

1 Ms. Margaret Maupin, appellant, said she believed the approved application did not follow the spirit of
2 County Code § 18-5.2A. She said firearms businesses should not be located in homes, and they should be
3 located in commercial spaces to be regulated and monitored. She stated that the approval determination
4 was made in error and caused the following harms as outlined in her presentation:

5 1) There was no investigation aside from a brief site visit to the home to inspect that the square footage
6 was within 400 square feet, noting that there is no formal checklist for this site visit as the approval is a
7 ministerial procedure, meaning that the application and approval is simply a matter of checking boxes.
8 She asked whether the inspection investigated where firearms would be stored and how they would be
9 secured. She asked whether firearm storage requirements were presented to the applicant.

10 2) Twelve (12) firearms-related home occupations have been approved in Albemarle County since 2010,
11 with half of those businesses being approved in the last two and a half years. This applicant is requesting
12 a wider array of firearms-related activities than the previous eleven applicants.

13 3) The storage of firearms at the site is inconsistent with the County's aim to preserve and protect the rural
14 nature of the neighborhood. Public knowledge of the storage of firearms on the site could invite theft
15 which would in turn spread into the peaceful neighborhood. The county nor the ATF have any
16 requirements as to the security measures needed for safe storage of firearms; although, ATF does require
17 a stop on the firearm once it is sold.

18 4) The applicant is required to have a license from the ATF as well as a permit from the county. The ATF
19 lists eight (8) types of licenses, ranging from a collector of curios to a manufacturer or importer of
20 destructive devices. The county has no knowledge or access to the type of license for which the applicant
21 has applied. It is an error, and wholly inappropriate, on the part of the Zoning Administrator to approve
22 this, or any, permit with no knowledge of which type of FFL the applicant is trying to achieve.

23 5) It is incompatible with County Code §18-5.2A, which states that there should be a balance between
24 encouraging limited economic home-based development with the need to protect and preserve the quality
25 and character of the county's agricultural and residential areas. Permitting a firearms business in the midst
26 of a neighborhood was antithetical to the interests of the area that includes homes and farms and that the
27 presence of a gun dealer in the neighborhood would create insecurity and thereby cause harm, changing
28 the peaceful character of the area.

29 6) A firearms business will inevitably be accompanied by a higher crime rate due to the potentially
30 dangerous nature of some gun buyers coming to purchase, repair, or store firearms. The business is
31 located in a residential area of the Rural Areas zoning district and residents do not want the peaceful
32 character altered.

33 7) A firearms business will cause harm by depressing property values and selling prices.

34 8) The permit to manufacture and sell guns was issued for the business that is within three to six miles of
35 two elementary schools which poses a danger for the students by being exposed to possible gun violence.

36 9) The presence of the business would increase traffic and accidents at the intersection of Free Union
37 Road and Woodlands Road.

38 10) The criteria for approval did not consider the community concerns and opposition regarding a
39 firearms business in the neighborhood as demonstrated by the more than 182 signatures on the petition in
40 opposition to the application. There are six (6) abutting parcels (5 property owners); three of the five
41 abutting property owners (60%) oppose the approval of the application.

42 11) This home occupation interferes with the quality and character of the neighborhood as referenced on
43 the county web site as requirements for home occupations.

44 12) This zoning decision does not serve the purpose of zoning as referenced in Virginia Code §15.2-
45 2283. Allowing a firearms business as a home occupation does not promote the health, safety, or general
46 welfare of the public.

47 13) The Virginia Code §15.2-2200 encourages localities to improve the public health, safety,
48 convenience, and welfare of citizens. The Zoning Administrator's approval of this application is counter
49 to the stated goal in the Code of Virginia. As a result of this error, other unknown dangers could arise
50 which could negatively impact the safety and security of the neighborhood.

1 Ms. Maupin closed by apologizing to the applicant for using the wrong wording in regard to his standing
2 with the Virginia bar to note the associate or not practicing status. She stated that June 2nd was National
3 Gun Violence Awareness Day, noting that four days later she stands before the BZA trying to reduce gun
4 violence in this small way, hoping that the BZA will make the decision to reject the Zoning
5 Administrator's approval of this application and any further firearms businesses in homes. She asked for
6 those in attendance who support and sponsored the appeal and anyone who opposed the firearm business
7 permit to stand. She asked, should any harm happen to anyone in the community or in her family related
8 to this approved firearms related home business, who should be held accountable?
9

10 Ms. Alley read the rules for public comment.

11
12 Linda Barr, 5244 Free Union Road, said she was opposed to the home occupation use, and she expressed
13 concerns about impacts on safety and the character of the area.
14

15 Marilyn Marshall, 3445 Free Union Road, expressed concerns about the firearms-related home occupation
16 use. She said that schools should be notified of the business, and parents should be provided the
17 information.
18

19 Kerin Yates expressed concerns about the intersection at Free Union Road and noted that it was
20 dangerous. She said that the site did not have safe access.
21

22 Patricia Doud expressed concerns about how firearms would be tested on the property and noted that the
23 road was dangerous.
24

25 Ronna Gray expressed concerns about the location of a firearms-related home occupation in a rural
26 neighborhood.
27

28 Karl Pfefferkorn, property owner on Ridge Road, said that he was a local resident who wished to use the
29 services offered by the home occupation and firearms were part of rural living. He said that the home
30 occupation use should be allowed.
31

32 John Swartzwelder expressed concerns about the lack of information regarding the applicant's ATF
33 license. He said that the Board should consider the possibility of gunfire being heard in the neighborhood.
34

35 April Holmes requested the Board to rescind the permit. She said she was a resident of Free Union. She
36 noted that the applicant had committed to not providing ammunition on-site, but she asked what
37 monitoring was in place.
38

39 Teresa Gillie said that there were more appropriate locations for a firearms-related business.
40

41 Joan Payne-Currier, Ridge Road, expressed concerns about producing guns in a home occupation and the
42 secure storage of firearms.
43

44 Robert Ruff, 410 Houndstooth Court stated he lived adjacent to the applicant's property. He said that the
45 applicant would likely not be manufacturing firearms but rather assembling, selling, and trading them.
46

47 Neil MacDougall requested the Board to consider the legal definition of transfer in regards to the
48 application.
49

1 Major General Douglas Caton, retired, stated he owned a farm neighboring the applicant's property. He
2 expressed concerns about his children or animals being shot. He said he was against the approval of a
3 firearms-related home occupation in a residential area.
4

5 Mr. Herrick offered a rebuttal to public comment. He said that the issue at hand was about whether the
6 Zoning Administrator correctly interpreted the zoning ordinance. He said that grounds for reconsidering
7 the Zoning Administrator's decision had to be based on County Code § 18-5.2A and whether the decision
8 was in violation of the ordinance. He said that the County Attorney believed the Zoning Administrator
9 correctly handled the application and requested the Board to affirm the decision.
10

11 Ms. Maupin said that allowing a firearms-related home occupation use did not follow state code. She said
12 that FFLs were not needed because there were 50 in the region. She questioned the efficacy of the appeals
13 process. She requested the Board rescind the approval.
14

15 Ms. Joseph closed the public hearing and brought the matter before the Board.
16

17 Mr. Shepherd clarified that the approval permitted altering and storing firearms and providing legal
18 services, noting that other items were not included in the approval.
19

20 Mr. Svoboda responded that those were the conditions in Attachment D.
21

22 Mr. Shepherd expressed concerns that the staff report and clearance did not tie the altering of firearms use
23 to a specific section of §18-5.2. He stated this section also requires that all home occupations must
24 comply with performance standards. He questioned where storage was permitted in the rural areas and
25 noted that firearms storage was not customary or incidental to a gun smithing shop.
26

27 Mr. Burkhart acknowledged that the ordinance was imperfect and encouraged those who felt compelled to
28 be part of the process during the review and rewrite of the ordinance to do so. He expressed concerns
29 about the methods that would be used to produce firearms, such as a 3D printer, and about the number of
30 firearms to be produced in a year for which there was no indication. He asked how the ordinance would
31 apply to discharging firearms. He asked whether the applicant would have to comply with contemporary
32 ordinance requirements if the ordinance were updated at a future date.
33

34 Mr. Svoboda explained that if the use was existing and the ordinance changed, then it would be
35 categorized as a non-conforming use. He said it was unlikely the ordinance would be applied
36 retroactively, and the business would be constrained to the limitations it was previously approved under.
37

38 Mr. Carrington said that staff applied the relevant ordinances appropriately.
39

40 Ms. Joseph said that altering firearms as a use was not connected to the ordinance requirements. She
41 questioned the ability to offer secure storage of firearms as a permitted use. She said that the approval did
42 not follow the ordinance requirements because it left too much for interpretation.
43

44 Mr. Svoboda said that alterations in terms of gunsmithing allowed for changing components such as
45 triggers.
46

47 Ms. Joseph asked whether the components would be made in-house and how waste materials from
48 manufacturing would be handled. She expressed concerns that alterations were not defined in the
49 approval, and there was no connection to the requirements in the ordinance.
50

1 Mr. Svoboda responded that they did not require applicants to provide an explanation as to what the use
2 was for or how materials would be utilized.

3
4 Mr. Shepherd said that the application should meet every criterion listed in §18-5.2A and that
5 performance standards should be considered.

6
7 There was continued discussion regarding performance standards as they relate to the ministerial review
8 process.

9
10 Ms. Joseph expressed concerns that there was pertinent information missing from the application, and she
11 was not able to affirm the administrative determination.

12
13 Mr. Carrington asked whether the home occupation permit would be revoked if it was found in violation
14 of the performance standards.

15
16 Mr. Svoboda responded that it was a possibility, but there was a violation procedure which included
17 notices, fines, and court procedures.

18
19 Mr. Shepherd said that there were no specific performance standards for the application, which made it
20 difficult to enforce.

21
22 Ms. Joseph noted that there were no limits to the number of alterations which could be performed, no
23 distinction of what the alterations could include, and no detail regarding the secure storage of firearms.

24
25 Mr. Herrick responded that performance standards applied, but it was a finite list and not at the discretion
26 of the Zoning Administrator. He said the performance standards listed in §4.14—noise, vibration, glare,
27 heat, and electrical disturbance—were limited to uses of an industrial character, and a certified engineer's
28 report was not required for every use. He explained that the zoning clearance stipulated that if applicants
29 complied with the plan as submitted, they would be in compliance with the zoning ordinance, but the
30 Zoning Administrator would still be able to enforce the ordinance if the use was not in compliance.

31
32 Mr. Carrington asked Mr. Bowling for his opinion regarding the lack of specificity.

33
34 Mr. Bowling said the Board had to address the matter at hand and determine whether the ordinance was
35 appropriately applied.

36
37 **MOTION:** Mr. Shepherd moved to reverse the Zoning Administrator's decision based on §5.2A(d)(1)
38 and §5.2A(l)(6), the lack of the engineer's report required by §5.2A(k), the requirements of §4.14,
39 §4.14.5(a)(4), and §4.14.5.4(d), and because storage was not a permitted use in the rural area. Ms. Joseph
40 seconded the motion, which failed (2-2). Mr. Rosenberg was absent.

41 AYE

42 Mr. Shepherd

43 Ms. Joseph

NAY

Mr. Burkhart

Mr. Carrington

44
45 **MOTION:** Mr. Carrington moved to affirm the decision of the Zoning Administrator for the reasons
46 stated in the staff report. Mr. Burkhart seconded the motion, which failed (2-2). Mr. Rosenberg was
47 absent.

48 AYE

49 Mr. Burkhart

50 Mr. Carrington

NAY

Mr. Shepherd

Ms. Joseph

1
2 Ms. Joseph explained that with both motions resulting in tie votes, the decision of the Zoning
3 Administrator stays. She explained that anyone who was not satisfied with the outcome could appeal the
4 decision of the BZA to the Circuit Court as the next step in the appeal process.

5
6 **Recess**

7 The Board took a 10-minute recess.

8
9 **B. AP2023-00002 Appeal of Determination of a Homestay Request {Sign #15}**

10 Mr. Svoboda said the determination was whether the ordinance was appropriately applied. He said on
11 February 8, 2023, an official notice of violation was issued. He said from February 17 through March 7, a
12 series of conversations were held regarding the requirement that a primary use be located within the
13 jurisdiction of the County to permit the homestay use of the cabin as an accessory use.

14
15 Mr. Svoboda said on March 2, the official determination was issued which determined the cabin was not
16 eligible to be operated as a homestay because the primary dwelling was located in Nelson County. He said
17 on March 29, the appeal was filed. He said that the determination was based on the fact no primary use
18 existed in the County's jurisdiction, so the cabin did not qualify as an accessory use. He said that the
19 County ordinance only applied within its jurisdiction, and because the Zoning Administrator's
20 determination was correct, the Board should affirm the determination.

21
22 Ms. Allison Harwood, appellant, stated that the cabin had been constructed in the late 1700s, and it had
23 been restored to include solar power. She said they received notice of non-compliance from the County
24 within two months of the homestay, and they were not eligible for a homestay use because of the
25 characteristics of the property. She said that the entire 34 acres of the parcel was under a conservation
26 easement, and it was indivisible.

27
28 Mr. Steve Blaine, representing the appellant, said that the Zoning Administrator made an inference from
29 the ordinance that the main use must be located in the County for the homestay to qualify. He said it was
30 the appellant's position that the location of the main use in the County was not necessary to protect the
31 health, welfare, and safety of the County, and it was not consistent with the reading of the ordinance. He
32 said that the cabin met all other parcel-related qualifications for a homestay.

33
34 Mr. Blaine explained that the homestay ordinance required a primary dwelling to be located on the same
35 parcel, not within the County, and the appellant's primary residence was located on the same parcel as the
36 homestay. He said that the location of the primary use did not preclude the County from regulating the
37 homestay use, as evidenced by the non-compliance notice.

38
39 Mr. Burkhart noted that in communications between the County and the appellant, the appellant was
40 advised to obtain building permits from Nelson County while installing solar panels on the cabin
41 property. He asked who in the County advised the appellant to address business with Nelson County.

42
43 Ms. Harwood responded that her husband had managed the communications for the solar power permits,
44 so she was not able to provide a name for who provided the information.

45
46 Mr. Burkhart asked what Nelson County's response was to the appellant's inquiries.

47
48 Ms. Harwood responded that Nelson County issued the permits.

1 Mr. Blaine said that the use was being regulated, so the County had jurisdiction on the cabin, so it should
2 have jurisdiction over the homestay use. He stated that the ordinance did not require jurisdiction over the
3 primary use because it only required the existence of a primary use as a factual condition.

4
5 Ms. Alley read the rules for public comment.

6
7 Brent Gunsalus said he lived on a property adjacent to the appellant. He stated that the appellants lived in
8 Michigan, and they no longer lived in the main house on the parcel in Nelson County. He said that the
9 solar panels the appellant installed were located in Nelson County. He expressed concerns about a firepit
10 that was placed on the appellant's property approximately 95 feet from his property, and as screening, the
11 appellant installed a woodshed that was inadequate. He said that the homestay use would impact his
12 property, and § 5.1.48(D)(3)(1) requested the Board to consider adverse impacts on the surrounding
13 neighborhood.

14
15 Alan Lane said he neighbored the Gunsalus property. He noted the negative impacts of other homestays in
16 the neighborhood and supported Brent Gunsalus' comments.

17
18 Charles Coyner said he owned property which neighbored the appellant's property, but his property was
19 located in Nelson County. He said the homestay would not impact his property and he supported the
20 homestay use.

21
22 Brenda Saunders said her property bordered the appellant's property, and it was located both in Nelson
23 and Albemarle County. She noted that the cabin had been rented out for several years, but it had been
24 recently renovated. She said that the primary residence in Nelson was only 200 feet from the cabin in
25 Albemarle. She said that someone was always present at the main house, and she and her husband
26 maintained the property for the appellant.

27
28 Lyn Gunsalus said her property was adjacent to the appellant's property. She expressed concerns about the
29 firepit and the potential noise levels.

30
31 Mr. Herrick provided a rebuttal to public comment. He explained that under County Code § 18-
32 5.1.48(b)(1), every homestay must have an associated primary residential use. He said that the cabin was
33 the only structure on the parcel in the County, and the Zoning Administrator did not have jurisdiction over
34 structures outside of the County. He said that it had been the County's administrative practice to consider
35 only structures and uses that were within the County. He requested that the Board affirm the Zoning
36 Administrator's decision because there was no primary use on the parcel within the County's jurisdiction.

37
38 Mr. Blaine said that there was a primary use on the parcel, so the homestay use should qualify. He
39 reiterated that it was not necessary for the primary use to be located within the County. He noted that the
40 appellants currently resided in Minnesota, and they were aware of the requirements for the onsite
41 manager.

42
43 Ms. Joseph closed public comment.

44
45 Mr. Burkhart said he agreed with the appellant's argument that the primary dwelling did not have to be
46 within the County to qualify as a homestay use. He said that the ordinance left the matter up for
47 interpretation.

1 Mr. Shepherd asked the appellant to elaborate on the conversations held with the County between the
2 initial notice and the final determination of non-compliance. He asked what options had been offered to
3 the appellant to have the use come into compliance.
4

5 Mrs. Harwood responded that there was a phone conversation with a Zoning official, but she was not part
6 of the discussion. She said that it did not feel like they were given options by the County.
7

8 Mr. Shepherd suggested deferring the Board's decision and sending the matter back through the special
9 exception process.
10

11 Ms. Joseph clarified that the County could not declare or determine whether there was a primary use on
12 the parcel if the use was not within the County's jurisdiction. She asked whether the County could obtain
13 documentation from Nelson County stipulating the primary use then issue a special exception to the
14 applicant. She asked what other avenues to approval were available for the appellant.
15

16 Mr. Herrick responded that the ordinance listed the specific areas for which special exceptions could be
17 granted. He said that § 5.1.48(B)(2) discussed special exceptions for a non-resident manager. He said §
18 5.1.48(B)(3) discussed special exceptions to yard requirements. He said that there were parcel-based
19 regulations in § 5.1.48(C), and there was a special exception in § 5.1.48(C)(2)(ii) related to structure
20 types.
21

22 Mr. Herrick said that the Board of Supervisors could not issue a special exception under the
23 circumstances affecting the appellant because there was no specific mention of such a special exception in
24 the ordinance. He said that the ordinance did not specifically state the primary use had to be in the County
25 because it was the County ordinance, and the provisions were assumed to apply only in the County. He
26 said that there was no special exception to waive the primary use requirement.
27

28 Mr. Blaine said that there was an agreement on the facts that the primary residential use was in Nelson
29 County, and the accessory use was in Albemarle County. He said that the primary use did not have to be
30 in the County in order to enforce the homestay ordinance.
31

32 **MOTION:** Mr. Shepherd moved to affirm the administrative determination. There was no second. The
33 motion died.
34

35 **MOTION:** Mr. Shepherd moved to reverse the administrative determination. Mr. Carrington seconded
36 the motion.
37

38 Mr. Shepherd stated the relationship between the primary dwelling and accessory homestay existed on the
39 parcel, and the homestay use could be regulated in the County.
40

41 Mr. Carrington stated that the homestay met the definition of an accessory use, including the requirement
42 the use was on the same lot as the primary use, so it was therefore permitted.
43

44 The motion carried unanimously (4-0).
45

46 **4. Approval of Minutes**

47 **A. May 2, 2023**

48
49 **MOTION:** Mr. Burkhart moved to approve the minutes as presented. Mr. Carrington seconded the
50 motion, which carried unanimously (4-0).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

5. Old Business

There was none.

6. New Business

Mr. Svoboda stated that there would be an appeal hearing next month, and noted that the meeting date was July 11, 2023.

7. Adjournment

MOTION: Mr. Carrington moved to adjourn the meeting. Mr. Shepherd seconded the motion, which carried unanimously (4-0).

The meeting adjourned at approximately 5:25 p.m.

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

Respectfully Submitted,



John Shepherd, Secretary Board of Zoning Appeals