 932 Monticello Ave Tax Map and Parcel 570066000

A. Information on Property Appealed

Zoning of Parcel R-A

B. Reason for Petition (choose 1, 2 or 3)

1. ☒ Administrative Review (Sec 34-137 of the Zoning Code), the Zoning Administrator has:

☐ Denied a Building Permit

☒ Denied a Provisional Use Permit

☐ Denied a Sign Permit

☒ Other Failure to Act on Application

Reasons for denial (City Code Sections): 3.2.2 of the Development Code

2. ☐ Variances (as outlined in Sec 34-136). The petitioner believes a variance should be granted for the following reasons:

(a) Strict application of the ordinance would produce undue hardship.

(b) The hardship is not shared generally by other properties in the same zoning district and vicinity.

(c) The authorization of the variance will not be of substantial detriment to adjacent property, and the character of the district will not be changed by the granting of the variance, and

(d) 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.

3. ☐ Interpretation Zoning District Boundaries (as outlined in Sec 34-6).

C. Petitioner Information

Name Derek Bathrick & Karla Bathrick

Address 932 Monticello Ave

Phone (W) (703) 608-9725 (H) _____

Email derek.bathrick@gmail.com; karlaebell@gmail.com

D. Property Owner Information (if not petitioner)

Name _____

Address _____

Phone (W) _____ (H) _____

Email _____

E. Attachments to be submitted by Petitioner:

A map of property showing the location of existing improvements and demonstrating the reason for the petition. The petitioner is also encouraged to provide any additional information, drawings, photographs, etc. that will help the Board understand the reason for the petition.

F. Property Owner Permission (if not petitioner)

I have read this petition and hereby give my consent to its submission.

Signature of Owner _____

Date _____

G. Petitioner's Signature

I hereby request that the Board of Zoning Appeals review this petition and that a decision on the above referenced Zoning Code sections be made. (Signature also denotes commitment to pay invoice for required mail notices.)

Signature of Petitioner Karla Bathrick

Date 5/20/24

For Office Use Only

BZA Case Number _____

BZA Action _____



May 20, 2024

BY HAND

City of Charlottesville Board of Zoning Appeals
c/o Department of Neighborhood Development Services
City Hall
Charlottesville, VA 22902

Board of Zoning Appeals Petition
May 9, 2024 Notice of Violation
932 Monticello Avenue; TMP 570066000 (the "Property")

Dear Members of the Board of Zoning Appeals:

This firm and the undersigned represent Derek ("Derek") and Karla Bathrick ("Karla") (improperly identified in the Notice of Violation as Karla Birmingham), who are husband and wife (collectively, the "Petitioners"). The Petitioners file this Petition because the Zoning Administrator improperly failed to act on Karla's 2024 application for a Homestay Permit. The Notice of Violation should be reversed and the Zoning Administrator should be directed to issue the 2024 Homestay Permit.

Background

Karla applied for and received a Homestay Permit in 2023. The 2023 Homestay Permit was issued on March 28, 2023 (**Exhibit A**). As part of her application, Karla provided a copy of her voter registration card, a copy of which is included in Exhibit A.

Karla reapplied for a Homestay Permit for 2024 in January of this year, using a copy of her driver's license showing the Property as her permanent address (**Exhibit B**).¹ Karla submitted with her application the \$100.00 permit fee, which was negotiated by the City on February 7, 2024 (**Exhibit C**).

Petitioner did not receive a response from the Zoning Administrator with respect to the 2024 Homestay application and believed that the permit had been granted due to the City having negotiated the check for the permit fee. Petitioner received no communication from the Zoning Administrator regarding the status of the application until April 26 of this year, just prior to receiving the Notice of Violation.

On April 26, upon learning that no Homestay Permit had been issued, Petitioner removed the Property from the rental market.

¹ Karla did not retain a signed copy of the application for her records. The City has the signed copy.

The Zoning Administrator Erred in Failing to Act on the Application

The Zoning Administrator's failure to act on Karla's 2024 application was due to his determination that Petitioners were "*not eligible to apply for a homestay permit*" because the Petitioners do not "*reside at the property as their primary residence for at least 185 days of each calendar year.*" Notice of Violation, ¶ 1. The Zoning Administrator's determination is both legally and factually erroneous.

1. The Determination is Legally Erroneous

The determination is legally erroneous because occupancy for at least 185 days of each calendar year is not a condition or requirement to be "eligible" to apply for a permit. Rather, it is a requirement for operating under a permit. In other words, once the permit is issued, the owner has an obligation to reside on the premises for 185 days during the "period of validity" of the permit.

Section 3.5.2.E of the Development Code governs homestays. The relevant provisions at issue in this appeal are subsections 5 and 9, which provide as follows:

5. An individual who applies for an Accessory Use Permit to authorize the operation of a homestay must present proof of the following:
 - a. The individual's ownership and permanent residence of the property that is the subject of the application. Acceptable proof of permanent residence includes, applicant's drivers license, voter registration card or U.S. passport, or other documents showing the address of the property which the Administrator determines provide equivalent proof of permanent residence at the property; and
 - b. Contact information for the responsible party. If the owner is not the responsible party who will be responsible during the time of use as a homestay, then the responsible party must be identified and must sign the application form.
9. Each Accessory Use Permit for a homestay will be valid from the date on which the permit is issued through December 31 of the calendar year in which the permit is issued. During this period of validity, the owner of the homestay must occupy the dwelling unit as their permanent residence for a minimum of 185 days.

Here, Karla met the application requirements in subsection 5 by providing proof of her permanent residence in the form of a driver's license and contact information for the responsible party and the Zoning Administrator should have issued the permit as part of his ministerial duties.

The Zoning Administrator's failure to issue the permit appears to be based on his misinterpretation of subsection 9. That Section provides that the owner "*must occupy the dwelling unit as their permanent residence for a minimum of 185 days*" during the "*period of validity*" of the permit. Thus, the occupancy requirement is prospective, i.e. it must be met during the period that the permit is valid.

The Zoning Administrator erred in this case by making the occupancy requirement a pre-condition to an application. Nothing in the Development Code supports this interpretation.

May 20, 2024

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2. The Determination is Factually Erroneous

The Zoning Administrator's determination that Karla does "not meet the minimum residence requirement" is also factually erroneous. As is clear from the calendar managed by the responsible party for the homestay use (attached as **Exhibit D**), the Petitioners blocked the rental of the Property for more than 185 days during 2024 so that they could occupy the Property on the dates the rental was blocked. Thus, the Zoning Administrator's prospective determination that Petitioners would not meet the residency requirement was erroneous.

Conclusion

For the foregoing reasons, there is no legal or factual basis for the Zoning Administrator's failure to act on Karla's application for a Homestay Permit, and therefore no basis for the Notice of Violation.

Petitioner respectfully requests that the BZA reverse the determination and direct the Zoning Administrator to issue the Homestay Permit.

Sincerely yours,

Ashley T. Hart (by med)

Ashley T. Hart

cc: Michael E. Derdeyn



Karla Bell Bathrick <karlaebell@gmail.com>

homestay permit

Brodhead, Read <BRODHEAD@charlottesville.gov>
To: "karlaebell@gmail.com" <karlaebell@gmail.com>

Wed, Mar 29, 2023 at 9:42 AM

Karla,

Your homestay permit is approved and attached. Please make sure that you abide by the rules for operating a homestay in the City of Charlottesville. If you haven't already, you need to contact the Commissioner of Revenue to set up an account to pay your lodging taxes.

-Read Brodhead
Zoning Administrator

From: MA1CDBIZHUBC458@charlottesville.gov <MA1CDBIZHUBC458@charlottesville.gov>
Sent: Wednesday, March 29, 2023 10:02 AM
To: Brodhead, Read <BRODHEAD@charlottesville.gov>
Subject: Message from KM_C458

**SKM_C45823032909011.pdf**

65K



HOME OCCUPATION PROVISIONAL USE PERMIT / HOMESTAY



Please Return to:

Department of Neighborhood Development Services

PO Box 911, City Hall

Charlottesville, VA 22902

Phone (434) 970-3182 Fax (434) 970-3359

\$100 Permit Fee: Checks Payable to the City of Charlottesville

Applicant: Karla Bathrick Homestay Website (URL): _____

Address: 932 Monticello Avenue

Phone: (240) 888-6468 E-mail: karlaebell@gmail.com

Proof of Permanent Residence:
***applicant must reside in residence
at least 180 days per year**

☒ Driver's License

☒ Voter Registration Card

____ Other

Responsible Party

Individual or business entity located within 30 miles who will be available 24 hours a day, 7 days a week, to respond to an resolve issues and complaints (in person, if necessary) that arise during the period of time in which the dwelling is being used as a homestay

Name of Responsible Party: Guesthouses

Phone: 434-979-7264 E-mail: info@vaguesthouses.com

Address: 229 Douglas Ave Charlottesville, VA 22902

Andrew Thomasson Digitally signed by Andrew Thomasson
Date: 2023.03.17 11:03:46 -04'00'

Responsible Party Signature

I have read the attached regulations concerning Homestays and understand that my permit may be revoked if I fail to comply with all provisions in this code. I give my consent to inspectors by the Zoning Administrator to verify compliance with the requirements for provisional uses and grant a right of access for the Zoning Administrator to make such inspections.

Karla E. Bathrick
Applicant Signature

3/21/23
Date

OFFICE USE ONLY

Zoning Administrator Signature: [Signature] Date Received 3/28/23

Approved ☒

Denied _____

Comments valid until 12/31/23

Amount Due: \$100.00

Amount Paid 100

Cash/Check No. 2555

Copy: Commissioner of the Revenue



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

VOTER REGISTRATION NOTICE

DATE ISSUED: 3/7/2023

ID NUMBER: [REDACTED]
KARLA ELIZABETH BATHRICK
932 MONTICELLO AVE
CHARLOTTESVILLE, VA 22902-5911

LANGUAGE PREFERENCE: English

YOUR VOTING LOCATION:

CLARK SCHOOL GYM
1000 BELMONT AVENUE
CHARLOTTESVILLE, VA 22902-



LOCALITY: CHARLOTTESVILLE CITY
PRECINCT: 102 - CLARK

DISTRICTS: CONG 05 SEN 011
 HSE 054

LOCAL: DISTRICT ONE

YOUR VOTER REGISTRATION OFFICE:

PO BOX 1219
CHARLOTTESVILLE, VA 22902-1219
434-970-3250

FOR TOWN ELECTIONS:

TOWN:

TOWN PRECINCT / DISTRICT:

TOWN ELECTION VOTING LOCATION:

HOME OCCUPATION PROVISIONAL USE PERMIT / HOMESTAY



Please Return to:

Department of Neighborhood Development Services

PO Box 911, City Hall

Charlottesville, VA 22902

Phone (434) 970-3182 Fax (434) 970-3359

\$100 Permit Fee: Checks Payable to the City of Charlottesville

<https://www.vaguesthouses.com/charlottesville-vacation-rentals/monticello-getaway>

Applicant: Karla Bathrick Homestay Website (URL): _____

Address: 932 Monticello Avenue, Charlottesville, VA 22902

Phone: (240) 888-6468 E-mail: karlaebell@gmail.com

Proof of Permanent Residence: X Driver's License
***applicant must reside in residence
at least 180 days per year** _____ Voter Registration Card _____ Other

Responsible Party

Individual or business entity located within 30 miles who will be available 24 hours a day, 7 days a week, to respond to an resolve issues and complaints (in person, if necessary) that arise during the period of time in which the dwelling is being used as a homestay

Name of Responsible Party: Guesthouses

Phone: (434) 979-7264 E-mail: info@vaguesthouses.com

Address: 229 Douglas Avenue, Charlottesville, VA 22902

Andrew Thomasson

Responsible Party Signature

I have read the attached regulations concerning Homestays and understand that my permit may be revoked if I fail to comply with all provisions in this code. I give my consent to inspectors by the Zoning Administrator to verify compliance with the requirements for provisional uses and grant a right of access for the Zoning Administrator to make such inspections.

Applicant Signature

Date

OFFICE USE ONLY

Date Received _____

Approved _____

Denied _____

Zoning Administrator Signature: _____

Comments _____

Amount Due: **\$100.00**

Amount Paid _____

Cash/Check No. _____

Copy: **Commissioner of the Revenue**

EXHIBIT

tabbles

B

Virginia VA, USA DRIVER'S LICENSE

44 Customer Number [REDACTED] ORGAN DONOR

1 Name
BATHRICK
KARLA ELIZABETH

Address
932 MONTICELLO AVE
CHARLOTTESVILLE, VA 22902-5911

2 Date of Birth [REDACTED] 3 Class
D

4 Sex F 5 Eyes BRO 6 End NONE

7 Height 5'-04" 8 Restrictions C

9 Iss REI 05/01/2023 10 Exp 01/23/2029

5 DO 092706204

1550 KARLA BATHRICK

**Paid Check**

Account: Business Basic Checking ...5364
Check Number: 1081
Amount: \$100.00
Date Posted: Wednesday, February 7, 2024

MONTICELLO GETAWAYS LLC
932 MONTICELLO AVENUE
CHARLOTTESVILLE, VA 22902

1081
65-7198/2550

January 23, 2024
Date

Pay to the
Order of City of Charlottesville \$ 100.00
One-hundred & 00/100 Dollars  Photo
Safe
Deposit
Details on back


Capital One, N.A.

For Homestay permit fee Karla Battuck 

⑆ [REDACTED] ⑈ 01081

02/07/2024 - Batch 3001 - Sequence 48
DEPOSIT ONLY <001742124>
FOR DEPOSIT ONLY



← Availability

Monticello Getaway ☺



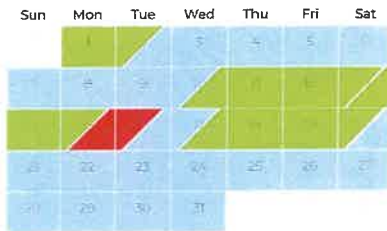
☐ Vacant

☒ Maintenance Block

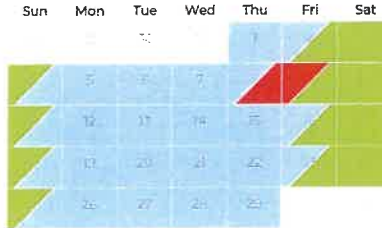
☒ Standard

☒ Owner Block

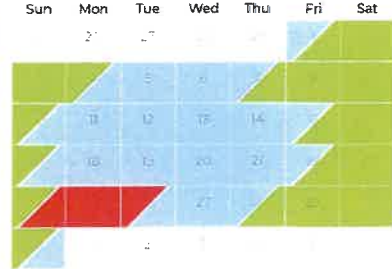
January 2024



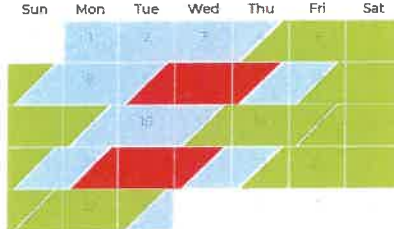
February 2024



March 2024



April 2024



May 2024



June 2024



July 2024



August 2024



September 2024



October 2024



November 2024



December 2024

