



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
ELECTRONIC MEETING VIA ZOOM
AGENDA**

TUESDAY, FEBRUARY 1, 2022 at 2:00 P.M

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 2022 Meeting Schedule
4. Public Hearings:
 - A. AP2021-003 Appeal of LOD2021-013 Homestays Ownership Eligibility
Property Owner: Howe Whitman/Howe D. Whitman Jr. Family Trust
Appellant: 5600 Turkey Sag Road, LLC/Bradford Manning
Staff: Lea Brumfield/Bart Svoboda
5. Approval of Minutes
 - A. July 6, 2021
6. Old Business
 - A. BZA Annual Report for 2021 – Submitted to BOS in September 2021 for review at the October 6, 2021 BOS meeting
7. New Business
 - A. Convene to Closed Session under *Virginia Code* § 2.2-3711(A)(1) – to discuss, consider, or interview prospective candidates for employment – BZA Legal Services Contract renewal for FY2022-23
 - B. Reconvene to Open Session – Certify Closed Meeting
 - C. Take Action on business discussed during Closed Session, if applicable
8. Adjournment

This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(16), An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster. The opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website on the Board of Zoning Appeals home page and on the Albemarle County calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received. <https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals>.

BOARD OF ZONING APPEALS ELECTRONIC MEETING GUIDELINES

Thank you for attending the Board of Zoning Appeals (BZA) electronic 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 unused 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 Chairman will open the public hearing to comments from the public. At the end of these proceedings the Chairman 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. For staff and applicants, there is a **15 minute time limit for presentations and a 5 minute time limit for rebuttal comments.**

The BZA reserves the right to digress from these guidelines in any particular case.

To Members of the Public:

If you wish to address the BZA during the public hearing, please follow the instructions below:

- Log in/call in early.
- Via Web: Use the "Raise Hand" icon to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.
- Via Phone: Press *9 to notify the BZA Clerk that you would like to sign up to address a public hearing item. The Clerk will acknowledge you and list your name on the sign-up sheet for the specific public hearing item. When the public hearing is opened, the Clerk will introduce each speaker for comment.

If you do not sign up to speak prior to the meeting, an opportunity to sign up will be given prior to the close of the public hearing. When this opportunity is announced, follow the directions above to notify the BZA Clerk that you would like to provide comment on a public hearing item.

Time keeping is conducted through a timer. Each speaker is allotted **three (3) minutes** to comment. The timer will commence when you begin speaking; you will be notified when three minutes has ended, and you are requested to bring your comments to a close as your microphone will be muted after several seconds.

In order to give all speakers equal treatment and courtesy, the BZA requests that speakers adhere to the following guidelines:

- When called to address the BZA, please state your name. For uncommon spellings, please spell your name for the record.
- Address comments directly to the BZA as a whole - open public debate is prohibited.
- You may email written statements and other relevant material to BoardofZoningAppeals@albemarle.org to be included in the record.
- If you represent a group or organization, you may identify the group to be recognized.
- If you exceed your allotted time, you will be asked to end your comments and the microphone will be muted.
- If a speaker does not use all allocated time, the unused time may not be shared with another speaker.
- Speakers are permitted one opportunity to comment during each of the public comment periods per meeting.

Additional Guidelines for Applicants and Appellants addressing the Board:

- 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 his 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 his or her 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.

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 each BZA member or to his or her place 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.

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 a party to the case or his/her 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 his/her 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 therefore.

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.* If any member abstains from voting on any motion, he shall state his abstention. The abstention 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.

7. 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.

8. 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.

9. 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.

* * * * *

(Adopted: 1-5-2016)

(Last Amended: 04-02-2019)

(Re-adopted: 01-07-2020, 01-05-2021, 02-01-2022)

2022 Submission and Review Schedule - DRAFT

Board of Zoning Appeals

Deadline for Filing (3 P.M.)	First Advertisement	Second Advertisement	Board of Zoning Appeals Meeting COB Auditorium (2 P.M.)
Monday	Monday	Monday	No sooner than Tuesday
Nov 01 2021	Dec 20 2021	Dec 27 2021	Jan 04
Dec 06 2021	Jan 17	Jan 24	Feb 01
Jan 03	Feb 14	Feb 21	Mar 01
Jan 31	Mar 21	Mar 28	Apr 05
Feb 28	Apr 18	Apr 25	May 03
Apr 04	May 23	May 30	Jun 07
May 02	Jun 20	Jun 27	Jul 05
Jun 06	Jul 18	Jul 25	Aug 02
<i>Jul 05</i>	Aug 22	Aug 29	Sep 06
Aug 01	Sep 19	Sep 26	Oct 04
<i>Sep 06</i>	Oct 17	Oct 24	Nov 01
Oct 03	Nov 21	Nov 28	Dec 06
Oct 31	Dec 19	Dec 26	Jan 03 2023
Dec 05	Jan 23 2023	Jan 30 2023	Feb 07 2023
<i>Jan 03 2023</i>	Feb 20 2023	Feb 27 2023	Mar 07 2023
Feb 06 2023	Mar 20 2023	Mar 27 2023	Apr 04 2023

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 2022.

2023 dates are tentative.



Albemarle County

Planning Application

Community Development Department
4011 Fire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

PARCEL / OWNER INFORMATION

TMP **04900-00-00-024A0** Owner(s): **5600 TURKEY SAG ROAD LLC**

Application # **AP202100003**

PROPERTY INFORMATION

Legal Description **ACREAGE PARCEL A**
Magisterial Dist. **Rivanna** Land Use Primary **Residential -- Single-family (incl. modular homes)**
Current AFD **Blue Run** Current Zoning Primary **Rural Areas**

APPLICATION INFORMATION

Street Address **5600 TURKEY SAG RD KESWICK, 22947**

Application Type **Appeal of Zoning Administrator's Determination**

Project **APPEAL OF LOD2021-13 - HOMESTAY OWNERSHIP ELIGIBILITY - DIGITAL**

Received Date **11/24/21**

Received Date Final

Submittal Date **12/07/21**

Total Fees **743.36**

Closing File Date

Submittal Date Final

Total Paid **743.36**

Revision Number

Entered By

Jennifer Smith

11/29/2021

Comments

Legal Ad

SUB APPLICATION(S)

Type	Sub Application	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	5600 TURKEY SAG ROAD LLC	200 GARRETT ST SUITE 0	CHARLOTTESVILL	22902	9177226284	
Primary Contact	KELSEY SCHLEIN	912 E HIGH ST.	CHARLOTTESVILL	22902	4342275140	

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2001-07 SIGN # _____
 ZONING ORDINANCE SECTION: _____
 Fee Amount \$ 713.36 Date Paid 11/24/21 By who? Shimp Engineering Receipt # (64)748097V2830534 Ck# _____ By: JS

Application for Appeal of Zoning Administrator's Determination



Appeal of Zoning Administrator's Determination = \$295.36
 Application \$284 + Technology surcharge \$11.36

Initial notice fee to be provided in conjunction with an application,
 for preparing and mailing notices and published notice = \$448

FEES for re-advertisement and notification of public hearing after advertisement of a public hearing and a deferral is made at the applicant's request

➤ Preparing and mailing or delivering each notice after fifty (50)	\$237
➤ Preparing and mailing or delivering each notice after fifty (50)	\$1.19 for each additional notice + actual cost of first-class postage
➤ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between \$150 and \$250)

Contact Person (Who should we call/write concerning this project?): Kelsey Schlein

Address 912 E High St. City Charlottesville State VA Zip 22902

Daytime Phone (434) 227-5140 Fax # () E-mail kelsey@shimp-engineering.com

Owner of Record 5600 Turkey Sag Road LLC

Address 5600 Turkey Sag Road LLC City Keswick State VA Zip 22947

Daytime Phone (917) 722-6284 Fax # () E-mail bradford@twoblindbrothers.com

Applicant (Who is the Contact person representing?): same as owner

Address _____ City _____ State _____ Zip _____

Daytime Phone () Fax # () E-mail _____

230625

Project Name: Appeal of LOD 2021-13 - Homestay Ownership Eligibility

Tax map and parcel: 04900-00-00-024A0 **Zoning:** Rural Areas

Physical Street Address (if assigned):
5600 Turkey Sag Road

Location of property (landmarks, intersections, or other):

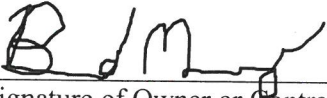
The following information shall be submitted with the application and is to be provided by the applicant:

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

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

Owner/Applicant Must Read and Sign

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


Signature of Owner or Contract Purchaser, Agent

11/23/2021
Date

5600 Turkey Sag Road by Bradford Manning its Manager
Print Name

917-722-6284
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote: _____

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

COMMUNITY
DEVELOPMENT



County of Albemarle
COMMUNITY DEVELOPMENT

LEA BRUMFIELD
Senior Planner II, Zoning
lbrumfield@albemarle.org
tel: 434-296-5832 ext. 3023

October 27, 2021

Howe Whitman Jr.
1202 Simmons Gap Road
St. George, VA 22935
howewhitman@gmail.com

RE: OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY – 1202 Simmons Gap Road at TMP 00900-00-00-024D0 (“the Property”)

Mr. Whitman:

In response to your request for a determination regarding the ownership qualifications of the Property for a Homestay Zoning Clearance, I have consulted with the Zoning Administrator and the County Attorney. It is my official determination that in order to meet the requirements for a Homestay Zoning Clearance, the Property must be held by a natural person residing on the Property, or a family trust whose beneficiary resides on the Property.

Background

On August 7, 2019, the Albemarle County Board of Supervisors adopted an ordinance regulating the use of homestays. These regulations replaced the regulations for the two uses formerly known as “Accessory Tourist Lodging” and “Bed and Breakfast” under the single use of “homestays.” This use is defined as:

“Homestay. “Homestay” means an accessory residential use providing transient lodging and rooms for dining and meetings for use by homestay guests provided that the dining and meeting rooms are subordinate to the homestay use. A homestay use may offer no more than five guest rooms for lodging.”

(County Code § 18-3.1)

County Code § 18-5.1.48(j) differentiates between (1) homestays located on either (a) parcels of less than five acres in the Rural Areas Zoning District or (b) parcels of any size that allow residential use in the Residential Zoning Districts or Planned Development Zoning Districts, and (2) homestays located on parcels of five acres or more in the Rural Areas district.

The Property at 1202 Simmons Gap Road is located in the Rural Areas district on a 24.91-acre parcel. The regulations governing a homestay use at the Property include the requirement of owner occupancy:

- (vi.) *Owner occupancy.* The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals.
(County Code § 18-5.1.48 (j)(2)(vi), emphasis added)

Homestay special exceptions are currently limited to the following waivers or modifications:

- (i.) More than two guest rooms and/or the use of an accessory structure in association with a homestay on parcels in the Residential or Planned Development districts, or Rural Areas district parcels of less than five acres;
- (ii.) Reduction in minimum applicable yards for a structure or parking used in whole or in part for a homestay.
- (iii.) The use of an accessory structure built after August 7, 2019.
- (iv.) Resident Manager occupancy instead of owner occupancy as required by 5.1.48(j)(1)(iv).
(County Code § 18-5.1.48 (i)(1), emphasis added)

Note that eligibility for the Resident Manager special exception is limited to parcels regulated by section 5.1.48(j)(1)(iv), which applies to owner occupancy on: “(a) a parcel of less than five acres in the Rural Areas Zoning District or (b) a parcel of any size that allows residential use in the Residential Zoning Districts or Planned Development Zoning Districts.”

Therefore, parcels of five acres or more in the Rural Areas Zoning District are not eligible for this special exception.

The homestay regulations were originally adopted by the Board of Supervisors on August 7, 2019. At a Work Session on June 2, 2020, the Board discussed a possible ordinance amendment to allow large Rural Areas parcels to apply for the resident manager special exception. The Board expressly declined to pursue such an amendment, citing concerns about business entities running homestays across multiple parcels.

Analysis

Under *County Code* § 18-5.1.48(j)(2)(vi), the owners of parcels conducting a homestay use must reside on the subject property. Because business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use.

As your property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel over five acres in size, it is not subject to *County Code* § 18-5.1.48(j)(1)(iv), and therefore is not eligible for a special exception to permit a resident manager under *County Code* § 18-5.1.48(i)(1)(iv).

A trust whose beneficiary is a natural person(s) may hold a property with a homestay use on it, as the trust is directly tied to the natural person(s). The natural person(s) named as beneficiary of the trust must reside on the property, and it must be their full-time residence.

Conclusion

The Homestay Zoning Clearance application submitted for the Property is Pending on the basis of conversations between the applicant and Zoning Staff, regarding the applicant’s intention to move the Property from the limited liability company River Rock LLC to the family trust currently holding the limited liability company. The application was deemed complete on May 10, 2021. The application has not been dismissed. Homestay Zoning Clearance applications are generally regarded as “void” following three months of inactivity on the part of the applicant in response to staff review requests or additional application requirements. The application of this Letter of Determination regarding the ownership eligibility for a Homestay Zoning Clearance serves as activity to further the validity of the application.

Because the Property at 1202 Simmons Gap Road is a Rural Areas Zoning District parcel of over five acres, it is not eligible for a special exception to permit a resident manager. It may, however, be held by a trust whose beneficiary resides on the property.

You may have a right to appeal this determination within thirty (30) days of this notice, in accordance with Virginia Code § 15.2-2311. This determination will be final and unappealable if not appealed within 30 days.

An appeal may be taken only by filing an appeal application with the Zoning Administrator and the Board of Zoning Appeals, in accordance with § 18-34.3 of the Zoning Ordinance, along with a fee of \$295.36 plus the actual cost of advertising the appeal for public hearing.

Applications for Appeal of the Zoning Administrator’s Determination are available at the Department of Community Development located at 401 McIntire Road, Charlottesville, Virginia 22902 or online at <https://www.albemarle.org/government/community-development/apply-for/letter-of-determination-or-zoning-compliance>. This form applies to the appeal of a decision of the zoning administrator or any other administrative officer pertaining to the Zoning Ordinance.

Regulations pertaining to the filing of an appeal to the Board of Zoning Appeals are located in Chapter 18, Section 34.3 of the Zoning Ordinance. They may be reviewed online at <https://www.albemarle.org/government/community-development/advisory-boards/board-of-zoning-appeals>.

If you have any questions, please contact me.

Sincerely,



Lea H. Brumfield
Senior Planner II, Designee of the Zoning Administrator

Albemarle County
401 McIntire Road, Charlottesville, VA 22902
lbrumfield@albemarle.org

Copy: Bart Svoboda, Zoning Administrator; Andy Herrick, Deputy County Attorney

Albemarle County Community Development
401 McIntire Rd
Charlottesville, VA 22902

November 24, 2021

RE: APPEAL OF OFFICIAL DETERMINATION OF HOMESTAY OWNERSHIP ELIGIBILITY (LOD2021-13)

I, Bradford Manning, am an aggrieved person by the Official Determination made regarding homestay ownership eligibility; this is an appeal to the Official Determination identified as LOD2021-13 that was issued to Howe Whitman Jr. on October 27, 2021. Mr. Whitman and I have similar ownership structures on our properties that are in the Rural Areas zoning district of Albemarle County and are greater than five acres. We both applied to Albemarle County Community Development to operate homestays on our respective properties.

Background:

In July 2021, I applied with Albemarle County Community Development to conduct a homestay (HS202100037) in my private single-family residence located on Albemarle County tax parcel 04900-00-00-024A0 (the "Property"); the Property has a physical address of 5600 Turkey Sag Road. In September 2021, I received a phone call from the Albemarle County Zoning Department notifying me of the denial of my application due to the ownership of the Property being a limited liability company.

The Property is owned by 5600 Turkey Sag Road, LLC (the "LLC") which is wholly-owned by the 2012 PBM GRAT fbo Bradford James Manning, a grantor retained annuity trust for the benefit of me, Bradford Manning. I am the sole manager of the LLC. The LLC's address is the Property address.

Sec. 5.1.48 of the Albemarle County Zoning Ordinance regulates homestays in the County. My property is located within the Rural Areas Zoning District and is greater than five acres, and therefore my property is subject to the parcel specific regulations enumerated in Sec. 5.1.48(j)(2), which includes the owner occupancy requirement.

Sec. 5.1.48(j)(2)(vi) *Owner occupancy*. The owner of a parcel conducting a homestay use must reside on and be present at the subject property during the homestay use except during approved whole house rentals.

As aforementioned, the LLC's address registered with the Virginia State Corporation Commission is the Property address; the LLC resides at the Property.

Sec. 3.1 of the Albemarle County Zoning Ordinance defines owner:

Owner. "Owner" means the owner or owners of the fee simple interest of real property.

The LLC is the owner of the fee simple interest of real property.

Appeal:

LOD2021-13 makes the official determination that "in order to meet the requirements for a Homestay Zoning Clearance, the [p]roperty must be held by a natural person residing on the [p]roperty, or a family trust whose beneficiary resides on the [p]roperty." Albemarle County's definition of "Owner" is not exclusive to natural persons and there's nothing in the County Code that suggests that a beneficial owner of such fee simple interest is not an Owner for County Code purposes. The County's position discourages the use of limited liability companies to hold real estate, which provide privacy protection and liability protection. Owning property through a limited liability company for these reasons is completely legitimate and the County's homestay ordinance should not favor landowners who do not seek privacy and liability protection over those who do. Ultimately, I take all actions for the Property and the trust for which I am the beneficiary and I am residing on the Property—it should count for this purpose.

The Analysis section of LOD2021-13 further states that, "[b]ecause business entities (such as limited liability companies) have no physical presence, they cannot reside on a property, and cannot qualify for a homestay use." The County Code

does not define “reside,” and there is no reference in the County Code that suggests that to “reside” is an action that can only be fulfilled by a natural person. The Cambridge Dictionary defines reside as “to live, have your home, or stay in a place¹” and some of Cambridge’s examples of reside include:

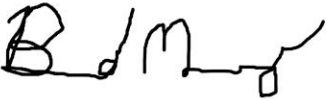
- *The answer resides in the calmness of your mind*
- *Ideas can come from anywhere, and talent resides everywhere*
- *The more accurate way to tell where language functions reside is to do a brain scan*

These examples demonstrate that reside is an action that can be performed by things other than a natural person.

Given the definition of Owner in the County Code, and that “reside” is not defined as an action that is exclusive to a natural person in the County Code, the owner occupancy requirement can be met by an owner other than a natural person.

In the case of my homestay application HS202100037, the LLC, of which I am the sole manager, is the owner of the Property and the LLC’s principal office address, the physical location of the principal executive offices, is the Property address. Therefore the ownership structure of my property is permitted under the Albemarle County homestay regulations; I request the Board of Zoning Appeals reconsider the Official Determination of Homestay Ownership Eligibility (LOD2021-13).

Sincerely,

A handwritten signature in black ink, appearing to read 'B Manning', with a stylized flourish at the end.

Bradford Manning
Manager, 5600 Turkey Sag Road LLC

¹ Reside. <https://dictionary.cambridge.org/us/dictionary/english/reside>. Retrieved November 2021



Albemarle County

Community Development Department
401 McIntire Road Charlottesville, VA 22902-4596
Voice : (434) 296-5832 Fax : (434) 972-4126

Planning Application

PARCEL / OWNER INFORMATION

TMP **00900-00-00-024D0**

Owner(s): **WHITMAN, HOWE D, TRUSTEE OF THE HOWE D WHITMAN JR F.**

Application # **AP202100003**

PROPERTY INFORMATION

Legal Description	ACREAGE		
Magisterial Dist.	White Hall	Land Use Primary	Residential -- Single-family (incl. modular homes)
Current AFD	Not in A/F District	Current Zoning Primary	Rural Areas

APPLICATION INFORMATION

Street Address 5600 TURKEY SAG RD KESWICK, 22947

Entered By

Application Type **Appeal of Zoning Administrator's Determination**

Jennifer Smith
11/29/2021

Project **APPEAL OF LOD2021-13 - HOMESTAY OWNERSHIP ELIGIBILITY - DIGITAL**

Received Date **11/24/21** Received Date Final Submittal Date **12/07/21** Total Fees **743.36**

Closing File Date Submittal Date Final Total Paid **743.36**

Revision Number

Comments

Legal Ad

SUB APPLICATION(s)

Type	Sub Application	Comment

APPLICANT / CONTACT INFORMATION

ContactType	Name	Address	CityState	Zip	Phone	PhoneCell
Owner/Applicant	5600 TURKEY SAG ROAD LLC	200 GARRETT ST SUITE 0	CHARLOTTESVILL	22902	9177226284	
Primary Contact	KELSEY SCHLEIN	912 E HIGH ST.	CHARLOTTESVILL	22902	4342275140	

Signature of Contractor or Authorized Agent

Date

FOR OFFICE USE ONLY AP # 2001-07 SIGN # _____
 ZONING ORDINANCE SECTION: _____
 Fee Amount \$ 713.36 Date Paid 11/24/21 By who? Shimp Engineering Receipt # (64)748097V2830534 Ck# _____ By: JS

Application for Appeal of Zoning Administrator's Determination



Appeal of Zoning Administrator's Determination = \$295.36
 Application \$284 + Technology surcharge \$11.36

Initial notice fee to be provided in conjunction with an application,
 for preparing and mailing notices and published notice = \$448

FEES for re-advertisement and notification of public hearing after advertisement of a public hearing and a deferral is made at the applicant's request

➤ Preparing and mailing or delivering each notice after fifty (50)	\$237
➤ Preparing and mailing or delivering each notice after fifty (50)	\$1.19 for each additional notice + actual cost of first-class postage
➤ Published notice (published twice in the newspaper for each public hearing)	Actual cost based on a cost quote from the publisher (averages between \$150 and \$250)

Contact Person (Who should we call/write concerning this project?): Kelsey Schlein

Address 912 E High St. City Charlottesville State VA Zip 22902

Daytime Phone (434) 227-5140 Fax # () E-mail kelsey@shimp-engineering.com

Owner of Record 5600 Turkey Sag Road LLC

Address 5600 Turkey Sag Road LLC City Keswick State VA Zip 22947

Daytime Phone (917) 722-6284 Fax # () E-mail bradford@twoblindbrothers.com

Applicant (Who is the Contact person representing?): same as owner

Address _____ City _____ State _____ Zip _____

Daytime Phone () Fax # () E-mail _____

23065

Project Name: Appeal of LOD 2021-13 - Homestay Ownership Eligibility

Tax map and parcel: 04900-00-00-024A0 **Zoning:** Rural Areas

Physical Street Address (if assigned):
5600 Turkey Sag Road

Location of property (landmarks, intersections, or other):

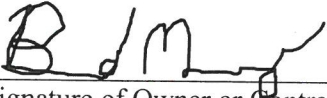
The following information shall be submitted with the application and is to be provided by the applicant:

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

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

Owner/Applicant Must Read and Sign

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



Signature of Owner or Contract Purchaser, Agent

11/23/2021
Date

5600 Turkey Sag Road by Bradford Manning its Manager
Print Name

917-722-6284
Daytime phone number of Signatory

Board of Zoning Appeals Action/vote: _____

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

COMMUNITY DEVELOPMENT

ALBEMARLE COUNTY BOARD OF ZONING APPEALS
VIRTUAL MEETING
TUESDAY, JULY 6, 2021 – 2:00 P.M.

Board Members: John Shepherd
 Marcia Joseph
 Ed Robb
 Edward (Bo) Carrington
 Kurt Burkhart

Staff Members: Bart Svoboda, Zoning Administrator
 Marsha Alley, BZA Clerk and Recorder
 Nicole Jones, A/V Specialist

County Attorney: Andy Herrick, Deputy County Attorney

BZA Attorney: James Bowling, IV (absent)

1. Call to Order

The meeting was called to order at 2:00 p.m. by Chairman John Shepherd.

Mr. Shepherd read the following statement into the record: “Good afternoon. as Chairman of the Albemarle County Board of Zoning Appeals, I call the meeting for July 6, 2021 to order. This is an electronic meeting. This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(16), ‘An Ordinance to Ensure the Continuity of Government During the COVID-19 Disaster.’”

Mr. Shepherd identified those members electronically present. All Board members were present.

Mr. Shepherd stated, “The opportunities for the public to access and participate in the electronic meeting are posted on the Albemarle County website, on the Board of Zoning Appeals homepage, and on the Albemarle County Calendar. Participation will include the opportunity to comment on those matters for which comments from the public will be received.”

2. Establish a Quorum

Mr. Shepherd established a quorum, with all of the Board members present.

3. Public Hearings

There were no public hearings scheduled.

4. Welcome Mr. Burkhart

Mr. Shepherd introduced Mr. Kurt Burkhart and said the group welcomes him and looks forward to working with him.

4. Approval of Minutes

A. May 4, 2021

Mr. Robb said he would be abstaining from the vote because he was absent from the meeting.

1 Mr. Shepherd would like the names of those present added to the minutes to meet minimum requirements
2 for regulatory purposes.

3
4 Mr. Burkhart said he would also like to abstain from voting, as he was not appointed to the Board at the
5 time of the May 4, 2021 meeting.

6
7 Mr. Svoboda stated that the names of all in attendance and absent from the last meeting are included at the
8 top of the minutes. He said he is verifying that this is sufficient.

9
10 Mr. Shepherd said this is sufficient.

11
12 **MOTION:** Ms. Joseph moved to approve the minutes of May 4, 2021. Mr. Carrington seconded the
13 motion, which carried unanimously (3:0). Mr. Robb and Mr. Burkhart abstained from the vote.

14
15 **5. Old Business**

16 **A. Update on Formatting of Meeting Minutes**

17
18 Mr. Shepherd said that during the last meeting, they discussed reducing the minutes from near verbatim to
19 something more limited that captures the minimum requirements for minutes and records decisions, votes,
20 etc. He said the Board had asked staff to work with Beth Golden to follow the format that the
21 Architectural Review Board uses, which is felt to be succinct but clear.

22
23 Mr. Shepherd said he thought Ms. Golden did a good job of capturing the meeting. He said that in the
24 future, he would try to clarify the discussions at the end so that the decisions and actions, along with their
25 bases, are made as clear as possible. He noted that the Board has the opportunity to review and seek
26 changes to every set of minutes.

27
28 Mr. Shepherd expressed his appreciation to Ms. Joseph for making the minutes process a topic to the
29 Board and staff. He said there was much discussion between Ms. Golden and staff in working out details,
30 and oversight by Mr. Herrick to ensure that even if the volume of minutes were reduced, the requirements
31 are still included. He commented that he appreciates everyone's efforts.

32
33 Ms. Joseph said it was incredibly effective to have Mr. MacCall typing on the screen and designate why it
34 was or was not approved, particularly any conditions. She said this provided words that everyone could
35 look at and agree to simultaneously, instead of being written down later or just in the minutes. She said
36 she hoped the Board would continue with that process and asked Mr. Svoboda for that confirmation.

37
38 Mr. Svoboda said that staff would do their best to adjust the motions in real time, which requires
39 reconfiguring of the PowerPoint if there's not an agreement on a decision to pinpoint the rationale. He
40 said if everything is captured at the end, it consolidates the conclusions both in reviewing the minutes
41 upon completion and any wordsmithing needed during the meeting in real time.

42
43 Ms. Joseph thanked Mr. Svoboda for his input.

44
45 Mr. Shepherd also expressed his appreciation.

46
47 Mr. Burkhart asked what the allocation of time has been for those compiling minutes in the past.
48

1 Mr. Svoboda said that the current process is to record the meeting and send the recording to the
2 transcriptionist, who turns them into minutes for the Board. He said there have been various versions, and
3 this one has been used for a little over a year. He said before the minutes read like a lengthy book with no
4 page numbers and no references on the side column.

5
6 He said that something like an appeal by an applicant or other aggrieved party could necessitate a
7 verbatim set of minutes. He said sometimes those situations are known ahead of time, and the Board can
8 make that request prior to the first draft of summary minutes—but moving forward, the summary minutes
9 would be effective. Mr. Svoboda said staff review time has not been tracked in house, but it takes staff at
10 least one whole day to review the tape. He explained that from a workload perspective, it's more efficient
11 to send it to the transcriptionist.

12
13 Mr. Shepherd said that a 90-minute to two-hour meeting covering a hearing could result in minutes of 40-
14 50 pages, and they were long and difficult to dig out the important points. Mr. Shepherd said that the
15 improvement could be appreciated if some of the old versions had been reviewed—particularly items
16 appealed in circuit court, which meant compiling minutes from several meetings and a voluminous pile of
17 paper.

18
19 Ms. Joseph jokingly said that the example Mr. Shepherd is referring to had 592 pages.

20
21 Mr. Shepherd said it took a lot to whittle down that large volume to telling a succinct and complete story.
22 He said there was a lot of motivation from that, which influenced what is being presented for minutes
23 now. He said he is happy with the change and hopes others are as well.

24
25 Mr. Robb asked for confirmation that the meetings are recorded.

26
27 Mr. Shepherd confirmed they are.

28
29 Mr. Robb said if any cases went to court, the best evidence rule would apply, and he suggests that the
30 actual recordings would be the evidence, not the transcripts, though he acknowledged that Mr. Herrick
31 may correct that assumption.

32
33 Mr. Herrick said the parties of the case could submit whatever evidence they want for the proceedings,
34 but his sense is that a judge would prefer a transcript as it would be quicker for the judge to read and go
35 back to, rather than an audio or video recording.

36
37 Mr. Robb said that is correct, but the transcript could be used in place of the recording.

38
39 Mr. Herrick confirmed and said there would need to be an agreement that the written transcript is an
40 authoritative and authentic and correct recording of the meeting itself. He said that would need to be
41 stipulated prior to entering it into evidence.

42
43 Mr. Robb said that is correct, but an attorney from either side could say they don't agree with the
44 transcript. He then asked if the actual recording is the evidence.

45
46 Mr. Herrick said that would be for the judge to decide to accept a written transcript or to have an
47 audio/video recording.

1 Mr. Robb said yes, but the judge could decide that the recording is necessary and that the recording is the
2 best evidence.
3
4 Mr. Herrick again reiterated that the judge would decide what would be accepted.
5
6 Mr. Robb said that he does not disagree, and that maybe he is too much involved in criminal cases, but the
7 best evidence would be the recording.
8
9 Mr. Herrick said the judge would make that determination.
10
11 Mr. Robb said he does not disagree with that.
12
13 Mr. Shepherd said that the efforts to reduce the volume of the minutes is done with full recognition that
14 the meeting is recorded and every syllable is available for study if others want to find that.
15
16 Mr. Robb said that is correct, and he is not disagreeing with that either. He said he thinks a statement was
17 made that the minutes were significant, and they are, but the most significant evidence would be the
18 actual recording. He asked for confirmation from Mr. Herrick.
19
20 Mr. Herrick said he hates to keep repeating himself but said that it would be for the judge to decide, but
21 it's good to have both available.
22
23 Mr. Robb said he knows that, and that is not the question.
24
25 Mr. Shepherd said he thinks Mr. Robb's point is that the recording is the source material, and anything
26 written after that is kind of derivative, so the recordings are very important.
27
28 Mr. Robb confirmed and said that was his point and thanked Mr. Shepherd for acknowledging.
29
30 Mr. Shepherd said they will move forward with the new format, and while the Board will continue to
31 review and discuss, he feels it is a good process moving forward. Mr. Shepherd then expressed thanks to
32 Ms. Golden for boiling things down. He said he knows it's harder to make choices about what's being
33 typed than going after every word heard as it requires more judgment and effort of a different sort.
34
35 Mr. Shepherd asked if there was any further discussion and said there is no Board action required.
36
37 **6. New Business**
38 A. Brief County Cybersecurity Update
39
40 Mr. Svoboda said there have been multiple conversations with IT and it is unclear if the private BZA web
41 page access would remain since albemarle.org email addresses are not used. He said they would still
42 receive their email packets, and all the information is the same as what is posted online except for things
43 like materials for executive session. He said that the Board is not subject to the Knowbe4 cybersecurity
44 training, and the goal is to reduce unnecessary access and trainings by keeping them in a more public
45 space.
46
47 Ms. Joseph said that this was welcome and that she is using her own computer and was concerned about
48 completing something that could cause cross-contamination to her personal computer.
49

1 Mr. Svoboda said that he apologizes for any confusion, but with all of the cyberattacks that are happening,
2 staff wants to ensure everything is secure, and he appreciates the Boards understanding.

3
4 Mr. Robb asked if anyone had taken the cybersecurity course.

5
6 Mr. Shepherd said he did not.

7
8 Mr. Svoboda said he did.

9
10 Mr. Robb said he thought it was pretty good. He said that it's been done for two consecutive years now
11 and he thought it was a requirement, but it came from outside the County, which gave him pause.

12
13 Mr. Shepherd said he struggled getting into the program and was then notified by Ms. Alley that it was
14 not required to complete at that point.

15
16 Mr. Robb was concerned that he was in the wrong by completing it.

17
18 Mr. Svoboda said it is a good course and is helpful, but from this point forward, it would not be required
19 for the BZA to complete the course.

20
21 Mr. Robb said he is glad he took it and recommends it to everyone.

22
23 Ms. Alley said that Knowbe4 is a company contracted to provide training for Albemarle local government
24 regarding protocols and policies. She assured Mr. Robb that his completing the course is not an issue.
25 She said that IT has looked at the profiles of the BZA members and has now removed the albemarle.org
26 association with those email addresses, so training will no longer be required.

27
28 Mr. Shepherd said that if there is a requirement in the future, it should be made clear as to what is needed
29 from each Board member.

30
31 Ms. Alley confirmed this.

32 33 **B. Renewal of BZA Legal Services –Closed Session**

34
35 Mr. Shepherd moved to a closed session.

36
37 Mr. Shepherd asked Ms. Alley to talk about the process first to make sure the Board is clear. He said that
38 he is going to read something into the minutes and then the Board members will close this current online
39 meeting session and follow the link provided in the email to the closed session.

40
41 Ms. Alley said this is correct.

42
43 Mr. Shepherd said he would like to set a time to reconvene and confirmed with Board members that 10
44 minutes was an acceptable time frame to discuss the topic.

45
46 **MOTION:** At 2:35 p.m., Mr. Shepherd moved that the Albemarle Board of Zoning Appeals goes into a
47 closed meeting pursuant to section 2.2-3711(A) of the code of Virginia under § 1 to discuss employment
48 of legal counsel for the Board of Zoning Appeals. Ms. Joseph seconded the motion, which passed
49 unanimously (5-0).

1
2 Mr. Shepherd said the Board is going to now leave this meeting and will reconvene at 2:45 p.m.

3
4 Ms. Alley interjected to say that Mr. Herrick and Mr. Svoboda should remain in this meeting until the
5 Board members rejoin after the closed session.

6
7 **CLOSED SESSION**

8
9 Mr. Svoboda asked Mr. Herrick if there were any protocol issues if a Board member did not rejoin the
10 meeting.

11
12 Mr. Herrick said there are none if roll call is taken again to reopen the session.

13
14 **MOTION:** At 2:45 p.m., Mr. Shepherd moved that the Albemarle County Board of Zoning Appeals
15 certified by a recorded vote, that to the best of each member's knowledge, only public business matters
16 lawfully exempted from the open meeting requirements that Virginia Freedom of Information Act and
17 identified in the motion authorizing the closed session were heard, discussed, or considered in the closed
18 session. Mr. Robb seconded the motion, which passed unanimously (4-0). Mr. Burkhart was absent as
19 there were technical issues in rejoining the meeting.

20
21 Mr. Carrington stated that he was going to have to step out for another commitment in about five minutes.

22
23 **MOTION:** Ms. Joseph moved that the Board approve the letter written July 7, 2021 to James M. Bowling
24 IV, and the letter will confirm the terms of his legal representation of the Albemarle County Board of
25 Zoning Appeals for the period of July 1, 2021 through June 30, 2022. Mr. Carrington seconded the
26 motion, which passed unanimously (4-0). Mr. Burkhart was absent.

27
28 **C. Status of County Building Posture**

29
30 Mr. Shepherd said the final topic is to discuss the reopening of the building, meeting protocols, etc.

31
32 Mr. Svoboda said currently that issue still under review, and emergency management staff are looking
33 into how to make the transition into either returning fully to the office, allowing the continuation of the
34 current model, or coming up with a hybrid process. Mr. Svoboda said his staff would keep the Board
35 posted.

36
37 Mr. Shepherd asked if Mr. Svoboda had any sense of what has or has not been decided for open meetings.

38
39 Mr. Svoboda said that more than likely, it will be sometime after September before decisions will be
40 made. He said that the hybrid system has been discussed, but the difficulty is with public hearings in
41 terms of scheduling speakers and order. He said there are some technological difficulties that are being
42 explored, but it will likely be a month or more before he knows the direction where things will land.

43
44 Mr. Robb asked if selective meetings could be held in the building when fewer people are required.

45
46 Mr. Svoboda said that was possible, and they would try to keep the protocol as similar as possible and not
47 have special rules for special things. He said public hearings would be kept in one set of protocols versus
48 a community meeting that would be easier access and doesn't have the same burden for recordation.

1 Mr. Robb asked if Mr. Svoboda was part of the decision-making process.
2

3 Mr. Svoboda responded that he is not but may be asked for input. He said that while he is not on the team
4 making that decision, the Director of Community Development is on the team and is aware of the Board
5 and Planning Commission situations.
6

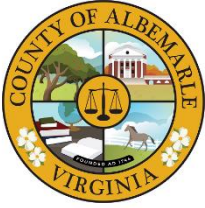
7
8 **7. Adjournment**

9 **MOTION:** Ms. Joseph moved to adjourn the meeting. Mr. Carrington seconded the motion, which passed
10 unanimously (4-0). Mr. Burkhart was absent.
11

12 (Recorded by Marsha Alley and transcribed by Beth Golden)
13

14 Respectfully Submitted,
15
16
17

18
19 _____
20 Edward (Bo) Carrington, Secretary Board of Zoning Appeals
21
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Annual Report - 2021

Board, Commission, Agency, Authority, or Committee Name:
Board of Zoning Appeals (BZA)

Committee Members as of July 1, 2020:

John Shepherd, Chair

Ed Robb, Vice-Chair

Marcia Joseph, Secretary

Edward (Bo) Carrington (new appointment as of 7/1/2020; oath administered on 8/14/2020)

Randy Rinehart (did not seek reappointment at term expiration as of May 23, 2021)

Meeting Frequency:

The BZA meets on the first Tuesday of each month at 2 pm. Meetings are not held if there is no business pending.

In FY2020-2021, the BZA held eight (8) meetings.

Meeting Attendance:

July 7, 2020

Present:

John Shepherd
Marcia Joseph
Randy Rinehart
Ed Robb

Absent:

August 4, 2020

Present:

John Shepherd
Marcia Joseph
Randy Rinehart
Ed Robb

Absent:

September 1, 2020

Present:

John Shepherd
Marcia Joseph
Edward (Bo) Carrington (first meeting serving on BZA)
Randy Rinehart
Ed Robb

Absent:

October 6, 2020

Present:

John Shepherd
Marcia Joseph
Edward (Bo) Carrington
Randy Rinehart
Ed Robb

Absent:

November 10, 2020

Present:

John Shepherd
Marcia Joseph
Edward (Bo) Carrington
Randy Rinehart
Ed Robb

Absent:

December 1, 2020

Present:

John Shepherd
Marcia Joseph
Edward (Bo) Carrington
Randy Rinehart
Ed Robb

Absent:

January 5, 2021

Present:

John Shepherd
Marcia Joseph
Edward (Bo) Carrington
Randy Rinehart
Ed Robb

Absent:

May 4, 2021

Present:

John Shepherd
Marcia Joseph
Edward (Bo) Carrington
Randy Rinehart (final meeting due to term expiration)
Ed Robb

Absent:

Summary:

BZA Activities:

- Three (3) applications for appeal of the Zoning Administrator's determination were submitted. Two were withdrawn and one was affirmed by a 5:0 vote
- Two (2) special use permit requests for signs which were both approved with conditions by a 4:0 vote and a 5:0 vote
- One (1) variance request which was granted with conditions by a 5:0 vote
- Two (2) training sessions
- One (1) organizational meeting
- One (1) business meeting to recognize a retiring member

Attached you will find a detailed report for FY 2021.

Milestones:

The BZA celebrated a milestone with Randolph Rinehart who chose not to seek reappointment to the BZA at the end of his term in May 2021. He was a dedicated member for 21 years. His service was celebrated with a resolution at the BZA meeting on May 4, 2021 and again at the BOS meeting on May 5, 2021.

Accomplishments:

The BZA welcomed two (2) new members during this fiscal year which completed the membership.

Challenges:

The BZA, like many other boards, faced the challenges of holding public meetings in an electronic format. The virtual meeting platform brought about some difficulties; however, at some point in the process, things became a bit more comfortable. There are occasional technical difficulties, but the BZA has been able to conduct business successfully.



ALBEMARLE COUNTY BOARD OF ZONING APPEALS

2021 ANNUAL REPORT

I. INTRODUCTION

Virginia Code § 15.2-2308 requires that the Board of Zoning Appeals (BZA) submit a report of its activities to the governing body at least once each year. The following report outlines the BZA's activities from July 1, 2020 through June 30, 2021 (FY2021).

II. PERSONNEL

The BZA consists of five members appointed by the Circuit Court for a term not to exceed five years. The BZA members during FY2021 were:

<u>Member</u>	<u>Term Expiration</u>
<i>John Shepherd, Chairman</i>	Appointed May 23, 2017 for a five-year term to expire May 22, 2022.
<i>Edgar S. Robb, Vice Chairman</i>	Reappointed May 16, 2019 for a five-year term to expire May 23, 2024.
<i>Marcia Joseph, Secretary</i>	Reappointed May 23, 2020 to complete the term to expire May 23, 2025.
<i>Edward "Bo" Carrington</i>	Appointed July 1, 2020 to complete the unexpired term of the late David Bowerman, which term expires May 23, 2023. He began service after being sworn in on August 14, 2020.
<i>Randy Rinehart</i>	Reappointed May 23, 2016 for a five-year term that expired May 23, 2021. He did not seek reappointment at the expiration of his term.

III. OPERATING PROCEDURES

Regular meetings of the BZA were scheduled for the first Tuesday of each month starting at 2:00 p.m., though meetings were not held if no business was pending. The BZA operates with Rules of Procedure adopted January 5, 2016, last revised April 2, 2019, and most recently re-adopted January 5, 2021.

IV. EXPENSES

The BZA does not have a separate budget. Compensation and mileage are included within the budget of the Department of Community Development. Funding for BZA salaries in FY2021 was consistent with prior years. BZA members were paid \$45 per meeting. Compensation expenses for FY2021 totaled \$1,665.00.

In June 2019, the BZA retained the legal services of James M. Bowling, IV of St. John, Bowling, Lawrence, & Quagliana, LLP. Their agreement stipulated that services would be charged at the rate of \$250 per hour, not to exceed \$2,000 for FY2019. In FY2020 and FY2021, the budgeted amount of \$5,000 was allotted for BZA legal counsel. Under the agreement, Mr. Bowling provides legal services even if his billing exceeds the budgeted amount of \$5,000. Legal counsel expenses for FY2021 totaled \$3,875.00.

County staff working with the BZA included the Director of Zoning (Zoning Administrator), Chief of Zoning (Deputy Zoning Administrator), Deputy County Attorney, Planners, Code Compliance Officers, and a Community Development Assistant II who serves as the Recording Secretary.

V. ACTION SUMMARY

The BZA held eight meetings in FY2021. The submittals and actions considered by the BZA are shown in the following tables:

Appeals

Three appeals were processed in FY2021. Two were forwarded to the BZA.

<u>Application #</u>	<u>Appellant or Project Name</u>	<u>Action</u>	<u>Issue</u>
AP2020-001	R.A. Yancey Lumber Corporation	On 8/4/2020, the BZA voted 4:0 to defer this appeal to 9/1/2020. The Board of Supervisors subsequently granted certain special exceptions to the appellant owner. Prior to the 9/1/2021 BZA meeting, the appellant then withdrew AP2020-001. The underlying VIO-2019-428 was abated based on the special exceptions and 9/28/2020 onsite inspection.	Owner's appeal of a notice of zoning violations
AP2020-002	Justin Shimp	Withdrawn by the appellant after clarification with the Zoning Administrator May 14,2020	Appeal of Zoning Administrator's Determination LOD2019-020 regarding pedestrian trails and accessory uses
AP2020-003	Appeal of Zoning Administrator's Determination regarding North Pointe	Affirmed the Zoning Administrator's determination (5-0) December 1, 2020	Determination regarding North Pointe construction entrance on Pritchett Lane

Special Use Permits

Two special use applications were heard in FY2021.

<u>Application #</u>	<u>Applicant or Project Name</u>	<u>Action</u>	<u>Issue</u>
SP2020-009	North Pointe Middle Entrance Sign	Approved with conditions (4-0) July 7, 2020	Construction of an entrance sign in public right-of-way
SP2020-011	Pantops Corner Bundle Sign	Approved with conditions (5-0) September 1, 2020	Construction of a bundle sign on Stony Point Road

Variance

One variance application was heard in FY2021.

<u>Application #</u>	<u>Applicant or Project Name</u>	<u>Action</u>	<u>Issue</u>
VA2020-001	Corbett Agricultural Barn	Granted the variance with conditions (5-0) December 1, 2020	Setback variance for agricultural barn

Training/Organizational/Business

The Deputy County Attorney provided legal training at the October and November 2020 meetings.

An organizational meeting was held in January 2021.

A business meeting for the approval of minutes and recognition of service for Randolph Rinehart was held in May 2021.

VI. COURT ACTION

During FY2021, two decisions of the BZA were the subject of Circuit Court appeals:

- In re: October 1, 2019 Decision of the BZA [AP2019-004] – On October 31, 2019, the Board of Supervisors appealed the BZA’s reversal of the denial of a home occupation clearance. At issue was the BZA’s reliance on VA Code 15.2-2311 (C) in making its decision.
- In re: February 4, 2020 Decision of the BZA [VA2019-001] -- On March 3, 2020, the Board of Supervisors appealed the BZA’s granting of a variance that had reduced the setback at issue in AP2019-004. At issue was staff’s position that the granting of the variance created a use variance.

In both cases, the BZA compiled and returned its official record to the Circuit Court, as required by *Virginia Code* § 15.2-2314. By law, the BZA is not an active participant in Circuit Court proceedings beyond compiling and submitting its record.

Following a resolution of the underlying issues, on December 18, 2020, the County voluntarily non-suited (withdrew) both of its appeals.