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2 ALBEMARLE COUNTY BOARD OF ZONING APPEALS
3 VIRTUAL MEETING
4 TUESDAY, DECEMBER 1, 2020 – 2:00 P.M.
5
6
7

8 Board Members: John Shepherd
9 Marcia Joseph
10 Ed Robb
11 Randy Rinehart
12 Edward (Bo) Carrington
13

14 Staff Members: Bart Svoboda, Zoning Administrator
15 Francis MacCall, Deputy Zoning Administrator
16 Frank Pohl, County Engineer
17 Marsha Alley, BZA Clerk and Recorder
18

19 County Attorney: Andy Herrick, Deputy County Attorney
20

21 BZA Attorney: James Bowling, IV
22
23

24 **1. Call to Order**

25 The meeting was called to order at 2:00 p.m. by Chairman John Shepherd.
26

27 Mr. Shepherd explained that they would address the variance on the agenda first and then the appeal that
28 concerns North Pointe at Pritchett Lane. He said before starting the hearing for Pritchett Lane, there would be
29 another chance for people to sign up for the public hearing, so no one has lost their chance to speak on that as
30 the board moves ahead with the variance. He said the variance would likely take anywhere from half an hour to
31 an hour, as a guess, and he wanted to give everyone an idea of what to expect with that.
32

33 Mr. Shepherd said many are familiar with Zoom meetings, but he had heard from at least one person that it was
34 their first one. He said he would start by reading certain things that have to be said that make this a legal public
35 hearing.
36

37 Mr. Shepherd welcomed everyone to the meeting. He said he hoped there would be some good discussions and
38 outcomes for both hearings, and he thanked everyone for their participation.
39

40 Mr. Shepherd read the following statement into the record: “Good afternoon. As Chairman of the Albemarle
41 County Board of Zoning Appeals, I call the meeting for December 1, 2020 to order. This is an electronic
42 meeting. Please be patient as we become familiar with this meeting alternative and virtual process.
43

44 “This meeting is being held pursuant to and in compliance with Ordinance No. 20-A(14), ‘An Ordinance to
45 Ensure the Continuity of Government During the COVID-19 Disaster.’ BZA members who are electronically
46 present at this meeting are Ed Robb, Randy Rinehart, Bo Carrington, Marcia Joseph, and myself.
47

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

5
6 **2. Establish a Quorum**

7 Mr. Shepherd established a quorum and asked board members to announce their names as being present for the
8 record.

9
10 Mr. Ed Robb, Mr. Randy Rinehart, Ms. Marcia Joseph, Mr. Bo Carrington, and Mr. John Shepherd all
11 announced their presence.

12
13 Mr. Shepherd introduced Mr. Andy Herrick, County Attorney; Mr. Jim Bowling, Attorney for the Board of
14 Zoning Appeals; Ms. Marsha Alley, Recording Clerk; Mr. Francis MacCall, who would be presenting the
15 variance; Mr. Bart Svoboda, Zoning Administrator; and Mr. Frank Pohl, County Engineer. He said there would
16 be more introductions upon hearing the appeal.

17
18 **3. Public Hearings**

19 **A. VA2020-00001 Corbett Agricultural Barn**

20 MR. SHEPHERD: We now want to turn this to a public hearing for Project Number VA2020-00001, Corbett
21 Agricultural Barn. Property owner is Michael and Michelle Corbett, and the staff for this variance hearing is
22 Francis MacCall.

23
24 So, with that, Francis, you have 15 minutes for your presentation. You can share that time with your attorney,
25 Andy Herrick. With that, I invite you to begin.

26
27 MR. MACCALL: Thank you, Mr. Chairman. Does everyone see my screen?

28
29 MR. SHEPHERD: One other thing, is Mr. Corbett here, or someone presenting for Mr. Corbett?

30
31 MR. MACCALL: I believe I saw them in the attendees section.

32
33 MR. SHEPHERD: OK. Marsha, can we verify that and let Mr. Corbett sort of enter the – come to the floor and
34 enter the gallery?

35
36 MS. ALLEY: I have now promoted Mr. Corbett to panelist, so give him just a moment to arrive there. Mr.
37 Corbett, if you could just let us know that you are present.

38
39 MR. CORBETT: We are present.

40
41 MS. ALLEY: OK. There we go. So, everybody’s where they need to be.

42
43 MR. SHEPHERD: Good to see you, thanks for being here.

44
45 MR. CORBETT: Mr. Chairman?

1 MS. ALLEY: Mr. Corbett, right now, Francis MacCall is going to make his presentation, and we just wanted to
2 make sure that you were in the gallery as well.

3
4 MR. CORBETT: Thank you.

5
6 MS. ALLEY: If you could just mute your mic.

7
8 MR. MACCALL: So, can everybody see my screen?

9
10 MS. ALLEY: Yes.

11
12 MR. MACCALL: Alright. Thank you, Mr. Chairman. Francis MacCall, Deputy Zoning Administrator. This is a
13 variance, 2020-00001 Corbett Agricultural Barn. The proposed variance application is to reduce the front
14 setback to allow the construction of an agricultural barn.

15
16 Here's a quick overview of what I'll be going over for the variance application. The property is in the western
17 portion of the County, at 8979 Dick Woods Road, and is zoned RA Rural Areas. In the RA Zoning District, for
18 any structure, the district requires a front setback of 75 feet from the front property line. The red square shows
19 the proposed location of the barn and will be noted throughout the presentation.

20
21 Here, we see the overall topography of the area and the property itself and the proposed barn's relation to the
22 property line. I'll zoom in on this so you can see a little closer.

23
24 Moving on for a little closer look, we see the building site and the proposed barn location. As noted in the staff
25 report, the building sites on the property are the areas where there is no floodplain, critical slopes, or stream
26 buffer. The preferred location for any structure is to be in a building site. Being a farm building, which this
27 application's structure is proposed as, the structure is exempt from the Uniform Statewide Building Code and is
28 not required to be in a building site.

29
30 That said, the area where the proposed barn is located is in a building site, thus not disturbing the stream buffer,
31 but would not meet the required 75-foot setback as required by the ordinance. For context, here is where the 75-
32 foot setback would place the barn.

33
34 Now, to the specifics of the request from the applicant. The applicant is requesting a variance from the Rural
35 Areas setback requirement to reduce the front setback of 75 feet to 36 feet to allow for the construction of the
36 agricultural barn. I'll zoom in a little closer here as well. As noted in the staff report, the applicant applied for a
37 permit to construct a barn for their agricultural operation. After review of the application, staff informed the
38 applicant that to issue the permit for the barn in the proposed location, a variance would be required to be
39 approved by the Board of Zoning Appeals. At this time, that permit has not been issued for the barn.

40
41 Here, we see the parking area for the dwelling that is on the property. The applicant can explain in more detail,
42 but the retaining wall constructed many years ago for the parking area began to fail. The potential to improve
43 the wall and incorporate a barn into the use with their agricultural operation presented itself. Submittal of a
44 building permit brought the issue of the barn's location to light and the request before you today.

45
46 Another picture of the site.

1 So now, to the specific regulations for granting a variance. It must be shown that a request for a variance meets
2 both the definition of a variance as provided in Virginia Code and the criteria outlined in the Zoning Ordinance.
3 Both are outlined in the staff report.

4
5 Please note that both the definition and the criteria require that it be shown that the strict application of the
6 ordinance would unreasonably restrict the utilization of the property.

7
8 As noted in the staff report as well, here's a quick overview of staff's analysis. The one criteria that staff is
9 unable to provide a definitive recommendation for is whether the strict application of the 75-foot front setback
10 would unreasonably restrict the utilization of the property or not.

11
12 So, to that, the question for the board that staff has not been able to offer a recommendation for is, "Does the
13 strict application of the 75-foot front setback unreasonably restrict the utilization of the property?" Further
14 deliberation of those facts by the board is needed after the hearing of the applicant's presentation.

15
16 Staff does believe that granting the variance would alleviate a hardship due to physical conditions relating to the
17 property and believes that the five additional criteria for granting a variance have been met.

18
19 Here are two possible motions, both in bold, for action by the board. I'm available for questions, as are other
20 staff members, as needed. I will now yield any additional time here to the Deputy County Attorney for any
21 additional comments, and I can bring this motion back up once we get to that point in the deliberations.

22
23 MR. SHEPHERD: Thank you, Francis. Mr. Herrick, do you wish to add to that?

24
25 MR. HERRICK: So, Mr. Chairman, members of the board. I'm Andy Herrick with the County Attorney's
26 Office. I really don't have much more to add beyond what Mr. MacCall has already presented. As he pointed
27 out, part of the definition of a variance is that the strict application of the ordinance would unreasonably restrict
28 the utilization of property.

29
30 Despite the applicant's good intentions and the other positives of this application, the staff is simply not able to
31 make that finding definitively, and that's why staff can't recommend this variance. But as Mr. MacCall pointed
32 out, that is something that the board can and should consider and discuss: again, whether or not the strict
33 application of the ordinance would unreasonably restrict the utilization of the property. That's all I have to add
34 to Mr. MacCall's presentation.

35
36 MR. SHEPHERD: Good, thank you. With that, I'm going to follow a script here. Let me make sure I'm in the
37 right place. So now, Mr. Corbett, I want to turn it over to you and invite you to make your case.

38
39 MR. CORBETT: OK, thank you. Let me see if we can share our screen to show the presentation.

40
41 MS. ALLEY: Mr. Corbett, if you let me know when you're ready, I'll let you know when we'll begin your
42 time.

43
44 MR. CORBETT: OK, thank you. Can everybody see my screen?

45
46 MS. ALLEY: We can.

1 MR. CORBETT: OK.

2
3 MS. ALLEY: Your time begins now.

4
5 MR. CORBETT: OK, thank you. Good afternoon, Mr. Chairman, esteemed members of the Board of Zoning
6 Appeals, and County staff. Last fall, after a three-year search in Western Albemarle County, we fell in love with
7 a 13-acre farm named Whistling Hollow, in Afton, and placed it under contract. Until 2015, it was a successful
8 family farm for over 30 years, raising sheep, geese, and ducks. Sadly, this farm had not been maintained by the
9 most recent owners, who neglected the outbuildings, pastures, stream buffer, and garden bed for the past five
10 years by allowing their horses to damage a delicate ecological refuge area.

11
12 Since we purchased the farm a year ago, in December of 2019, we have actively restored the garden beds,
13 started growing crops for a local CSA market, established a new flock of chicken layers, and are actively
14 partnering with a newly formed nonprofit called Pasture to Produce in Earlysville, who has donated over 6,000
15 pounds of fresh produce to local food pantries this past growing season. I'm a strong believer in giving back to
16 the community.

17
18 As a bit of background, I've been an active volunteer firefighter and paramedic for over 25 years. I'm currently
19 a physician assistant at a local skilled nursing facility in Charlottesville, providing daily healthcare to our most
20 vulnerable County residents, especially in this current pandemic.

21
22 In preparation for buying the farm, I contacted the County Engineer, Frank Pohl, who is with us today, in
23 November of 2019, before we actually closed on the property, to discuss rehabilitating and sensibly expanding
24 the historic 90-year-old farmhouse rather than demolishing it, which was an option that was presented which we
25 never considered, as well as constructing a new barn to be built adjacent to the farmhouse, as we would be
26 building all this within or next to the stream buffer. I stressed to him throughout, and as well throughout this
27 process of my interactions with County staff, is that we want to follow the rules and hope to avoid any surprises
28 in the future.

29
30 He assured me – Mr. Pohl assured me that the farmhouse addition would be grandfathered in as an existing
31 structure and could be extended within the stream buffer, and that the barn would be allowed to be constructed
32 if the land disturbance was under 10,000 square feet and we submitted the appropriate farm use exemption
33 form, which we did submit in July, which then prompted the review and subsequent variance application.

34
35 I asked him if there were any other processes or permits to be performed, which he replied, "I don't think so,
36 but you may need Health Department approval." During many subsequent emails and a phone conversation, the
37 need to explore the property line setbacks was not mentioned.

38
39 We submitted the farm building form in July of 2020 and were surprised to learn that the barn did not meet
40 current setback requirements, and we would need to build in a different location encroaching into the stream
41 buffer.

42
43 The barn, which we are proposing and you can see on the screen, is a classic traditional structure. It was
44 intentionally designed to minimize any new land disturbance and fit the existing topography of site features.
45 This barn will allow us to replace several dilapidated outbuildings; house our farm vehicles, including the
46 tractor and implements; and provide a space to process our crops. Our intention is to be good stewards of the

1 farm and make conscientious choices to restore the health and productivity of the riparian area, pastures, and
2 garden beds.

3
4 We hope to build the current design in the proposed location for the following reasons. The barn is designed to
5 minimize additional cut and fill by taking advantage of a retaining wall recently rebuilt to stabilize the only
6 existing parking area on the site, which has been severely compromised. When the property was purchased, the
7 current parking and access area was held up by a pressure-treated six-by-six retaining wall that was failing due
8 to poor DIY construction, lack of care, and many years of significant water runoff from a neighboring property.
9 As you can see from the picture, this was the only picture I could find, unfortunately, but you can see at the
10 front that the six-by-six beams are perched fairly precariously at a 30-degree angle, and it was very concerning
11 to us when we purchased the property.

12
13 Due to increase in the heavy rains, it was clear that we would have no place to park and no means to access our
14 house at grade. Upon removing the failing wood retaining wall, as you can see in this picture, severe storms
15 resulted in further erosion of the parking pad, creating a dangerous situation, and required an immediate
16 installation of the concrete wall and backfilling. As you can see in the picture, the erosion did continue until we
17 backfilled against the concrete wall.

18
19 With the increased frequency of extreme rains and flooding, we have seen the stream behind our property –
20 well, behind the house, within the property – jump out of its banks numerous times. We urgently see the need to
21 invest in stream stabilization and revegetation strategies. We fear that adding another structure in the stream
22 buffer will further compromise the function of the stream protection zone to absorb floodwaters as well as put
23 the structure and its uses at risk.

24
25 By taking advantage of already-established infrastructure – mainly, the driveway, parking area, and retaining
26 wall – these features do not need to be created or expended into the productive pasture of the sensitive buffer
27 areas. A strict enforcement of the setback requirement could result in either an unsightly and expensive
28 causeway from the existing parking area or the need for a new access to it to be built through the stream buffer,
29 as well as a significant redesign of the barn building.

30
31 We are currently in the process of restoring and expanding the old farmhouse, which is located just 9.5 feet, as
32 you can see from this picture, from Dick Woods Road. This makes for quite a noisy time, especially with the
33 construction down the street on another project.

34
35 The barn to be located approximately 50 feet north of the farmhouse will be 36 feet from the property line, from
36 the right-of-way. The proximity of the original house to the road makes the farm feel significantly set back from
37 the road in proportion and is 8 feet lower than the road, which you cannot see on this plot, but it's pretty
38 obvious in person. The barn will also be significantly obscured from the road by a new privacy fence that was
39 just built, and it's still out of the riparian buffer, which we are seeking to remediate.

40
41 The proposed location minimizes disturbance from construction in the stream protection area. We are working
42 to improve the condition of the stream buffer for water quality, habitat, and flood mitigation purposes, and we
43 don't want to offset our progress by converting a section of the stream protection area to a new building site.
44 We are now being regularly visited by a blue heron in our stream, which we see as a positive sign that we are on
45 the right track for stream restoration.

1 We have met with both Cory Kirtland, who is the local NRCS District Conservationist, and Anne Marie Roberts
2 of the James River Association, utilizing their organization resources to achieve these important stream buffer
3 restoration goals. They have both confirmed the wisdom and the benefits of our proposed barn location. We are
4 actively in the process of establishing the farm. And you can see, this is the plan that we submitted to the James
5 River Association Watershed Restoration Program that shows, in green, the proposed areas where we would be
6 doing stream buffer restoration. And we are being told that this would likely happen this spring with new
7 plantings.

8
9 This program with James River Association, for those of you who don't know, has a goal of planting over
10 74,000 new seedlings throughout the river basin within the next three years, and we would love to be a part of
11 that.

12
13 We have spoken with all of our adjacent resident neighbors through this process, who have all pledged their
14 support of the barn project and offered no objections. Their names, quickly, are John and Marian Easter, Robert
15 and Lynn Johnson, Gilbert and Etta Towlard, and Peter Gadwa.

16
17 We appreciate the time and effort of the County staff to evaluate our variance application as well as the
18 guidance of our local Supervisor, Ann Mallek, who may be attending today's hearing, but I didn't see her show
19 up in the attendance list. We appreciate her site visits and her support of our agricultural endeavors.

20
21 A relevant point stood out from Mr. MacCall's presentation, which states that staff believes that the property's
22 physical conditions create a hardship for adequately locating the barn within a building site and meeting the
23 required setback, and that the five additional criteria for granting the variance had been met. We believe that we
24 have provided sufficient evidence to meet the requirements of County Code 18-34.4 in order to grant a variance.
25 We believe that the strict application of the terms of the ordinance would unreasonably restrict the utilization of
26 the property now and in the future.

27
28 We thank you for working with us to find a mutually beneficial solution, which we all honestly believe is in the
29 best interest of the environment, our County, and our lovely farm. We sincerely believe that the most logical
30 solution is to take advantage of the existing topography and site layout, minimizing any new land disturbance,
31 protecting sensitive areas, and restoring agricultural use of this land, which is so important in the County as we
32 struggle with new development on a daily basis.

33
34 We plan to spend a great deal of time and money repairing and enhancing the current riparian buffer. Putting the
35 barn further down onto the property from the current parking will not only damage the pristine area we are
36 trying to seek to preserve, but also infringe on the delicate stream buffer. These plans reflect the best practices
37 and priorities enjoined by the County. Thank you again for your consideration. We really do appreciate it.
38 Michael and Michelle.

39
40 MR. SHEPHERD: Thank you, Mr. Corbett.

41
42 MR. CORBETT: Thank you, Mr. Chairman.

43
44 MR. SHEPHERD: And Mrs. Corbett as well. Thank you for being here and for that good presentation. Is there
45 anyone from the public who wishes to speak? We want to – we'll prepare to open a public hearing now if
46 someone wants to speak to this issue.

1 MS. ALLEY: Mr. Chairman, I do not see any hands raised for your announcement, and I also did not have
2 anyone sign up prior to the meeting.

3
4 MR. SHEPHERD: OK. So, with that, I'm going to close the public hearing. And now, we can – there's time
5 now for staff and the applicant both to add additional comments if they wish to. We go – turn it back to you,
6 Mr. MacCall, if you wish – you have another five minutes if you wish to clarify anything.

7
8 MR. MACCALL: I do not have any additional clarification in need.

9
10 MR. SHEPHERD: OK, thank you. Mr. Corbett, do you want to get something – anything else to add?

11
12 MR. CORBETT: I did want to thank the County staff and the volunteer board members for your time. I must
13 say, we have been so impressed with the professionalism, the courteousness, friendly nature of everybody that
14 we've interacted with in the County. Having lived in some larger urban areas nearby, we are not used to this.
15 So, my hat's off to everybody that this has been a – could be a very unnerving process that would cause
16 somebody to lose a lot of sleep, but we feel very comfortable working with everybody, and we're very glad of
17 the decisions that we have made. So, thank you.

18
19 MR. SHEPHERD: Thank you. So, with that, I want to turn the discussion to board members. I want to just sort
20 of go down the list and ask for you – any comments, questions, discussion you wish to engage in, starting with
21 Mr. Rinehart.

22
23 MR. RINEHART: Chairman, I visited the site yesterday, and incidentally, to the Corbetts, your daughter was –
24 I think it was your daughter, pardon me, it was pretty far away – was out on the porch, and I was a little nervous
25 of scaring her or having a dog that was not going to invite me in, so I did not announce my visit.

26
27 Mr. Chairman, I have, really, no questions. I support this variance, but I'll wait to hear from my fellow board
28 members.

29
30 MR. SHEPHERD: Thank you. Ms. Joseph?

31
32 MS. JOSEPH: I just have a, well, not just – I always have a lot to say. But I'd like to ask the Corbetts, and also
33 Mr. MacCall, whether or not you checked the side setback on that, because it was making me nervous when I
34 looked at one of the illustrations. Has that been checked?

35
36 MR. MACCALL: Yes. I'm confident that it meets the 6-foot side setback that would be permitted for accessory
37 structures.

38
39 MS. JOSEPH: OK, thank you. I do feel that this is a hardship for the County if you decided to push this back
40 into the WPO buffer. I think it's important for us to, when we have an ordinance like that, to adhere to it. So, to
41 push the barn back into the buffer means that there's a lot more disturbance going on. In terms of the barn
42 building itself, but also access to et cetera, et cetera, you're going to have to have some major pathways to get
43 equipment into that barn.

44
45 I do feel that I would like to add some conditions onto this, if it is approved, that would reflect that the design of
46 the barn should be as you have submitted. That is something that the BZA can ask for. You have submitted
47 these beautiful drawings of the barn, and because it will only be 36 feet away from the property line, I would

1 like us to consider adding that as a condition, that the barn itself be as reflected in Attachment B and that also,
2 the footprint dimensions of this barn be as reflected in Attachment B because when you approve a variance, it
3 runs with the land. And if this thing is ever— excuse me, your beautiful barn is ever – if you decide to expand it,
4 then you’d need another variance. OK? So, that was one thing I was thinking about.
5

6 The other thing I was thinking about is that you’ve shown us a sketch as Attachment A, and I would like us to
7 consider another condition that says that the barn will be located – and I guess attorneys can help me out here –
8 in general accord, or whatever, as the location is illustrated on Attachment A. And again, this is just giving us
9 and future generations an idea of what was approved here. OK?
10

11 And the other thing is – I’ll ask Mr. Pohl if he’d like to add to this -- but I was wondering if he feels that there’s
12 any sort of mitigation plan that is required within this 100-foot WPO buffer if all they do now is place the barn
13 in this location.
14

15 MR. POHL: For the barn, it appears the barn is outside of the stream buffer, so there would be no, in my
16 opinion, there’s no impacts to the barn where proposed and therefore wouldn’t trigger any mitigation
17 requirements.
18

19 MS. JOSEPH: OK. And the other question I have for you, Mr. Pohl, is do you know anything about the James
20 River Association and their advocacy for stream buffer renovation?
21

22 MR. POHL: Do you have any specifics?
23

24 MS. JOSEPH: Have you ever heard of them before? I guess I had never heard of them before.
25

26 MR. POHL: I have heard of them.
27

28 MS. JOSEPH: Yeah, and I don’t know what work they’ve done or what their reputation is. That’s all I was
29 asking is if you’d ever heard about them.
30

31 MR. POHL: I’ve heard of them. I’ve never worked with them.
32

33 MS. JOSEPH: OK, thank you.
34

35 MR. POHL: You’re welcome.
36

37 MS. JOSEPH: That, Mr. Chair, is pretty much all I have, or as comments are. But I’d like us to consider those
38 conditions.
39

40 MR. SHEPHERD: Yes. Thank you, Ms. Joseph. Mr. Carrington.
41

42 MR. CARRINGTON: Thank you, Mr. Chairman. I agree with my fellow board members, in general. I agree
43 with Mr. Rinehart that I think this is an application that we can support, or a request we can support. And I also
44 think that Ms. Joseph’s conditions are reasonable. I’d be obviously interested in hearing from the applicant,
45 whether that’s acceptable or not. But in general, I’m supportive of this request.
46

1 MR. SHEPHERD: OK, thank you very much. I have some comments also. I will just sort of lower the suspense
2 in the room by saying I'm also supportive of this application, but have some questions having to do with
3 process and just a couple of things.
4

5 One, I just have to say I was surprised when I visited the site on Sunday to find that the full foundation for this
6 building has been constructed. And I just want to say, I would have appreciated that being in the staff report. It
7 changed my thinking about it from looking at the application and wondering if the building was in the right
8 place or not, or if it should move. Just – I was thinking I had some leeway there. And when I saw that the
9 foundation was a poured concrete foundation to the – already installed, to me, it changed my thinking about it,
10 and I just don't think that was a – I think it was not a good service to the board.
11

12 I would also say that it brings up the question that if we were thinking about not approving this, then we'd get
13 into all sorts of issues having to do with – having gotten some assurance from County officials that something
14 was OK when it wasn't. We would trigger that remedial state code provision that we grappled with about a year
15 ago. And I just want to say, it would have been helpful to me to have that in the staff report. I think it should
16 have been.
17

18 And along that line, I want to just make another thing clear. There are three different ordinances that are in play
19 here: the Water Protection Ordinance, the Building Code, and the Zoning Ordinance. Mr. Pohl, you are not the
20 zoning person. You are administering the Water Protection Ordinance, and I don't see where you have – I'm not
21 calling you out on not warning them about zoning regulations, about setbacks and stuff, so that's not – I'm very
22 interested – I'm glad you are attending the hearing because I wanted maybe some help and guidance on
23 understanding the buffer. But that's what my request was about for that. Just want to say that as well.
24

25 So, I also have a question regarding the two sort of threshold criteria – one being whether granting the variance
26 would leave an unreasonable restriction, and the other has to do with does the land pose a hardship. And I view
27 those two things – there's an "or" between them. And Mr. MacCall, I want to understand – I want to clarify that
28 and ask why – I mean, when I look at that, I see that while the request may or may not be – alleviate an
29 unreasonable restriction, which I kind of think it does. But I think we could – couldn't we just – because there
30 was an "or" between those two paragraphs, just set that aside, and if you are finding that this does alleviate a
31 hardship, I wonder why there's not a recommendation to approve this.
32

33 MR. HERRICK: Mr. Chair, I realize that you were directing that question to Mr. MacCall, but if I might
34 attempt to answer that question?
35

36 MR. SHEPHERD: Fair enough.
37

38 MR. HERRICK: In 15.2-2309, you're correct – there is an "or." But in order for the variance to be adopted, the
39 definition section, 15.2-2201, contains an "and." And I realize we're now getting into the legal minutiae here,
40 but the definition of "variance" does include an "and," and it does require that the strict application of the
41 ordinance would unreasonably restrict utilization of the property.
42

43 As we discussed in the refresher training session last month, there's no way around the "unreasonable
44 restriction" requirement because it's an essential part of the definition.
45

46 MR. SHEPHERD: OK, thank you. So, when we're making our final determination – yes, Mr. Bowling?
47

1 MR. BOWLING: And I want to point out that the statute was amended fairly recently, but has not yet been
2 interpreted by the Virginia Supreme Court. But I think the staff laid out its dilemma pretty well, but I think it's
3 within the board's province to make a finding not only that there's a hardship here caused by the stream buffer
4 requirements, but that strict application of a 75-foot front setback would unreasonably restrict the utilization of
5 the property. Both findings are necessary in this particular case.

6
7 MR. SHEPHERD: OK, thank you.

8
9 MR. BOWLING: I think that, really, the board's role is different than the staff's role and important prospectus
10 because you're a quasi-judicial body.

11
12 MR. SHEPHERD: Thank you. Mr. Robb?

13
14 MR. ROBB: A little introduction here of myself to the applicant, and that relates to the fact that I lived in the
15 Afton area from 1971, so I'm very familiar with the property and went by it many, many times during my life.
16 And I really admire what you're trying to do. I think that it's very reassuring to know that young folks want to
17 make a difference here. And I also realize you have your hands full with that project.

18
19 MR. CORBETT: Yes, thank you.

20
21 MR. ROBB: Now, having said all that good stuff, there is a metal building adjacent to your property. Is that
22 correct?

23
24 MR. CORBETT: Correct. That's part of the property, yes.

25
26 MR. ROBB: That metal building that is shaped as a barn, as a shed.

27
28 MR. CORBETT: Yes, sir.

29
30 MR. ROBB: Is that part of the property?

31
32 MR. CORBETT: Yes.

33
34 MR. ROBB: And how far is that from – how long – has that been there quite a while? I don't remember,
35 frankly, having seen that before. It looks like a relatively new metal building.

36
37 MR. CORBETT: Based upon pictures we have located, it's probably been there 15 to 20 years is my guess.
38 Looking at some of the things that are failing, the roof is leaking at this point, so it was put in by not the people
39 we bought it from, but the owners before that.

40
41 MR. ROBB: OK, well, that building is – doesn't – is it 75 feet back from the road?

42
43 MR. CORBETT: It's my understanding that it is. Yes, sir.

44
45 MR. ROBB: It is? And as I look at this topo map here, you have two parcels, right?

46
47 MR. CORBETT: Yes, sir.

1
2 MR. ROBB: And how much frontage do you have on the road?
3

4 MR. CORBETT: We've actually never had that measured. I'm guessing about a quarter of a mile, but don't
5 quote me on that.
6

7 MR. ROBB: So then, it's possible that you could put a building elsewhere on that property. Or somebody could.
8 Is it divisible?
9

10 MRS. CORBETT: The problem – the critical slopes.
11

12 MR. CORBETT: Between the critical slopes and the stream buffer, it was determined by County staff that there
13 was very, very few building sites on this property. Anything with road frontage, you're looking at with the barn.
14 Anything further south is not a building site.
15

16 MR. ROBB: Is it divisible? That's my question. With that many feet of frontage, is it a divisible piece of
17 property.
18

19 MR. MACCALL: Mr. Robb, it is not. The two parcels no longer can be subdivided. They have to stay the size
20 that they are, or there could be boundary line adjustments, but there are no new lots that can be created.
21

22 MR. ROBB: I see. But there's other building sites, considering you have two parcels. Are there building sites if,
23 in other words, as I understand it, to grant a variance like this, you're basically – it says there will be no other
24 properties in that vicinity that would require a variance. Is that right?
25

26 MR. MACCALL: Let's see the way that that is worded.
27

28 MR. SVOBODA: Bart Svoboda, Zoning Administrator. Francis, correct me if I'm wrong, but if we were to
29 determine the building sites under the current definition, there isn't one that would meet setback on that
30 particular parcel. Is that correct?
31

32 MR. MACCALL: On the subject parcel or the adjacent parcel?
33

34 MR. SVOBODA: Subject parcel.
35

36 MR. MACCALL: I don't believe so. It's very tight. It's hard to tell on the backside. Like I say in the report,
37 there's a description of the two. We did not measure both of them, so it would be – you'd have to cross that
38 stream to get to the other area that is – and do that stream crossing. So, whether it then meets adequately for a
39 dwelling or some other structure, that was not evaluated during this. But it is pretty tight, compared just with
40 some rough estimates that our GIS tools allow.
41

42 MR. SVOBODA: I don't know, Mr. Robb, if that addresses your question about getting into the buffers and
43 near the stream that you would have to cross the stream to get into any other areas.
44

45 MR. ROBB: With two parcels and that much frontage, however, I think if I recall correctly, what you're saying
46 is on that particular parcel and all the parcels in that general vicinity, there is no other parcels that would require
47 a variance – that could be affected by a variance. Right?

1
2 MR. MACCALL: I think the question you're asking is criteria to – that such need for a variance would not be
3 shared generally by other properties. Is that the question?
4

5 MR. ROBB: Well, so you're saying we can't – they can't subdivide this property.
6

7 MR. MACCALL: That's right.
8

9 MR. ROBB: Now, then – but there's other areas on the property where, if a variance is granted, he could ask for
10 a variance in other places, other spots on this property. Right? I'm sorry to say "he." I say, "they could."
11

12 MR. MACCALL: I believe that they would have the opportunity to ask for another variance, but how likely that
13 would be granted with whatever might be granted here, or with this application, or with any of the conditions
14 that might be placed on the variance.
15

16 MR. SVOBODA: If there's concern about the variance traveling, let's say to a different structure, you could
17 condition the variance to be specific to this structure.
18

19 MR. MACCALL: And I believe that's what Ms. Joseph was trying to get to with the addition of the conditions.
20

21 MR. ROBB: Well, that's correct, but there's two parcels. We're only dealing with one parcel here.
22

23 MR. SVOBODA: Yes, the other parcel is not subject to the variance.
24

25 MR. ROBB: Correct. Therefore, could there be a variance in the future related to that supposed – you can't see
26 into the future, of course. I wish I could. Is it possible that the Corbetts would sell one of those parcels, and
27 there could be another request for a variance? Is that correct?
28

29 MR. SVOBODA: Yes.
30

31 MR. ROBB: Or they could ask for another variance. But the fact that we've set precedence by providing a
32 variance here –
33

34 MR. SVOBODA: Each parcel would be reviewed on its own merits, so we would have to look at that parcel
35 specifically, see if any other regulation would be applicable there, like if there is a single-family house on that
36 parcel already, things like that. And so, we would have to look at each one specifically. A decision such as this
37 doesn't necessarily present itself as precedence because each one of these is an individual decision based on the
38 criteria and the circumstances of each individual parcel.
39

40 MR. ROBB: Correct.
41

42 MR. SVOBODA: So, there's nothing that would bind a decision or force an approval of a variance on an
43 adjacent piece, or any other piece within the proximity or zoned the same.
44

45 MR. ROBB: That's correct. How far with this – with the new – with the variance that we're discussing, the –
46 I'm going to say the south end of that barn – how far would it be from the buffer?
47

1 MR. MACCALL: It's a guesstimate, but it could be anywhere between 5 to 10 feet, as far as the backside of
2 that. Again, it's a guesstimate, with the tools that we have at our disposal.

3
4 MR. ROBB: And then, one other question, just to satisfy my curiosity. The idea that it would unreasonably
5 restrict the utilization of the property – could I ask Mr. and Mrs. Corbett to explain to me how this variance
6 would make a difference, or how not granting it would make any difference related to the reasonableness of the
7 property?

8
9 MR. CORBETT: We have a vision of a productive family farm, as I outlined in my presentation, that we have
10 been searching for for many, many years. I see that the – having this barn on the property greatly expands our
11 ability to do things such as to transition from a backyard gardener who might be able to provide greens for my
12 family's meals to having the capability to provide food for the Pasture to Produce project. Working with
13 produce, it's important to have facilities to be able to process and to clean the produce as it comes out of the
14 field. We don't have the facilities to do that, currently. I feel that it's an important piece, and this is the only
15 spot that we have reasonably determined that we are able to build this sort of facility.

16
17 And that is why we reached out to County staff, even before we closed on the property, to ascertain that that
18 was possible, that we would be able to move forward with what we had envisioned for this property. As we
19 mentioned, it was a three-year search to find the right property that met our requirements –

20
21 MRS. CORBETT: In Albemarle County.

22
23 MR. CORBETT: Yes, specifically in Albemarle County. We very specifically wanted to stay in Albemarle
24 County. We have two young children who – well, Mr. Rinehart, I think, actually saw sitting on the porch
25 whittling a piece of wood that day when you stopped by, yesterday. So, we feel very strongly about the
26 Albemarle County schools, and we wanted to stay within the County. So, we're very excited about the
27 possibility of moving forward with this, and we feel that if we're unable to have this barn built, it will definitely
28 change the trajectory of what we have envisioned for this property.

29
30 MR. ROBB: So, you're saying if you don't get the variance, you wouldn't be able to continue with the
31 ownership of the property and the goals and aspirations that you have. It's that critical.

32
33 MR. CORBETT: Yes, sir. Correct.

34
35 MR. ROBB: What's the plan for that other building? The metal building that's further down the way.

36
37 MR. CORBETT: That will be for animals. We plan to introduce other animals such as sheep, possibly cattle, in
38 the future. We were told in our first year of farming, "Don't bite off more than you can chew," so we started
39 with chickens. We hope to expand reasonably and that this red barn – this red structure, the metal structure, will
40 help support keeping those animals.

41
42 MR. ROBB: OK. Well, I don't have any further questions, Mr. Chairman.

43
44 MR. SHEPHERD: Thank you. So, Mr. Bowling, I have a question. I want to – we have two steps to finish this
45 up. One is, we should make clear, positive findings to support our decision, which means positive findings on
46 both the question of the reasonable question and the hardship question, and also the five criteria that follow. I'm

1 wondering if we can – if I could – I gather we should vote on that, and my question would be can we take that
2 as one – just one item and combine them into one, or should we go through each one separately?

3
4 MR. RINEHART: Mr. Chairman, before we go there, I just have a couple of questions. Is that appropriate?

5
6 MR. SHEPHERD: Absolutely.

7
8 MR. RINEHART: Ms. Joseph, when your testimony just a minute ago – I just wanted to you to know that going
9 out there; their building is very set in concrete, literally. That was not just a retaining wall. The footings for the
10 building that’s designed, unless they should have overhangs, or whatever – there isn’t a possibility of addition
11 to that building is my way of thinking.

12
13 The question to the Corbetts is, was that foundation put in by a surveyor so that you know for a fact, inclusive
14 of overhangs, that you are comfortable with the requested footage away from the footage distance that is being
15 asked for?

16
17 MR. CORBETT: Yes, we are. And we have no intention of expanding it, and we agree to the terms, conditions
18 that Ms. Joseph has set forth for keeping the building within this specific site and abiding by the plans that were
19 submitted that this will be the building that will be built as proposed.

20
21 MR. RINEHART: Thank you very much. Thank you, Mr. Chairman.

22
23 MR. SHEPHERD: Thank you. I’ll also say, I have drafted some – two conditions that I think might satisfy
24 everyone’s concerns here. We could talk about conditions now, or – I’d like to hold that in advance and first,
25 just carry the discussion through to making findings on the criteria.

26
27 MS. JOSEPH: John, I just wanted to say that the intent of the Rural Areas in the Albemarle County Ordinance
28 is to promote agriculture. It’s not, “promote subdivisions.” The last time I read it may have changed. But the
29 last time I read it, it was very clear as to promote agricultural activities. Agriculture has changed a lot in the past
30 five, ten years. We used to think of smaller lots as not being something that could be sustainable agriculturally,
31 but we found that people are more concerned about where their food is coming from. They want to know who it
32 is that grew it. They want to know where it was that it was grown. So, I really do feel that this helps support
33 exactly what the intent of the Albemarle County Zoning Ordinance says as it refers to Rural Areas. That’s all I
34 wanted to say. Thank you.

35
36 MR. SHEPHERD: Thank you. I would actually say I agree with that. I haven’t been focusing on – it’s not,
37 perhaps, within the absolute narrow scope of the review of a variance, but my sense from my visit of the site,
38 reading the report, listening to the Corbetts speak today – all that adds to an appreciation for the efforts that
39 have gone into the planning of this project and their commitment to their project. So, I say that as well.

40
41 Other comments? Or we can sort of bring this down to the nitty gritty of the approval process.

42
43 MR. HERRICK: Mr. MacCall, did you have a proposed motion or motions that you might be able to share on
44 the screen?

45
46 MR. MACCALL: Just a moment. There we go. That’s what was originally proposed.

1 MR. SHEPHERD: I would like to offer a slight variation on those two conditions. I'll just read them and see
2 what you all think about this.

3
4 Condition Number One: "The proposed barn shall conform with the attached plan, rendered in a black font" –
5 anyone who Xeroxes that thing, it's going to be invisible. So, let me just start over. "A proposed barn shall
6 conform with the attached plan, rendered in a black font, revised 10-2-2020, showing four elevations, basement
7 floor plan, first floor plan, and second floor plan." That would just be confining the condition just to exactly to
8 the building, not speak of the activities within it.

9
10 My second –

11
12 MR. BOWLING: John?

13
14 MR. SHEPHERD: Yes?

15
16 MR. BOWLING: You still haven't narrowed it down because you haven't said where it is. You need to refer to
17 – I believe it's either Attachment D or Attachment A. Which one are you referring to? Maybe Marcia can help
18 you.

19
20 MS. JOSEPH: John?

21
22 MR. SHEPHERD: Yes?

23
24 MS. JOSEPH: I don't really have a problem so much with One and Two. What I was suggesting was we add
25 Three that says, "The design of the barn should reflect the elevation and footprint dimensions included in
26 Attachment B." And then, I thought Condition Four would be, "Barn to be located in general accord with the
27 location illustrated on Attachment A."

28
29 MR. MACCALL: I took the liberty earlier just to try to do something, but that's just me. At least, it's not for the
30 –

31
32 MS. JOSEPH: Yeah, I just want something there with the dimensions. I do realize what Mr. Rinehart was
33 saying, that the foundation is already there. But I just think everything should be on the four corners of the page
34 so that when somebody goes back and takes a look at this, they know exactly what's supposed to be done.

35
36 So, we have reference materials that were given to us as attachments, and I'd like to reference the attachments
37 so that people know what happened during this meeting and will know what's been approved so that everyone
38 walks away and understands what we're doing here. That was my thought on this.

39
40 And I do like, "Proposed barn may not be used as a dwelling unit." Thank you so much, Francis.

41
42 MR. SHEPHERD: Could I add to that? I would like to add, "The proposed barn shall not be used as a dwelling
43 unit or a homestay," which I think covers all of the things having to do with B&Bs, Airbnbs, or other uses. It
44 just clarifies that.

45
46 MR. BOWLING: Andy, is that adding new words? I mean, if it's a dwelling unit, it's a homestay. Correct?
47

1 MR. HERRICK: Not necessarily. It would need to go through the process of getting a clearance for the
2 homestay. But as was pointed out earlier, the board can impose additional conditions regarding the location,
3 character, or other features of the proposed structure or use.
4

5 MR. BOWLING: OK, thank you.
6

7 MS. JOSEPH: Francis, would you – in Two, would you reference the elevation? “The design of the barn should
8 reflect the elevation and the footprint dimensions.” OK? That were on those drawings.
9

10 MR. MACCALL: Say that one more time? “The design of the barn” –
11

12 MS. JOSEPH: “Of the barn should reflect the elevation and footprint dimensions.” Footprint dimensions. And,
13 “The proposed barn location must be in general accord, as shown” – I’ll ask the lawyers. Is “general accord” an
14 okay term for this?
15

16 MR. HERRICK: “General accord” is fine with me. I would suggest, though, that the first part of Condition Two
17 should be stronger than a “should.” It probably should be either “must” or “will.”
18

19 MS. JOSEPH: OK. I’m good.
20

21 MR. RINEHART: Marcia, if you’re good with that, I’ll make the motion, or I’ll second your motion whichever
22 you would like.
23

24 MR. BOWLING: Andy, at the same time, I feel like it’s important that the board make findings in this case, for
25 the record, to support its decision, to support the motion. Do you agree?
26

27 MR. HERRICK: I think that the motion that’s shown on the screen is sufficient. I think that granting the
28 variance implies that the board has made the necessary findings, but it wouldn’t hurt if the board wanted to
29 make a motion to move forward with the variance.
30

31 MR. BOWLING: Because I think the staff’s right, particularly that staff could not definitively state that the
32 strict application of the 75-foot front setback would unreasonably restrict the utilization of the property. That is
33 that there’s a residence there, and they can use it as a residence. But I think the board has the discretion, for the
34 reasons that the board members have announced here today, to find that strict application of the 75-foot front
35 setback would unreasonably restrict the utilization of the property for the uses which, surely, the Corbetts and
36 board members themselves have verbalized today.
37

38 MR. HERRICK: Well, the board could make a finding that the variance application met the definition of the
39 variance in the Virginia Code and met all the requirements for a variance in the Virginia Code. That might be
40 another way of the board making those findings.
41

42 MR. BOWLING: I agree with what you’ve just said.
43

44 MS. JOSEPH: OK, could you repeat that?
45

46 MR. SHEPHERD: [Inaudible] remember that and make the motion would be good.
47

1 MS. JOSEPH: Can you repeat that – what you just said, Mr. Herrick, please?
2

3 MR. HERRICK: Yes, the board could, as part of its motion, make a finding that the variance application met
4 the definition of a variance in the Virginia Code and met all the requirements for a variance in the Virginia
5 Code.
6

7 MS. JOSEPH: So, “The board finds that the variance application meets the definition in the Virginia Code and
8 met all requirements in the Virginia Code.” Is that what –
9

10 MR. HERRICK: “For a variance” in both cases. And it could be phrased in such a way: “I move that the board
11 find that the variance application meets the definition of a variance in the Virginia Code and all the
12 requirements for a variance in the Virginia Code, and to grant variance application _____,” and then go
13 with what’s shown on the screen.
14

15 MR. BOWLING: Is it possible for somebody to write that in so the board members can read it?
16

17 MS. JOSEPH: How are you doing up there, Francis?
18

19 MR. MACCALL: If you can bear with me and my – if somebody could state it, I’ll type it out.
20

21 MS. JOSEPH: “I move that the board finds that the variance meets” –
22

23 MR. MACCALL: Hold on. “Finds...that the variance...”
24

25 MS. JOSEPH: “Meets.”
26

27 MR. MACCALL: “Meets.”
28

29 MS. JOSEPH: “The definition.”
30

31 MR. MACCALL: Bear with my spelling. I’m not a great typer. I’ll fix that in just a second. “Meets the
32 definition...”
33

34 MS. JOSEPH: “Of a variance...in the Virginia Code...and meets all the requirements in the Virginia Code.”
35 Does that sound right to you, Andy and Jim?
36

37 MR. RINEHART: I’m happy if you’re happy.
38

39 MR. HERRICK: Just a quick correction. “I move that the board find that the variance application meets the
40 definition.”
41

42 MS. JOSEPH: OK.
43

44 MR. HERRICK: “And that the variance meets all the requirements for a variance in the Virginia Code.”
45

46 MS. JOSEPH: “For a variance.” You talk faster than I write.
47

1 MR. HERRICK: And then, at the end of “Virginia Code,” it would be “and that the board grant variance
2 application _____,” and go from there.

3
4 MS. JOSEPH: Are you okay with that, Mr. Shepherd?

5
6 MR. SHEPHERD: Yes. I have a question about – well, let’s make sure we’re settled at that point, and I want to
7 go to number – the conditions first, in a minute. Is everyone satisfied with that motion, as it’s written there? Just
8 as it’s written. I’m not asking to vote on it right now. I am.

9
10 MR. RINEHART: Can I call for the question?

11
12 MR. SHEPHERD: Well, I have another – yes, but I have a question myself on Number One, on the conditions.
13 Do we want to say that the proposed barn is limited to the activities described by the applicant that support the
14 farm? It’s almost like we can – they wouldn’t be able to do some other agricultural sort of thing in the barn if
15 you strictly followed that condition. I’m not sure we want to condition the activities within the building. I’m
16 thinking of this more as being limiting the building. I don’t know what the Corbetts might have to say about that
17 also, but I don’t see the –

18
19 MR. CORBETT: I agree with you, Mr. Chairman. I think that’s a good point, and it doesn’t follow the
20 purveyance of this hearing to –

21
22 MRS. CORBETT: Restricts –

23
24 MR. CORBETT: Impose those limits –

25
26 MRS. CORBETT: The activities.

27
28 MR. CORBETT: Of activities. Like if my wife wanted to put an art studio and paint the beautiful mountains out
29 the window, that she would be able to do something of that nature.

30
31 MR. SHEPHERD: I wouldn’t want to try to limit those sorts of activities in there. I mean, it’s – other members
32 have an idea about that, or comments?

33
34 MR. CARRINGTON: Yeah, I agree that One and Three seem redundant, and I think Three is probably the one
35 that seems more applicable and sensitive to what I would consider us trying to limit. And so, I would be in favor
36 of deleting One in its entirety.

37
38 MR. SHEPHERD: I agree with that.

39
40 MS. JOSEPH: Deleting One is okay with me.

41
42 MR. RINEHART: It is okay with me.

43
44 MR. SHEPHERD: Mr. Robb?

45
46 MR. ROBB: Same.

1 MR. SHEPHERD: OK. And my final question would just be to Mr. and Mrs. Corbett. Is there – do you have
2 any questions, reservations, worries, comments on the conditions as we have set them out here?
3

4 MR. CORBETT: Mr. Chairman, I agree with the conditions that are being proposed.
5

6 MR. SHEPHERD: Alright, thank you.
7

8 MR. CORBETT: Thank you.
9

10 MR. SHEPHERD: Is there a motion?
11

12 MR. RINEHART: Marcia, are you going to make the motion? Or I'll make it, either way.
13

14 MS. JOSEPH: I move that the board finds the variance application meets the definition of a variance in the
15 Virginia Code, and that the variance meets all of the requirements in the Virginia Code, and that the board grant
16 variance application VA2020-00001 Corbett Agricultural Barn to allow the proposed barn to be located 36 feet
17 from the right-of-way of Dick Woods Road, a variance of 39 feet, with the following conditions: (1) The design
18 of the proposed barn must reflect the elevation and the footprint dimensions, and the proposed barn location
19 must be in general accord as shown in Attachments A and B; (2) The proposed barn may not be used as a
20 dwelling unit or a homestay.
21

22 MR. SHEPHERD: Great. Is there a second?
23

24 MR. RINEHART: Second.
25

26 MR. SHEPHERD: Ms. Alley, will you call the roll, please?
27

28 MS. ALLEY: Mr. Rinehart?
29

30 MR. RINEHART: Aye.
31

32 MS. ALLEY: Ms. Joseph?
33

34 MS. JOSEPH: Aye.
35

36 MS. ALLEY: Mr. Robb? Mr. Robb, you're muted.
37

38 MR. ROBB: Aye.
39

40 MS. ALLEY: Mr. Carrington?
41

42 MR. CARRINGTON: Aye.
43

44 MS. ALLEY: And Mr. Shepherd?
45

46 MR. SHEPHERD: Aye. Good luck, Mr. and Mrs. Corbett.
47

1 MR. CORBETT: Thank you so much. You just made our year.

2
3 MR. SHEPHERD: Best wishes. Thank you for what you're doing, and good luck with it. And – OK, thank you.

4
5 MRS. CORBETT: Thank you.

6
7 MS. JOSEPH: Mr. Shepherd, could we do a five-minute break?

8
9 MR. SHEPHERD: No, we have to keep working. I'm sorry. I think that would be a good idea to take a break.
10 What time is it now? We can set a definite time to come back.

11
12 MS. ALLEY: It's 3:20 right now.

13
14 MR. SHEPHERD: OK. So, 3:25? Is that good for everybody?

15
16 MS. ALLEY: Yes.

17
18 MR. SHEPHERD: OK. Thank you. So, we'll see you back in five minutes?

19
20 [There was a recess.]

21
22 **B. AP2020-00003 North Pointe PDMC Development**

23 MS. ALLEY: Mr. Chairman, if I may, it's 3:25. If I could go ahead and see – would it be alright with you if I
24 ask about other folks who want to sign up for the public hearing?

25
26 MR. SHEPHERD: Yes, I would appreciate that.

27
28 MS. ALLEY: So, hello, everyone. We'll be reconvening in just a moment, and we will be going into our next
29 public hearing, which will be the appeal 2020-003 North Pointe and Stewart Wright. At this time, if you have
30 not already signed up to speak for this public hearing and would like to do so, please signify by raising your
31 hand in Zoom. If you're calling in by phone, you can do that with *9 and signify, and I can add you to the list.

32
33 It appears that we have everyone we need or everyone who's interested at this point. We'll offer another
34 opportunity later on.

35
36 MR. SHEPHERD: OK. So, are we all here? Let's see, is Mr. Bowling back? And Mr. Herrick is here. I think
37 everyone is here. I think we can – Mr. Bowling, Mr. Pohl, are you here?

38
39 MS. ALLEY: Frank Pohl is present.

40
41 MR. SHEPHERD: OK, thank you. I think everyone's here but Mr. Bowling.

42
43 MR. BOWLING: I'm here. I'm just eating lunch.

44
45 MR. SHEPHERD: Oh, OK. Have at it. So, with that, let's come back to order, and I want to introduce Project
46 Number Appeal 2020-00003 North Pointe Planned Development Mixed Commercial Development. The
47 appellant is Stewart Wright. Bart Svoboda is the staff for this. And I'm ready to – Bart, if you're ready with

1 your staff report, you have 15 minutes total. You can share your time with Mr. Herrick, who can be followed by
2 Mr. Wright's presentation. Same ground rules.

3
4 MR. SVOBODA: Yes, sir.

5
6 MS. JOSEPH: Mr. Shepherd, before –

7
8 MR. SHEPHERD: Yes?

9
10 MS. JOSEPH: Before Mr. Svoboda begins, I just wanted to make everyone aware that many years ago, I
11 worked with Great Eastern Management as a consultant on one project for them. And I just wanted to make sure
12 that I noted that this will not affect my comments or any decision that I make on this appeal, AP2020-00003.
13 Thank you.

14
15 MR. SHEPHERD: Thank you.

16
17 MR. SVOBODA: Alright, we're going to try and share our screen. Are we sharing?

18
19 MS. ALLEY: Yes

20
21 MR. SVOBODA: OK.

22
23 MS. ALLEY: Your time will begin now.

24
25 MR. SVOBODA: As stated, we're here for Appeal 2020-3. This is for the North Pointe property. This hearing
26 is in regard to construction entrances along Pritchett Lane, specifically Condition #9 of Special Use Permit of
27 2002-72.

28
29 This is a layout of the property. You can see what's in purple is the property that is the subject of this particular
30 appeal. This is regarding the construction entrances, again which is customarily and incidentally use to and
31 usual use to all development and all building.

32
33 Special Use Permit Condition 9 is now on your screen, talks about extensions and specifically 9A, "Extensions
34 to Pritchett Lane." These are the minimums of what the developer must provide. There is no prohibition listed
35 in there for the construction entrances. Again, construction in and of itself within the Zoning Ordinance is not a
36 listed use. It's subordinate to the construction of a house, a bank, any other development.

37
38 This is an example. In your staff report it is Example Number 3 that talks about Construction Traffic
39 Management Plan. This is a rezoning that took place in 2013. It's 2013-012, and it specifically addresses what
40 to do with construction traffic. We do have a few of these. This particular one is out near Glenmore. But when
41 the Board (Board of Supervisors) accepts a proffer regarding construction traffic and management, it is clear
42 within the language about what that means. This is that example within Number 3, included in your staff report.
43 The other examples within your staff report talk about when the Board prohibits uses, it's very specific.

44
45 MS. JOSEPH: Bart, this is a condition of that rezoning in – where is this, Glenmore?
46

1 MR. SVOBODA: Yes, in 2013. Yeah. So, this is, again, it's not a condition. This is a proffer, offered by the
2 developer, and the Board accepted this condition. The special use permit, the Board can place conditions on. So,
3 they're a little bit different. The example would be in the language, that it's clear when they want to prohibit
4 something. It's clear on how they want to handle that.

5
6 MS. JOSEPH: OK.

7
8 MR. SVOBODA: And so, in summary, on September 21 of 2020, I, the Zoning Administrator, issued an
9 official determination of no violation found. We inspected the property. We looked at the proffers and
10 conditions. There was no prohibition to prohibit construction access on Pritchett Lane, and so, that
11 determination was made. Because the determination was and is correct, the Zoning Administrator asks that the
12 board does uphold and affirm the determination. I am now going to relinquish the remainder of my time to Mr.
13 Herrick.

14
15 MR. HERRICK: Thank you, Mr. Svoboda. Again, I'm Andy Herrick with the County Attorney's Office, here
16 on behalf of the Zoning Administrator. And I'd like to share with the board today five reasons why I think that
17 the Zoning Administrator's determination is correct and should be affirmed.

18
19 As Mr. Svoboda mentioned, the special use permit conditions are a floor, not a ceiling. They require minimum
20 improvements to be made by the applicant, by the developer. I've asked that Mr. Svoboda, at least for a time,
21 leave the conditions up there. You'll see that Condition 9 – this is also, by the way, on page 32 of your
22 materials, and it's on page 4 of Exhibit B -- requires the owner to construct certain minimum improvements.
23 The conditions do not limit the developer's ability to go above and beyond the minimum that's required.

24
25 As we discussed last month, it's important to look at the actual wording, the words on the page of these
26 conditions. And I note that there are no "nots" and no "onlys" on these conditions. If this were a limit on the
27 ability of the developer to make additional improvements, you'd expect to find somewhere in these conditions a
28 "not" saying, "This may not be used for construction," or, "It shall only be used for emergency access."

29
30 As a matter of fact, if you look at these requirements carefully, you'll see that this has the potential to allow for
31 a future expansion to a full public right-of-way. You'll note that it's required that they be reserved within 50-
32 foot rights-of-way, and specifically, Condition 9A.1 talks about how it shall be designed and graded to
33 accommodate a minimum Virginia Department of Transportation standard for a public street. So, what this does
34 is requires the developer to design these entrances initially for emergency purposes, but it leaves open the
35 possibility of a future expansion. So, far from limiting this to emergency access only, it requires a construction
36 of these as access points for now, but allows them to be eventually developed into a fuller access.

37
38 The second reason why I think the Zoning Administrator's determination is correct is that the construction of
39 permitted structures is a permitted accessory use. I think that the appellant, in his argument, mistakenly argues
40 that construction of permitted structures is a use unto itself and then makes the argument that since construction
41 isn't specifically listed as a permitted use, it must not be a use permitted.

42
43 But construction of permitted structures is necessarily implied. For example, if someone had a building permit
44 to construct a single-family dwelling in a residential area, the argument that construction is a use unto itself
45 would prohibit that single-family dwelling from being built in a residential area. The argument would be
46 construction is not a permitted use in a residential district; therefore, you can't construct a single-family
47 dwelling. That doesn't make much sense.

1
2 The applicant, in this case, put in a lot of time and effort to have a development approved with all the uses that
3 were spelled out in this application. To then say that it can't construct the structures that were approved in its
4 development doesn't make much sense.
5

6 I'd point out that the special use permit conditions don't explicitly permit a construction access onto Route 29,
7 either. So, again, following the appellant's argument, if the special use permit doesn't allow access onto
8 Pritchett Lane, and it doesn't explicitly allow access onto Route 29, either, you effectively block the applicant
9 from constructing a project that was duly approved by the Board of Supervisors.
10

11 The third point I'd make is that one of the appellant's submissions was a letter dated 2006 from Great Eastern
12 Management. And for better or for worse, that's not something that could be used as the basis to prosecute a
13 zoning violation. What the appellants are essentially asking the County to do is to find that there was a violation
14 of the Zoning Ordinance and to prosecute the owner for a violation of the Zoning Ordinance. But when our
15 office goes into court, we need to do so on the basis of a violation of an ordinance rather than a letter that was
16 written by a developer, again, that's 14 years old.
17

18 I think the fourth reason to support the Zoning Administrator's finding in this case is that Pritchett Lane is a
19 VDOT-maintained public road, and unless and until travel on that road is restricted by VDOT – not by the
20 County, but by VDOT – Pritchett Lane is open to the motoring public. VDOT is the one that controls access to
21 and use of the road. Again, the motoring public has the right to use that road in the absence of restrictions by
22 VDOT.
23

24 And the fifth and final point I'd bring up is that the Water Protection Ordinance, in this case, really doesn't
25 dictate the outcome. I noticed that there were a number of questions regarding the applicability of the Water
26 Protection Ordinance, both in this case and in our prior case. But as the Chair noted in the prior case, Water
27 Protection Ordinance enforcement and appeals are really outside of the BZA's scope and jurisdiction. The BZA
28 is here to hear appeals of zoning determinations rather than any sort of Water Protection Ordinance issues.
29

30 So, again, I appreciate the appellant's frustration. I'm sure that the residents of Pritchett Lane don't appreciate
31 the additional construction traffic, and I certainly sympathize with that. But I would say that the unmet
32 expectations there are the result of a fundamental misunderstanding of the special use permit conditions. Again,
33 those are a floor that require the developer to make certain improvements, but not necessarily a restriction or
34 limitation on what those entrances can be used for.
35

36 So, that concludes that remarks. I'm happy to turn it back over to Mr. Svoboda, or to see if any of the board
37 members have any questions for us.
38

39 MR. SHEPHERD: OK, thank you. I think at this point, we open the public hearing. Marsha –
40

41 MR. SVOBODA: You need to hear from the applicant.
42

43 MR. SHEPHERD: Oh.
44

45 MS. ALLEY: We have Mr. Wright available, and I'm also going to be –
46

47 MR. SHEPHERD: I'm totally sorry, Mr. Wright. I'm sorry for that. I get ahead of myself sometimes.

1
2 MS. ALLEY: I'm also going to move Mr. Mitchell into the panelist gallery as a representative for the North
3 Pointe project. So, if you will both give me just a moment to do that.

4
5 MR. SHEPHERD: Alright, thank you.

6
7 MS. ALLEY: Mr. Mitchell should be arriving momentarily. And Mr. Wright, as soon as I can find you on my
8 page, we'll have you unmute your mic.

9
10 It appears that everyone is in attendance in the gallery, Mr. Chairman.

11
12 MR. SHEPHERD: Thank you.

13
14 So, Mr. Wright, when you are ready.

15
16 MR. WRIGHT: Alright, I am ready. Good afternoon, members of the Board of Zoning Appeals. My name is
17 Stewart Wright. I live on Pritchett Lane. I'm here today to appeal the Zoning Administrator's determination that
18 construction access points on Pritchett Lane are compliant with the Zoning Ordinance and Condition 9,
19 specifically 9A, of the Special Use Permit 2002-72.

20
21 Since my first complaints in February, I have been told by staff they couldn't find anything written that
22 specifically prohibits construction access points on Pritchett Lane. When I worked in Zoning for almost 14
23 years, I was taught by the previous Zoning Administrator and the County Attorney that you must always find
24 where proposed use is allowed, not prohibited, because the Zoning Ordinance is an inclusive ordinance. So, I
25 tried to find where it says construction access points on Pritchett Lane are allowed. What do the words on the
26 page say?

27
28 While I completely agree with Zoning that the Condition 9, specifically 9A, does not prohibit a construction
29 access point as worded, it also does not allow it. Condition 9A only addresses the connections to Pritchett Lane
30 that were approved by a ZMA2000 Number 9. Two emergency access easements were the only connections
31 shown on the ZMA application plan. They were reviewed by staff for compliance with the district regulations
32 and later approved by the Planning Commission and Board of Supervisors as part of that rezoning. The
33 emergency access easements were the only type of connections that could comply with the district regulations
34 spelled out in Section 25A.4.1 regarding vehicular access and, therefore, were the only types of connections
35 approved.

36
37 Construction access points along Pritchett Lane were never proposed by the developer. They were not shown as
38 an element of the approved application plan and, therefore, were never reviewed or considered by staff, the
39 Commission, or the Board of Supervisors; no doubt because a construction entrance would not be able to
40 comply with the Section 25A.4.1. Therefore, since Condition 9A only applies to approved connections, a
41 construction entrance does not comply with the conditions of the special use permit.

42
43 Before I move onto the second part of my argument, I want to remind the BZA that North Pointe is a planned
44 development. It is not a conventional development. Planned developments go through a much more rigorous
45 review process. Part of that review process is a transportation plan that shows projected automobile and truck
46 traffic that will be generated and provides estimates of traffic to and from the site. The review process also
47 involves community meetings and citizen input. Another large part of the review process is the application plan,

1 which shows proposed lot layouts, streets, commercial centers, and other important elements that must be
2 reviewed.

3
4 Points of access and types of access are important elements that must be shown on the application plan when
5 the proposed rezoning is going through the review process so that staff, the Commission, and the Board can
6 make sure everything works without creating harmful impacts to the surrounding areas, such as traffic hazards,
7 noise, traffic congestions, and other dangerous situations.

8
9 This also applies to any special use permit required for use in the planned development. The Board of
10 Supervisors must, among other things, consider whether the proposed special use will be of substantial
11 detriment to adjacent parcels; public safety, health, and welfare; and preventing traffic congestions and other
12 hazardous conditions as stated in Section 33.40 of the ordinance. The Board may also impose conditions to limit
13 impacts of the same nature to ensure public safety, health, and welfare.

14
15 Now, to the second part. The Zoning Administrator made the written determination that the construction access
16 points are compliant with the Zoning Ordinance. That is not correct. The construction access point he has
17 allowed on Pritchett Lane has actually created a violation of the district regulations – specifically, Section
18 25A.4.1, “Vehicular Access,” which states, “Pavement widths and strengths of both internal and external roads
19 shall be adequate to accommodate projected traffic generated by the district.”

20
21 Construction traffic is part of that projected traffic generated. The only way it couldn’t be is that this regulation
22 stated, “External roads shall be adequate to accommodate projected traffic generated by the district after
23 construction is complete, or post-construction.” If that is really the intent of this section, then the County should
24 consider a zoning text amendment to address that. The Zoning Administrator failed to look at this section of the
25 Zoning Ordinance.

26
27 When the Planning Commission and the Board of Supervisors approved the ZMA and the special use permit,
28 the only connections to Pritchett Lane they approved were the two emergency access easements. They did not
29 approve a construction access point. They approved that because the emergency access easements will generate
30 practically zero traffic onto Pritchett Lane. The projected traffic generated by an emergency access easement
31 complies with 25A.4.1 all day long. Staff, the Commission, and the Board never reviewed or even considered
32 approving a construction entrance because it was never proposed during the rezoning by the developer or staff.

33
34 It was not shown on the application plan. If the developer absolutely had to have construction access from
35 Pritchett Lane, shouldn’t that have been addressed during the rezoning and shown on the application plan? You
36 even have a letter from the developer encouraging the residents of Pritchett Lane to attend the last public
37 hearing before a vote on the proposed rezoning to support him in advocating for no other connections other than
38 emergency access from North Pointe to Pritchett Lane; the same developer that then came back to Zoning 13
39 years later to ask if they could use the emergency access for construction entrances. Please remember that.

40
41 So, what is the projected traffic generated by the two emergency access easements shown on the application
42 plan? No more than five vehicle roundtrips per year. More than likely, zero trips per year, since there are four
43 approved commercial entrances to this development. These four entrances were supposed to be where
44 construction traffic enters the property. Two of these entrances have been constructed. The stream crossing has
45 been completed, so now, the developer has full and unfettered access to the property. When the Zoning
46 Administrator decided to allow the construction entrances, he changed the projected traffic generated by the
47 development that was reviewed during the rezoning process.

1
2 So now, the question is, “What is the projected traffic generated by a construction access point to a new planned
3 development?” I don’t know what that projected number is, but from what I’ve observed in my front yard while
4 timing truck trips with my watch, is over 320 roundtrips per day, at its peak. This went on for months and
5 months at that rate, so we are looking at over 1,500 trips per week – over 6,000 per month. And these are not
6 small vehicles, these are dump trucks weighing over 50,000 pounds each, loaded. The oversized tractor trailers
7 hauling in large, heavy equipment weigh even more than that, and they are over 10 feet wide.

8
9 This is what happened when the Zoning Administrator approved construction access points that weren’t even
10 discussed during the rezoning. We went from no traffic impact to more huge trucks rolling down our road than
11 we could have ever imagined; thousands of truck trips and counting.

12
13 Please remember that Pritchett Lane is an old minor public road. It does not even meet the minimum width
14 requirement of 20 feet required by the County for a private road. Certain places are only 16 feet wide at the
15 beginning of the road and now, we have vehicles over 10 feet wide and 60 feet long rolling down our road. I
16 have had to pull off the road or back way up to let them pass – not a safe situation at all.

17
18 How did the Zoning Administrator determine that Pritchett Lane was wide enough or strong enough to support
19 this new type of traffic on Pritchett Lane – the biggest and heaviest traffic you can put on the road with
20 absolutely no time limits or duration? This can go on for years and years. I have no idea how he did that. I do
21 know that the Zoning Administrator is not qualified to do that.

22
23 According to my contacts at VDOT, the only way to do this would have been to hire a testing agency or
24 engineering firm to go up there, survey the road, measure pavement width, and do core samples through the
25 road to see what’s underneath it to determine the road strength. Pritchett Lane is a very old road, so there are no
26 construction records to support.

27
28 The Zoning Administrator should be able to show some form of documentation that this was done prior to his
29 decision to allow Pritchett Lane to be used for unlimited construction access. Remember that his actions have
30 now completely changed the projected traffic generated by the development. It has changed dramatically. He
31 can’t provide any documentation of this because it was never done.

32
33 We know that Pritchett Lane is not strong enough to handle this type of traffic. Pritchett Lane is falling apart
34 because of all the heavy construction traffic it has to endure now. I’ve sent you photographs of the damage
35 that’s occurred, especially right at the construction entrance, where the developer has already had to repair the
36 road.

37
38 I think I have now very clearly shown that the construction entrance is not in compliance with the Zoning
39 Ordinance. The Zoning Administrator actually created a zoning violation by his actions, no doubt about it. I
40 must admit that I was wrong when I said Zoning staff had administratively amended the conditions of the
41 special use permit. They didn’t. They allowed a construction access point that was never proposed during the
42 rezoning process and was never shown on the approved application plan, and therefore, was never reviewed or
43 approved by Planning staff, the Commission, or the Board. So, basically, Zoning staff amended the approved
44 application plan of the rezoning without a full staff review or a legislative action by the Commission or the
45 Board.

1 The Zoning Administrator also stated in his staff report that there is nothing prohibiting specific accessory uses
2 from being added. Section 21.2 of the ordinance states, “Uses and structures which are customarily accessory
3 and clearly incidental shall be permitted, provided the establishment of the same the accessory use shall not be
4 permitted until construction has commenced on the principal building or the principal use has been established.”
5 Well, there appears to be a conflict there because no principal building has been constructed, and the principal
6 use of the property – mixed commercial and residential uses – has not been established on the property yet. It’s
7 nothing but dirt out there. I do know that the Zoning Administrator cannot approve an accessory use that creates
8 a violation of district regulations, which is exactly what he has done.

9
10 So, I’ll now summarize my argument. The Special Use Permit Condition 9A only addresses the two emergency
11 access easements that were approved by the rezoning and were shown on the approved application plan. No
12 other types of connection to Pritchett Lane were approved by the rezoning, so the construction entrance there is
13 not allowed. Therefore, it cannot possibly be in compliance with the conditions of the special use permit.

14
15 The addition of the unapproved construction entrance approved by the Zoning Administrator changed the
16 projected traffic generated by the district. Again, the only connections to Pritchett Lane that were approved by
17 the legislative approval of the ZMA were the two emergency access easements. Section 25A.4.1 requires that
18 pavement widths and strengths of external streets being used as access to the district shall be adequate to
19 accommodate projected traffic generated by the district.

20
21 The Zoning Administrator’s action drastically changed the projected traffic generated by the district. He did not
22 make any attempt to verify that Pritchett Lane is wide enough or strong enough to adequately accommodate the
23 massive amount of heavy equipment traffic he has now permitted. He did not verify compliance with Section
24 25A.4.1. As a result, Pritchett Lane – the external road used as access to North Pointe now – is failing and
25 deteriorating as a result of the thousands of vehicle trips by heavy equipment. If the construction entrance was
26 not approved by the rezoning and now has resulted in noncompliance with Section 25A.4.1, then it is not in
27 compliance with the Zoning Ordinance.

28
29 And I now want to close with a question that the BZA and County staff should all ask themselves now: why do
30 we have all these rules, regulations, processes, and procedures in place to prevent this sort of thing from
31 happening, and then turn around and let it happen anyway? What’s the point? Ask yourself that. Why bother, if
32 it’s so easy to get around the rules and regulations? Why bother trying to protect our neighborhood and our
33 road, and then turn around and hammer them? I base my entire argument on what the words on the page say,
34 not what they don’t say, as the Zoning Administrator has done.

35
36 I hereby ask the Board of Appeals to overturn the Zoning Administrator’s determination that the construction
37 access points on Pritchett Lane are compliant with the Zoning Ordinance, the Special Use Permit Condition 9,
38 specifically 9A. Thank you. I’ll be happy to answer any questions the BZA may have for me at this point.

39
40 MR. SHEPHERD: Thank you, Mr. Wright. That’s a good presentation. Now, it is time to turn to public hearing.
41 I ask you all to bear with Marsha for a moment to set forth the meeting guidelines for the public hearing.
42 Marsha, are you prepared to do that?

43
44 MS. ALLEY: I am, thank you.

45
46 MR. SHEPHERD: Thank you.

1 MS. ALLEY: As a reminder, this meeting is being recorded. If you wish to comment during this public hearing
2 and have not already notified the clerk prior to the meeting, you may do so at this time. If you are participating
3 via the web, use the “Raise Your Hand” icon to notify me that you would like to comment on this particular
4 public hearing item. If you are participating via telephone, please press *9 to notify me that you would like to
5 comment on this particular public hearing item.
6

7 The clerk will introduce each speaker for comment. Timekeeping is conducted through a timer. The timer will
8 commence when you begin speaking. You will be notified when three minutes has ended, and you are requested
9 to bring your comments to a close, as your microphone will be muted after a few seconds.
10

11 In order to give all speakers equal treatment and courtesy, the BZA requests that speakers adhere to the
12 following guidelines. When called to address the BZA, please state your name. For uncommon spellings, please
13 spell your name for the record. Address comments directly to the BZA as a whole. Open public debate is
14 prohibited. You may email written statements and other relevant material to be included in the record at
15 boardofzoningappeals@albemarle.org. If you represent a group or organization, you may identify the group to
16 be recognized. If you exceed your allotted time, you will be asked to end your comments, and the microphone
17 will be muted. If a speaker does not use all allocated time, the unused time may not be shared with another
18 speaker. Speakers are permitted one opportunity to comment during each of the public comment periods per
19 meeting.
20

21 Mr. Chairman, at this time, I don’t show any raised hands after that announcement. I’m going to do one more
22 quick look. But I don’t see any indication of added speakers.
23

24 So, at this time, our first speaker is Tom Briedisruiz. And Mr. Briedisruiz, if you will unmute your mic, you
25 may begin speaking. When you begin speaking, I will begin timing. You have three minutes.
26

27 MR. BRIEDISRUIZ: Good afternoon. I have been asked by my wife to submit this statement to the Board of
28 Zoning Appeals. She’s a nurse who couldn’t attend this Zoom meeting because she’s needed as a frontline
29 healthcare person.
30

31 Years ago, when the council approved North Pointe, along with many neighbors, I attended a planning meeting
32 with developers and designers. We broke into groups to discuss what we residents would want in this adjoining
33 new neighborhood. Though I opposed the development due to its high density and proximity to my
34 neighborhood, I was encouraged that they wanted to work with us. Each group – I think there were
35 approximately five groups with about 10 local citizens – unanimously agreed we did not want North Pointe to
36 have any road access onto Pritchett Lane. We were hounded that the developer needed emergency access. We
37 relented, saying, “OK, emergency access only.” After the meeting, several of us met outside. We shared our
38 suspicions that we had been duped and eventually, this promise would be broken. We were correct.
39

40 We now have a busy construction entrance, which some weekdays sees a minimum of 50 trucks in an eight-
41 hour period. Our country lane is not a paved road. We are a tar-and-gravel road that, after several decades,
42 resembles a paved road but doesn’t have the underlying structure our road needs to support the frequency of
43 large truck traffic that we have seen since the beginning of North Pointe constructions. We have sinking,
44 cracking, and increased frequency of potholes. The width of our road is designed for no more than two large
45 cars to pass. There’s no shoulder, and in places, a small strip of grass separates the front – separates the road
46 from the culvert.
47

1 For the 27 years I've lived on Pritchett Lane, it's been known as a scenic and safe road for walkers, bikers, and
2 joggers. This foot traffic has only increased in the past five years, since more young families have moved into
3 our neighborhood. As huge logging trucks and oversized vehicles carrying gigantic cement structures flow up
4 and down our road, we were told this was necessary to join the eastern and western portions of the
5 development. Now, the ravine separating these areas has been bridged. There's a new paved entrance onto the
6 development from Route 29 North. 29 North is a highway built for this type of vehicle and traffic, but still, our
7 lane continues to see heavy truck traffic.

8
9 Our lane was approved for emergency entrance, nothing else. I don't believe it is fair, safe, or legal using it for
10 construction traffic just because no one wrote it couldn't be used for a construction entrance. As a long-time
11 homeowner on Pritchett Lane, taxpayer, and voting citizen of Albemarle County, I feel taken advantage of by
12 the developers of North Pointe. Just as we suspected at the planning meeting many years ago, we were duped.
13 Trust has been broken. The quiet nature of our road is destroyed, and the safety of our pedestrians and
14 neighborhoods is jeopardized.

15
16 It is past time to do the just and sensible thing and move construction traffic to the Route 29 North entrance.
17 Ladies and gentlemen, thank you very much.

18
19 MR. SHEPHERD: Thank you. Marsha, who is the next speaker?

20
21 MS. ALLEY: So, Mr. Chairman, our next speaker is George Dellaganna. I want to ask, while Mr. Dellaganna is
22 getting prepared, can you hear the timer bell?

23
24 MR. BRIEDISRUIZ: I was unable to hear it.

25
26 MS. ALLEY: Could any of our board members hear that?

27
28 MR. SHEPHERD: No.

29
30 MS. ALLEY: Oh, you did not? OK. So, I just want to be clear. Mr. Briedisruiz, you did go over just a couple
31 seconds. I knew you were winding down, so I went ahead and let you finish.

32
33 MR. BRIEDISRUIZ: Thank you.

34
35 MS. ALLEY: I just want to give everybody a reminder of three minutes is the time. What I will do is I'll let you
36 know when three minutes is up and, just as we just did, we'll give you just a couple seconds to go ahead and
37 close your final statement. I hate to interrupt you to indicate that your three minutes is up, but if you can't hear
38 the bell, then I'm going to have to, and I apologize for that interruption on the front end.

39
40 So, Mr. Dellaganna, the timer will begin when you begin speaking.

41
42 MR. DELLAGANNA: I want to thank the board for listening to our concerns here, and I want to particularly
43 thank Mr. Wright for his expertise on the particular issue. My name is George Dellaganna, spelled D-E-L-L-A-
44 G-A-N-N-A. I live on Pritchett Lane, and my wife called in February, when the North Pointe construction
45 company began to work on their access road because it was quite apparent it was going to be a violation of what
46 they had agreed to back when we went to the homeowner's meetings, back 10 or 12 years ago. At that
47 homeowner's meeting, it was more of a sales pitch by North Pointe to try to convince us that they weren't going

1 to impact our neighborhood and that they were going to keep Pritchett Lane as a rural road without a heavy
2 amount of traffic where people walk and ride their bicycles and that sort of thing.

3
4 Obviously, the heavy construction vehicles on the road appear to be a violation of that assurance from the North
5 Pointe. It's just another example of a big company with lots of money and lawyers and those sorts of things, and
6 10 years ago when they made promises, breaking those promises and then trying to run over the local
7 neighborhoods. We've got no authority and, quite frankly, we wouldn't be having this meeting if it wasn't for
8 Mr. Wright because although we complained about it, we have no idea as to how the process works to be able to
9 get ourselves before the board to hear what our concerns were. So, I want to particularly thank him for having
10 worked us through that process.

11
12 I read through the documents that were prepared by Mr. Svoboda and particularly, his permit conditions, which
13 says that, "Not allow for temporary construction easements as a type of extension to Pritchett Lane. Although
14 the proffers, conditions do speak to various road standards, they do not prohibit the use of construction
15 entrances." OK, so – and he calls the construction entrance an "accessory." OK?

16
17 So, first of all, he talks about it being temporary and then, it's an accessory. Now, I'm not a lawyer and that sort
18 of thing, but I do have a dictionary, and I do have the internet and that sort of thing, so I kind of looked up what
19 those kinds of things mean. "Temporary," to me, I mean, there are lots of things that are temporary – pretty
20 much everything. But how long that temporary is going to go on for here when you're building a huge
21 neighborhood such as North Pointe is hard to see.

22
23 As far as zoning ordinance go, I understand that an accessory is subordinate to a principal use for something.
24 So, the principal use for those access points along Pritchett Lane was to be an emergency access, not a
25 construction area that was being used all the time. So, we're talking about a principal use versus an accessory
26 use, and I think that what we've got now is a principal use being the construction road, not an accessory use for
27 that particular issue.

28
29 Now, I know I don't have a whole lot of time here, but one thing I would like to say, the horse has kind of left
30 the barn. We have a construction, whether we like it or not, going down Pritchett Lane.

31
32 And I hear the buzzer. I will wrap up.

33
34 MR. SHEPHERD: Thank you.

35
36 MR. DELLAGANNA: So, even if the board approves or doesn't stop this, I would like to ask that you
37 specifically deny a second construction road between L6 and L17, north of the church. Thank you very much.

38
39 MR. SHEPHERD: Thank you. Next speaker?

40
41 MS. ALLEY: Mr. Chairman, our next speaker is Dwayne Smith. Mr. Smith, you may unmute your mic, and
42 your timer will begin when you begin to speak.

43
44 MR. SMITH: Yes, my name is Dwayne Smith. I live on Pritchett Lane. I've been here since 1969. When I came
45 here, the road over here was a dirt, gravel road. So, like Mr. Wright says, the road is not feasible for all the
46 heavy trucks and traffic that's coming in for the construction for North Pointe. And it's not wide enough. And
47 you have school buses right now that are coming in, and people are traveling back and forth, and with the heavy

1 equipment and with dump trucks and what have you, people can't get by. You have to stop. And some of the
2 trucks are running very fast. And people that are walking or kids that are out playing are – it's too dangerous to
3 have that kind of construction work on Pritchett Lane.
4

5 And when we went back to the meetings back in the days when they was bringing this up, just like the other
6 parties have said, they told us that only going to be for emergency exit only. Fire trucks, emergency vehicles
7 only. Now, you've got construction coming in, and I don't think it's feasible for this type of road right now.
8 And I just – another thing: who's going to pay for the road if the road starts deteriorating on down the road –
9 next year, or whatever? Cold weather comes in. Is the construction company going to do it from there all the
10 way through Pritchett to Proffit Road? Probably not. Just probably end up fronting [inaudible].
11

12 And another thing – then, I thought it was supposed to be a buffer on Pritchett Lane from North Pointe. And as
13 you go down Pritchett Lane, all the trees are cut off, cut down there. I thought there was supposed to be some
14 kind of buffer between Pritchett Lane and North Pointe, but it's wide open.
15

16 So, my point is, I hope you all vote on – and counsel are – have them use the main road coming off 29, or down
17 Leake's Road coming off Proffit Road, because it's unsafe for the whole neighborhood. And I appreciate you
18 taking concern of this, and Mr. Wright, thank you very much for all your help of putting this in. And thank you
19 all, board members. Thank you.
20

21 MR. SHEPHERD: Thank you, Mr. Smith.
22

23 MS. ALLEY: Mr. Chairman, our next speaker is Gladys Bryant.
24

25 MR. SHEPHERD: Thank you.
26

27 MS. ALLEY: Ms. Bryant, your time will begin when you begin speaking.
28

29 MS. BRYANT: Thank you. Yes, my name's Gladys Bryant, and I have been a Pritchett Lane resident for over
30 50 years now, 53 years actually. And so, I've seen our neighborhood change some over the years, but even so, it
31 still remains a dead-end road, and it's rather quite a quiet neighborhood, still.
32

33 So, several years ago, when plans were beginning, people started talking about the North Pointe development.
34 We, the whole community here, we were concerned about the possibility of them having access from the
35 development area onto Pritchett Lane. And so, we raised our concerns at that time. I know I especially talked to
36 our County Supervisor at that time and raised concerns about it. But anyway, he said that there were no plans
37 for any access to be made from that development onto Pritchett Lane. And then, my husband went to some
38 planning meetings along the way and whereby, we were told that there would only be emergency access onto
39 Pritchett from that development.
40

41 So, needless to say, we've been very disappointed with all this construction traffic that's now on Pritchett. So,
42 not only has there been a lot of large tractor trailers and dump trucks and that sort of thing on the road, but the
43 noise level is a constant thing because sometimes, the traffic is bumper-to-bumper all day long. And so, you put
44 up not only with the vehicles going up and down the road, but there's the noise factor also. And then, people
45 who walk or bike on the road – they have to be extremely careful because the road is not that wide, and it
46 doesn't have any shoulders, and it doesn't have any sidewalks or anyplace to get out of the road. And so, on
47 occasion, people have to actually get into the ditch in order to get out of the way of those big trucks.

1
2 And so, it's my understanding that the developer's use permit to build the division – the North Pointe – that his
3 permit didn't include permission to use the emergency access for construction traffic. But, of course, we know
4 that that's what's happening. And so, since he didn't get his permit amended or approved through the Board of
5 Supervisors, which I understand is the normal mechanism, I'm really concerned that the same sort of go-around
6 will happen when the development is finished, and general traffic will be permitted on [inaudible due to
7 buzzer].

8
9 I'm requesting that construction traffic end, that when we can get some assurance that long-term [inaudible due
10 to buzzer] from North Pointe onto Pritchett will not be permitted. Thank you so much for your time.

11
12 MR. SHEPHERD: Thank you. I ask that the folks respect the buzzer, respect the time limit. It's a courtesy to all
13 the speakers, everyone here. I would appreciate that. Marsha, who is next?

14
15 MS. ALLEY: Mr. Chairman, our next speaker is Richard Cale. Mr. Cale, your time will begin when you begin
16 speaking.

17
18 One moment, Mr. Chairman.

19
20 MR. SHEPHERD: Yes?

21
22 MS. ALLEY: Let me double-check. It looks like Mr. Cale may have left the meeting. No, he's still here. Hold
23 on. Mr. Cale, are you available?

24
25 MR. CALE: Hello. My name is Richard Cale, and I am a resident on Pritchett Lane. I wanted to start off by
26 thanking Mr. Wright. I understand when we're looking at issues like this, I thought of it as the residents as a
27 small little French fry. We have a multimillion dollar company and lawyers. I just hope that the County moves
28 forward with ensuring that they're being legally defended or represented by someone who's looking at our
29 community and not for our larger companies.

30
31 So, right now, we're looking at a commercial volume traffic in our residential area, and I'm concerned about
32 two main areas which will inherently cause some consequences after that. My two areas of concern are traffic
33 and safety.

34
35 So, my wife and I moved here over a year ago, and we are avid walkers, avid lovers of wildlife, and we've
36 unfortunately had to stop our evening walks due to the traffic. When you have two 10-foot-wide trucks passing
37 each other at the same time, and that I have a culvert next to me, I don't really have a whole lot of place to go
38 when I'm taking my evening walk. I'm not saying we should take all this down based on my evening walk, but
39 this is a huge safety issue.

40
41 In addition to this, these size trucks are extremely detrimental to our road conditions. I believe that the
42 construction company is responsible for these, but they really like to put band-aids rather than really do the job
43 correctly, so that is exactly what they have done to our road is put a band-aid.

44
45 And also, the lack of, the disregard for, traffic laws. These large trucks move faster than most sportscars down
46 our area, and we have many children and adults and elderly who like to walk down our lane.

1 So, traffic and safety are two concerns of mine, and these inherently have caused other consequences that I have
2 noticed. These are pollution, not only noise, air, but also litter. I have seen an extreme amount increase of litter,
3 especially around our construction area, which I cannot prove this, but if we're going to look at – if we're going
4 to use legal jargon and try to be not as explicit as possible, then I believe that would hold up in this area.

5
6 Additionally, my last point I would like to say is about the special use permit. It says that it wasn't explicit for
7 29 or Pritchett, or maybe we should make that explicit. And I also do not think that should be contingent on
8 VDOT to use a residential road rather than a more accessible highway such as 29. If a multimillion-dollar
9 company wants to come in, they should have to go through the legal ramifications of going through VDOT to –
10 instead of using a residential road. So, I think that's kind of a cop-out, and I think it is our responsibility as
11 community members – everyone in this meeting, not just those who live on Pritchett Lane – to address these
12 issues. Thank you so much for having me.

13
14 MR. SHEPHERD: Thank you, Mr. Cale.

15
16 MS. ALLEY: Mr. Chairman, our next speaker is Nina Crawford. Ms. Crawford, are you available? Ms.
17 Crawford, you may unmute your mic, and your time will begin when you begin speaking.

18
19 MS. CRAWFORD: Thank you. My name is Nina Crawford, and I have the unfortunate displeasure of living
20 across the street from the entrance. My life has been impacted by this, and – Dave, I know you're here, and I
21 thank you for all that you've been. You've been very helpful, but this has been quite a living nightmare for us.

22
23 We, too, have gone to the meetings for many years, and like all my neighbors, we were told explicitly this was
24 an emergency access. So, my question to the board is, as all these meetings we went to were discussed,
25 everyone was present, every issue was gone over, and there were public meetings, why was there no public
26 meeting to discuss the emergency access becoming a road? That's the question I'd like you to think about and
27 respond to the development and the community here that if all of the other issues we look at have to be
28 examined, why was this not examined and steamrolled through to the negation of the benefit and the welfare of
29 the people on this street?

30
31 As for the garbage, I will concur there is garbage rolling into my driveway constantly. My dogs are getting sick
32 from garbage and bones and food coming into the yard. We also have people not obeying the speed limit. The
33 safety is an issue. The roads are an issue. I mean, I could go on for much longer than three minutes, but I just
34 feel like this was such a huge oversight.

35
36 My husband's family has lived on this street for many generations, and I don't believe this is what they
37 envisioned. I think that there are ways to be more neighborly and consider the impact you're having to the
38 people on the street. As the other neighbors have expressed, there are times where I have to wait to get out of
39 my driveway because it's blocked by big vehicles, and I can't even get out to my appointments.

40
41 The traffic is also a detriment. You have to wait in line sometimes when the traffic and the trucks are coming in
42 both directions. It is just dangerous. It is uncomfortable.

43
44 As far as the buffer goes, we were told there would be a 50-foot buffer. I know they're anticipating putting
45 vegetation back, but why were these historic trees removed? Some of the effect from taking these historic trees
46 down – trees have blown down in neighbors' yards that were there for years because the wind coming across

1 the barren field across from us now is really hampering, and that's also causing the trash and the garbage and
2 things to roll into Pritchett Lane.

3
4 People walking on the street are fearing – I've seen some of the elderly people gingerly walking to the
5 precipice, sitting by the culvert, sort of covering and cowering as these trucks roll by them. This is a dead-end
6 road. This is not 29. There's absolutely no reason why they cannot use the entrances and exits on 29 as
7 originally planned. The three main routes and the spine going up through Leake Square. There's absolutely no
8 reason not to use that and use Pritchett Lane. Thank you for your time.

9
10 MR. SHEPHERD: Thank you, Ms. Crawford.

11
12 MS. ALLEY: Mr. Chairman, our next speaker, and our final speaker at this point, is Mr. Walt Morgan. Mr.
13 Morgan, you can unmute your mic, and your timer will begin when you begin speaking.

14
15 MR. MORGAN: Hello, my name is Walt Morgan. My wife, Eva Marie Ireland, and myself, just moved in here
16 recently, but she's been associated with this area for 10 years. We're at the end of Riverview Lane, which is the
17 last thing you turn on, basically, on Pritchett Road. And my background is an engineer, and I cannot believe
18 anyone would allow the construction traffic that's on that road. It's going to destroy that road. It's just – you
19 don't need an engineering degree to see that.

20
21 There are lots of people who walk on it that are not just kids, but elderly people, young people. It is terrifying.
22 Myself, when I drive on that road, what I'm going to meet head-on or not. And the speed limit should probably
23 lower down to 20 miles per hour, but I'm pretty sure it's going more like 45, 50 miles down that road.

24
25 There has been a result of some wildlife killed because of vehicles hitting it, like a deer, stuff like that. And it –
26 other concern is because this has set a precedence, when the development moves down to where Riverview
27 joins with Pritchett, are they going to do the same thing there? They're going to tear that all up and turn that into
28 a construction zone of traffic coming in and out. And so, this is not a very – we don't like what they've done,
29 and we don't certainly like it as precedence.

30
31 Anyway, I appreciate your time, and I appreciate your careful consideration on this. Thank you very much.

32
33 MR. SHEPHERD: Thank you, Mr. Morgan.

34
35 MS. ALLEY: Mr. Chairman, right now, we don't have any further names on our list, but I would like to give
36 the opportunity to those in attendance, if you would like to comment on this public hearing at this time, please
37 signify by using your "Raise Your Hand" icon. If you're calling by phone, please use the *9.

38
39 Mr. Chairman, we have one raised hand. Give me just a moment.

40
41 MR. SHEPHERD: OK.

42
43 MS. ALLEY: Mr. Morgan, you have raised your hand, but you've already spoken your three minutes for this
44 public hearing.

45
46 MR. SHEPHERD: Is there another person that was wishing to speak?
47

1 MS. ALLEY: It was. Mr. Morgan had raised his hand once more, but he has already spoken. He was our last
2 speaker, I believe. So, I don't show anymore indications of raised hands at this point.

3
4 MR. SHEPHERD: OK, so, consistent with our rules that people get one opportunity to speak, I'm going to now
5 close the public hearing and circle back to five-minute summations from the staff and the appellant. And we
6 start with the staff, Mr. Svoboda. You have five minutes and, of course, you can share that time with Mr.
7 Herrick.

8
9 MR. SVOBODA: Yes, I will share some time with Mr. Herrick. To cut to the chase, the construction cannot
10 happen with that specific approval, as the appellant is stating. There are only a few instances where construction
11 access is regulated through a special use condition or proffer. Otherwise, it is considered part of that
12 development of the parcel because it's only temporary, and traffic analyses do not generally incorporate the
13 construction traffic. It is about the long-term traffic of how that development lays out. Mr. Herrick?

14
15 MR. HERRICK: So, along those lines, a lot of Mr. Wright's presentation was indicating that the Zoning
16 Administrator approved this, or the Zoning Administrator approved that. And I would simply point out that this
17 really did not require an affirmative approval by the Zoning Administrator. The Zoning Administrator was not
18 an active agent in approving this.

19
20 I'm not unsympathetic with the concerns of the neighbors, but simply, the Zoning Administrator was finding –
21 and I agree with this finding – that there's no law against what's being done there right now. The existing
22 special use permit permits the use of that road as a construction entrance, and it doesn't really require an
23 affirmative approval by the Zoning Administrator. The special use permit does not prohibit that use of Pritchett
24 Lane.

25
26 MR. SHEPHERD: OK, thank you. Bart, Mr. Herrick – more? You have a few moments left. Complete? OK,
27 thank you for that.

28
29 Mr. Wright, we come back to you. You have five minutes to summarize your presentation.

30
31 MR. WRIGHT: Alright, thank you for that, Mr. Shepherd. Yeah, I mean, the County Attorney and the Zoning
32 Administrator want to keep talking about the special use permit. That's fine, but I'm going to focus on the
33 rezoning because Mr. Svoboda said everything's compliant with the Zoning Ordinance. The rezoning is a
34 zoning act. It's got an application plan. What does the application plan show? Two emergency access
35 easements.

36
37 The attorney's statement that my logic doesn't allow any construction on the property is just totally bogus. They
38 have four approved commercial entrances: three on Route 29, one at the end of Leake Lane. Why couldn't they
39 use those? That's what was shown to everybody at the rezoning. That's what was approved by everybody at the
40 rezoning.

41
42 I understand why my neighbors are so hopping mad because everything said, "Oh, it's just an emergency access
43 easement." I was even told that by senior planning staff, after it was approved, "Oh, they can't do that. It's just
44 emergency access." So, again, it's what was reviewed at the rezoning. It's what was approved at the rezoning.
45 And now, it doesn't mean a thing, and it's just insane.

1 But I'm sorry – how do you get around violating Section 25A.4.1? It is a zoning violation. Until the
2 construction entrance was approved – or allowed, I guess I should say – by the Zoning Administrator, we didn't
3 have a violation out here. OK? Everything was compliant with the rezoning. Once he changes that and we start
4 sending thousands and thousands of dump trucks down here, the road's falling apart. OK? I don't see how the
5 Zoning Administrator gets around 25A.4.1. I don't. He approved a change to a rezoning. He approved
6 something to happen that created a zoning violation. Therefore, it cannot be in compliance with the Zoning
7 Ordinance.

8
9 I was in construction for years. I understand how things work. You've got to have a way to get in there and
10 build something, and they did. They had four approved entrances off of public roads, not through residential
11 areas. OK? If they were going to absolutely have to have access to Pritchett Lane to accomplish a stream
12 crossing, why was that not brought up at the rezoning? It makes no sense, but again, something has been
13 approved that has created a zoning violation. Therefore, it's not compliant with the Zoning Ordinance. I have no
14 idea how the County Attorney or the Zoning Administrator can spin that another way. I mean, it just – it makes
15 no sense. I don't see how they do it.

16
17 Again, everybody's forgotten about the rezoning. Everybody's forgotten about the application plan and what it
18 showed. OK? It did not show construction entrances, temporary construction easements. There was no
19 provision made at those two entrance points for anything other than emergency access, which is what was
20 approved by a legislative act. And by allowing something other than what was approved has created a zoning
21 violation. I'm sorry. The Zoning Administrator does not have that kind of authority. You can't overrule a ZMA,
22 and you certainly cannot approve something that creates a zoning violation. It doesn't work that way.

23
24 So, anybody has any other questions, I'm all ears. I'm here and available.

25
26 MR. SHEPHERD: Thank you. I'm going to ask everyone's indulgence and want to take a two-minute break.
27 And we will, as I say, be back here in just a couple of minutes. I don't want to take much time off, but we'll
28 take a quick break, if that's alright. I will be back in a moment.

29
30 [There was a short recess.]

31
32 MR. SHEPHERD: Thank you. Looks like everyone took me up on the offer.

33
34 MR. MITCHELL: Mr. Shepherd, I was wondering if – this is David Mitchell. I didn't get called in the public
35 hearing. I got moved forward. Is there a reason? Hi Stewart, I see you. We see you.

36
37 MR. SHEPHERD: Mr. Mitchell, I will give you the – I have a couple of questions for you that I will ask in the
38 course of the discussion.

39
40 MR. MITCHELL: Alright, that's fine. I just want to make sure. Thank you.

41
42 MR. SHEPHERD: Yup.

43
44 MS. ALLEY: Mr. Mitchell, just for your reference, I have you on my radar. When we reconvene, I was going to
45 remind them that you are available for any comment or to answer any questions that they had. You had not been
46 forgotten. I just wanted to give you some peace of mind on that.

1 MR. MITCHELL: Alright, thanks.

2
3 MR. SHEPHERD: Likewise. Is everyone back? I think we are. Let's come back to order, and we will now turn
4 this over to discussion on the board's side. I remind folks that both Mr. Mitchell is here, and also Mr. Pohl is
5 here, and both of those folks may be able to offer understanding on background, and also answer any other
6 questions – particular questions folks have.

7
8 And I also just hope we can provide some clarity. And I also wanted to say I appreciate the comments people
9 made. I appreciate the efforts Stewart has made on this, and hopefully, bring some clarity and make a good
10 decision.

11
12 So, with that, the public hearing is closed, and I turn it to – put this to board members, starting with Mr.
13 Rinehart. Questions, comments? Or, board, do we want to ask Mr. Mitchell to speak, or do we want to simply
14 ask him questions? I want to just – procedurally, I want to handle that in the right way. Yes, Marcia?

15
16 MS. JOSEPH: I would like to ask Mr. Mitchell some questions. Mr. Rinehart, Mr. Robb?

17
18 MR. RINEHART: I will yield to you, yes.

19
20 MS. JOSEPH: Well, I didn't – matter – what would – I just wanted to ask him things before – if he wants to add
21 anything on there. I'd also like to talk to Mr. Pohl about the whole process of development.

22
23 So, can I start with my little story? My little story is I live across the street from a construction site, and there
24 have been all kinds of Faulconer trucks in and out. And one of the things about the site plan itself – the
25 approved site plan does not show an entrance onto my little road. It shows an entrance onto Berkmar. However,
26 they're using a construction entrance that was approved with the erosion and sediment control plan that has the
27 entrance onto my little Woodburn Road. OK? That's a construction entrance.

28
29 And I talked to Mr. Pohl about my construction project across the road, and he sent me a nice response. And by
30 the way, Mr. Pohl, speedy delivery. Thank you so much. The response from you was very quick, so I appreciate
31 that. And what he told me is that in many cases, it's a usual thing for – not Bart Svoboda to approve the
32 construction entrance. Not Andy Herrick to add into any kind of input on construction entrances. But VDOT
33 does. VDOT makes a determination with the erosion and sediment control plan of where the construction
34 entrance has to go.

35
36 Now, one of the things that happens when you get an approved rezoning, in my experience, is that you have to
37 submit a site plan. To get a site plan approved, you have to submit an erosion and sediment control plan. The
38 erosion and sediment control plan always has a construction entrance. The erosion and sediment control plan
39 also has sediment basins, and it has a lot of riprap, and it has diversion dykes, and it has – and I drew these up in
40 my youth, so I know what these things are. And I also know they're temporary – that when the Board of
41 Supervisors approves a rezoning, they're not looking at an erosion and sediment control plan. So, this is
42 something that is done for engineering purposes, and now, it's become heavy duty. And we have a Water
43 Protection Ordinance. We have state regulations that have to be complied with.

44
45 So, please. The implication that Mr. Svoboda and Mr. Herrick had anything to do with approving these
46 construction entrances – it's just not there. I mean, these things are required by law, by state law, to have an
47 erosion and sediment control plan that is approved by the County Engineer.

1
2 So, there's one question I would really – and I know that there's a bond done on the erosion and sediment
3 control plan, and it is temporary. And that bond gets released when – I'm assuming, and tell me if I'm wrong –
4 when all of the erosion and sediment control measures are removed. Some may remain permanent as part of the
5 plan, but most of them – construction entrances – will be removed.

6
7 Now, the question I have for Mr. Mitchell is, what's your schedule on the erosion and sediment control plan?
8 And the other thing I want to ask Mr. Pohl and Mr. Mitchell is, once they begin construction on buildings, will
9 they be using this construction entrance to haul lumber, or concrete, or block, or whatever onto this site?

10
11 So, I just wanted to make sure that everybody knows that a lot of times, this isn't something that is done by
12 Engineering, or even the applicant, or certainly not Zoning to determine where the construction entrance goes.
13 VDOT is looking at whether or not they want to have these big trucks moving out slowly on Route 29, where –
14 I don't know, I think the speed limit is around 60 miles per hour at this point, at North Pointe, or whether or not
15 they want them onto a smaller road.

16
17 I understand what you're talking about because I'm dealing with the same sort of thing with big trucks moving
18 in and out on a smaller lane. I do understand, but I also understand that there are other safety concerns that
19 VDOT has looked at in terms of the larger segment of the population than those that are living on Pritchett.

20
21 So, I'm sorry I've gone so long, but if you guys could answer me on how long you think that this dirt moving is
22 going on, how much longer you're going to be moving these trucks in there. And in terms of the bond, which I
23 saw was over \$1 million, which really surprised me, is when does this bond – when do you remove the bonding
24 and assume that this whole erosion and sediment control plan is complete and construction can begin?

25
26 MR. MITCHELL: So, Marcia, yeah, the bond is large because it encompasses essentially all the dirt moving
27 and all the temporary stormwater protection measures, and then some. I think the County usually adds a little
28 extra for oopsies. And that bond will stay in place, in some amount. It can be reduced as we get grass to grow,
29 as we install asphalt, as we install curb and gutter, as we install all the things that convey water wherever
30 water's supposed to go.

31
32 So, that bond, for this Phase 1, could easily be in place for two or three years because sometimes, on a project
33 this large, it may take that long to establish the conditions that you're no longer causing potential erosion. So,
34 that – I think that's the first question.

35
36 We have a stormwater management plan, a WPO plan, that that bond is a part of. You can amend it onsite with
37 the permission of Johnny Otto, who is our inspector. If we see something in the conditions that are different, it's
38 – as long as everybody, including the County and our engineers and the contractor, agree that it's the right thing
39 to do.

40
41 But generally speaking, we follow the plan. The plan is like a battle plan – first contact, and you change it. But
42 we try to stick to it as close as possible, and we have.

43
44 And then, let's see – the entrance is only for the construction of the dirt moving in Phase 1, and Phase 1, in our
45 parlance, is everything to the east of Flat Branch, which is the main stream that runs through the middle of this
46 project. Part of the reason that this is not – this may not have been thought about 20 years ago when this plan

1 was originally put forward was, at the time, the Corps of Engineers was going to allow us to pipe all of the
2 streams on that property, including Flat Branch, and build a big pond. So, it'd be a regional stormwater facility.

3
4 In the intervening 20 years, that is no longer an option. The Corps of Engineers does not allow the wholesale
5 piping of streams anymore, or the impoundment of streams, to create that lake that was part of the southern
6 commercial entrance and therefore, we lost access to cross the creek in a substantial way. We still have the
7 single box culvert entrance that's been talked about that comes from 29 into the middle entrance. There's a –
8 two 8-foot by 10-foot box culverts and about 40 foot of fill to get across that ravine. But the problem we have
9 there is, the dirt to fill that ravine comes from the Phase 1 side of the stream, which is on the Pritchett side of the
10 project.

11
12 So, we did get a – the contractor, Faulconer Construction, which is a great contractor and does a wonderful job
13 – they're not the least expensive, but they're the best. They got a land use permit from VDOT. They have
14 permission from VDOT to enter at that point and presumably, VDOT has assessed that that's an acceptable
15 location. I'm sure this is true. I'm sure that VDOT will – when that permit, when that entrance is closed, VDOT
16 will assess it and have Faulconer repair any damages that they deem necessary to be repaired. That's usually
17 how land use permits work – the ones that we've dealt with. This permit happens to be in the name of Faulconer
18 Construction, not the developer. That's just the process we went through. It doesn't really affect the function of
19 anything – it's just a sidebar to it.

20
21 We – the houses, and the trusses, and all that stuff are not going to come through there. We are within weeks of
22 closing in on completing the gravel and a portion of the asphalt so we can actually drive across those box
23 culverts I talked about. It has taken longer than I wanted it to, but as soon as we gain access across those box
24 culverts, we do not need that construction access any longer. It was simply because it was the only point of
25 access that we reasonably had.

26
27 You know, I've heard a lot – I understand how these things go, but I've got to push back a little bit. I know
28 people get angry and upset. You know, we're not a big – we're a family-owned development company that's
29 been here for 40 years. And we do the best we can to work within this community because we've got to live
30 here, too. I know people hear that all the time, and it sounds like something people just throw out, but it's true.

31
32 Now, the letter that was spoken about – I'm sorry, Mr. Stewart decided to walk out of the room. The letter that
33 we talked about, that he's talked about, was specific to a permanent access not being on Pritchett. That has
34 always been the case. And if it was misunderstood, I'm sorry that that was misunderstood by people, but that's
35 the way that letter was presented. That's the way I read that letter, and I think that that's the right way to
36 interpret it.

37
38 You know, another sidebar – Nina Crawford and a guy named Alex, who wouldn't give me his last name, were
39 the only two neighbors that contacted me directly. And there have been a lot of complaints, and Ms. Ragsdale –
40 I always told her, I said, "Give them my name and number, and I'll be happy to meet with them and talk."

41
42 Nina's been great. I understand she's upset, and she's clearly the most impacted person because she's directly
43 across the street from this access point. And I understand she's not happy, but I would hope that she believes me
44 and can attest to the fact that I have returned her calls and gone to see her multiple times to try to fix whatever
45 mistakes that are happening. I mean, you've got truck drivers that – all truck drivers drive too fast, occasionally.
46 They are large pieces of equipment. These things are going to happen. I mean, when humans are involved,
47 nothing is perfect, but I have tried every time she has called me to address it and fix it, and I think that I have.

1
2 And the one guy, Mr. Alex – again, I don't know his last name – he – I did the same thing. I mean, I read the
3 riot act to the superintendent and the truck drivers about driving slow and being respectful to people who live in
4 this neighborhood, and we have tried to correct every issue that's been brought forward.

5
6 But literally, the only two people that have contacted me directly were Alex and Nina, and I think we could
7 have gotten along – we maybe could have avoided this if I had been contacted directly. I had offered that. I
8 know my information was given to everybody, and nobody called.

9
10 And regarding the buffer, the trees that were taken down were because they – that was an area that needed to be
11 graded in order to build the lots. It's a 30-foot buffer. It is being designed. It will be installed in the spring of
12 next year, 2021, and it has been reviewed and is pending approval from the Planning staff. And there are
13 specific requirements for that buffer, and it will be installed and maintained per the proffers.

14
15 MS. JOSEPH: OK, so what I heard from you about scheduling is you're expecting that this entrance will be
16 closed within the next few weeks. Is that what I heard?

17
18 MR. MITCHELL: Yes.

19
20 MS. JOSEPH: OK. So –

21
22 MR. MITCHELL: We will put boulders and trees across the entrance.

23
24 MS. JOSEPH: OK. And so, the other thing I heard is that you're using this entrance because you had to put a
25 box culvert in on – and you needed the dirt to fill in that area. Is that –

26
27 MR. MITCHELL: Yeah. That's the way the site lays out. All of the fill dirt for this project is on the east side of
28 Flat Branch, and therefore, you need to get access to that side to start filling across that area. That's where the
29 equipment is that's moving all the dirt. I mean, you know, and – on an average day, you're talking 15 to 20 guys
30 driving to work. There are days when we deliver gravel or dirt to the site, or large pipes and structures, and I –
31 clearly, that is a lot of traffic in a short period of time. But I think it is incorrect to say that it is that traffic
32 consistently every day, eight hours a day. That's just not the case. But there is heavy traffic in short periods of
33 time, absolutely.

34
35 MS. JOSEPH: Mr. Pohl, do you have anything you'd like to add from anything that your inspectors have seen
36 out there?

37
38 MR. POHL: With regards to the entrance, no. I don't have anything to say about that. We do approve plans, but
39 rely on VDOT for determining and issuing permits for those entrances. So, we do have entrances that move.
40 They're shown on the plan, but when they get into the construction phase and they ask for an entrance permit,
41 VDOT does, sometimes – rarely, but they may decide that a different location is more suitable, and they may
42 make that determination work with the contractor to put those in a suitable location.

43
44 With regards to the bond, this – I can see the bond being, as Mr. Mitchell said, two or three years out. There are
45 stormwater components that also have to be constructed that typically aren't completed until after the site is
46 stabilized, so that can take a little bit longer. And part of the release, though, is to close up those construction
47 entrances, remove them, and all E&S measures.

1
2 MS. JOSEPH: Thank you. I'm done.

3
4 MR. SHEPHERD: OK. Thank you, Marcia. Thank you, Mr. Mitchell. Thank you, Mr. Pohl, for – that was a
5 good discussion, and I appreciate it.

6
7 Mr. Robb, any further comments, questions, ideas?

8
9 MR. ROBB: Well, I'm grateful for the time and energy that Mr. Mitchell has provided. I think it's important to
10 have people from both sides of the conflict, disagreement, or whatever – I'm sorry that the community hasn't
11 been able to get that sort of treatment, I guess. And I think it's a human frailty where the squeaky wheels get the
12 grease, and I'm really glad to hear that the temporary entrances will be closed up in a short period of time.
13 That's real reassuring.

14
15 And I quite – I can't understand it, and I really think there is a problem with this picture. Why they even used
16 the term "emergency entrance?" Why not just say, "access?" Why call it – and I don't know. Maybe somebody
17 could answer that. "Emergency," to me, is a whole lot different from "access." And then, VDOT had to have
18 issued a permit, I presume. Maybe I'm wrong. I've never known of any times when VDOT didn't inspect and
19 issue entrance permits. Is there an entrance permit? Maybe Mr. Mitchell can answer that one.

20
21 MR. MITCHELL: We have a land use permit from VDOT with Faulconer Construction for that location.

22
23 MR. ROBB: Would that be an entrance permit?

24
25 MR. MITCHELL: Yeah, VDOT calls it a "land use permit." Yes.

26
27 MR. ROBB: Because I know from my experience in being around construction business, somewhat, in order to
28 put a driveway into somebody's property, you had to get an entrance permit.

29
30 MR. MITCHELL: Right. That's for a permanent access point, but when you're doing a temporary access or
31 construction, or if you're going to leave an improvement like a tree in the VDOT right-of-way, in an island or
32 something like that, VDOT just says, "This is our land. This is our right-of-way." You have to get a land use
33 permit –

34
35 MR. ROBB: Right. Thanks for that understanding. But the idea, too, that I think was provided that we could try
36 to compare Route 29 and Pritchett Lane is ridiculous, and that comparison was made today. There's no
37 comparison as far as traffic control on Route 29. That can be accomplished by using the control systems that we
38 have, including police. So, I don't know, but I do understand where Mr. Mitchell's coming from and the fact
39 that they needed to get equipment in there to move the dirt. But once – and my question is, once that equipment
40 is in there, how come there's that many trips up and down that road? But did they have to haul the dirt all the
41 way around? Is that it, or what happened there? That doesn't make any sense.

42
43 MR. MITCHELL: Do you want me to answer that?

44
45 MR. ROBB: Yes.

1 MR. MITCHELL: So, during the construction of the main fill area and the box culverts, there are also a bunch
2 of underground piping structures that are part of the E&S plan and the stormwater management plan that all
3 have to be installed at the same time you are excavating the dirt because you've got to control, permanently and
4 temporarily, the runoff of the excavation area as you're moving that dirt down into the creek, over top of the
5 box culverts.

6
7 So, that equipment that's being – and that's not just moving dirt. You're bringing in gravel. You're bringing in
8 select fill. Sometimes, we can't find the right type of dirt – specifically, clays that are required in the dams. So,
9 sometimes, you need to bring in materials that are not available onsite, and that's – all of those structures and
10 facilities that need to be built in order to facilitate you to do the land clearing and the dirt moving without
11 dumping all of the sediment into the streams require other materials that have to be brought on.

12
13 That's what that equipment – that's what that traffic is that you see that's not just the guys driving to work in
14 the morning, parking, and then getting on their equipment and driving around all day. There are times when you
15 have to bring in materials, and parts, and pieces, and structures to facilitate the excavation of that dirt to fill that
16 creek – or not the creek, but over top of the box culverts.

17
18 MR. ROBB: Mr. Mitchell, do you – were you available at the time when this project was being – going through
19 approval process some many years ago? Were you involved?

20
21 MR. MITCHELL: No, I was living in Richmond and single.

22
23 MR. ROBB: So, you don't know what Mr. Wright and the others were told by the people –

24
25 MR. MITCHELL: I saw the letter. That's the only thing from the rezoning that I would know. And obviously, I
26 have the documents from the rezoning – the proffers and the SUP that's currently specified. But my
27 involvement with this project started probably four years ago, when we started to actually do the design of the
28 subdivision and the structures – not the rezoning, but the actual construction plans for the project.

29
30 MR. ROBB: My position is that I think – somebody used the word “neighborly.” It just seems to me – and I'm
31 one of those people who like to be a peacemaker if I can be. Maybe that's from being a politician. I don't know
32 if that's good or bad. But it seems to me like the neighbors could have been somehow appeased and brought
33 into the whole picture much sooner than what – and I know you say you've tried to do that with a couple
34 people, but I'm sorry that it's gotten to this point, and I don't know what we can do about it at this point, at this
35 time, but try to bring it together because –

36
37 MR. MITCHELL: The best thing I can do is get off the road and get out of there, which is what we're trying to
38 do as fast as possible.

39
40 MR. ROBB: Well, I appreciate that, and I think – I don't know how everybody else feels about it, but I really
41 sympathize with the neighbors out there. But I realize the position that Mr. Svoboda is in, too, and everybody –
42 all of us – are sympathetic, I think. So, let's try to do the best we can, and – I'll stop my preaching, and thank
43 you very much.

44
45 MR. SHEPHERD: Thanks, Mr. Robb. Good points. Mr. Rinehart?

1 MR. RINEHART: Mr. Chairman, I have no further comments. I'm in a position to make a motion, and maybe
2 that's not appropriate because I need to hear from my other board members.

3
4 MR. SHEPHERD: Well, I'd like to offer some – couple of thoughts. I think the issues have been set forth very
5 well. I will tell you, my first reaction to this was being mindful of both the importance of just reading the words
6 on the page of the final – the action letter for the rezoning and the special use permit. I know that that was the
7 starting point, and I did go from there to wondering about the points that Stewart, Mr. Wright, is making about
8 the words on the page, “emergency access easement,” as opposed to a construction entrance. And I was
9 wondering about that, and I realize that there have been many, many public hearings and discussions about this.

10
11 I did read the minutes from the final Board meeting, and you could just tell from what the Board of Supervisors
12 were saying that they were very aware of all of the issues and had thought about it enough to where they were –
13 the minutes from the final meeting reflected a sort of a – summations from the Board members. Many of these
14 things were not discussed at that point but clearly, they had been in the past. And I – so my point was – so, I
15 was looking for that in the – looking for more guidance on how the terms “emergency access easement” was
16 used versus the “construction entrance.”

17
18 And I've come to the – I'm making an assumption that the Board had – knew that there were great concerns
19 from the people on Pritchett Lane, but were viewing their approval as what was required for the final project,
20 the final buildout project, and were not focused on the construction entrance. And, in fact that – so, with that, I
21 haven't seen anything to dissuade me from that, and I've come to learn that the approval of construction
22 entrances is more in the bailiwick of VDOT rather than – that comes after the approval of the project, rather
23 than the Board of Supervisors – or to make final decisions about construction entrances, unless there was some
24 particular thing that would explicitly be put forth as a condition.

25
26 So, those are the things I'm thinking. Those are all going into my decision. I'm also – want to just appreciate
27 what Mr. Robb was saying and others have also said. I hope that the project – just as time goes by, I hope that
28 the folks on Pritchett Lane and the developers here can work together as best they can so that impacts to the
29 Pritchett Lane are minimized and there's a good communication there. I know that in the short term, it's a very
30 difficult and negative thing that's happening out there. What I'm thinking.

31
32 Mr. Carrington, do you have a take on this?

33
34 MR. CARRINGTON: I do, Mr. Chairman. I'll be quick. I think I'll echo some of the comments that have been
35 made, but in general, I guess I agree with some of the sentiments that while it might be unfortunate, and nobody
36 likes litter, and noise, and big trucks near their house, that this is not the appropriate venue to seek relief from
37 that, and that it feels like something that fell through the cracks in the rezoning process, and also that it's more
38 in the purview of VDOT than the Board of Zoning Appeals.

39
40 MR. SHEPHERD: OK, thank you. Other comments from anyone on the board?

41
42 MR. RINEHART: Mr. Chairman, I will go ahead and pipe in. First, I am extremely, extremely sensitive and
43 sympathetic to the neighbors on Pritchett Lane, without question. I can't imagine what they have endured to this
44 point.

1 Based on the facts of the testimony that's been – that I heard today, I would like to make the following motion. I
2 would move that the Board of Zoning Appeals affirm the Zoning Administrator's determination of the violation
3 found on Attachment C. So, bottom line is, I'd like to affirm the Zoning Administrator's determination.
4

5 MR. ROBB: I'll second it.
6

7 MR. SHEPHERD: OK. Further discussion? Ms. Alley, will you call the roll, please?
8

9 MS. ALLEY: Mr. Rinehart?
10

11 MR. RINEHART: Aye.
12

13 MS. ALLEY: Ms. Joseph?
14

15 MS. JOSEPH: Aye. I thought one of the things we were going to do is repeat the motion before we voted on it.
16 Can we do that?
17

18 MR. SHEPHERD: Yes, thank you.
19

20 MS. JOSEPH: And I think one of the things, Mr. Rinehart, that was missed in there was, "affirm the Zoning
21 Administrator's determine of no violation found on Attachment C." So, I [inaudible] –
22

23 MR. RINEHART: I –
24

25 MS. JOSEPH: To add the "no." OK?
26

27 MR. RINEHART: Were you an English teacher? I just realized that I did miss a key word. I apologize to my
28 fellow board members. I will repeat the motion. Sorry.
29

30 I move that the Board of Zoning Appeals affirm the Zoning Administrator's determination of no violation
31 found. Thank you for that correction.
32

33 MR. SHEPHERD: Thank you. Is there a second?
34

35 MR. ROBB: I second it.
36

37 MR. SHEPHERD: Thank you, Mr. Robb. Alright. Further discussion? Ms. Alley, will you please call the roll?
38

39 MS. ALLEY: Mr. Rinehart?
40

41 MR. RINEHART: Aye.
42

43 MS. ALLEY: Ms. Joseph?
44

45 MS. JOSEPH: Aye.
46

47 MS. ALLEY: Mr. Robb?

1
2 MR. ROBB: Aye.

3
4 MS. ALLEY: Mr. Carrington?

5
6 MR. CARRINGTON: Aye.

7
8 MS. ALLEY: Mr. Shepherd?

9
10 MR. SHEPHERD: Aye. That's final. I look forward to the quick completion of this phase of the project. Mr.
11 Bowling, you're on mute, but I think you're saying something?

12
13 MR. BOWLING: I apologize. I'm telling my paralegal goodnight.

14
15 MR. SHEPHERD: Oh, OK. Well, OK, so with that, as I say, I look forward to a quick conclusion to this phase
16 of the project to get the big trucks off of Pritchett Lane. I regret – well, I just hope that this settles things for the
17 moment, and appreciate everybody's diligence with this hearing.

18
19 Thank you – particularly, the staff for the work they did on this. Mr. Pohl, for spending the best part of your day
20 here. There are not many minutes on the job, but it was helpful, and I appreciate your helping us out here.

21
22 And with that – OK, so that item is concluded.

23
24 **4. Approval of Minutes**

25 **A. November 10, 2020**

26 **MOTION:** Ms. Joseph moved to approve the minutes of November 10, 2020. Mr. Rinehart seconded the
27 motion, which passed unanimously (5-0).

28
29 **5. Old Business**

30 Mr. Svoboda said he did not have any old business to discuss. He said he did have an update, as the board had
31 asked for the last time, on Mr. Maus, and that his home occupation has been approved and the letter has been
32 sent out.

33
34 Mr. Shepherd asked if this meant the appeals had been withdrawn, or if they were going to move forward.

35
36 Mr. Herrick replied that the appeals were not moving forward. He said he had not yet filed the paperwork, but
37 he has started preparing the paperwork to file what is called a “voluntary nonsuit,” which would be the
38 voluntary withdrawal of the County's appeals.

39
40 Mr. Shepherd said this was the long way to a good conclusion, and he was glad to hear it. He asked if there
41 were any items from other members.

42
43 Mr. Rinehart told Mr. Herrick that he believed he had sent him an email and if not, he would apologize. He said
44 he wanted to echo what some of his fellow board members said about the two months of Mr. Herrick's sincere
45 education and that he learned a lot. He said he realized the few times he had withdrawn from hearing a case, he
46 could have actually heard it and not had a conflict and so, he got an education from that perspective.

1 Mr. Rinehart said he would like to move back to a question. He addressed Ms. Joseph to say he did not mean
2 for it to come out a certain way. He said referring to the variance earlier, the BZA is more concerned about the
3 face of the building and its setback than its design or what it looks like. He asked if he was missing something,
4 as Ms. Joseph had talked more about the design. He said this is not the BZA's job.
5

6 Ms. Joseph said that according to what she was reading, the BZA can do that. She said as part of the variance
7 approval, according to what she was sent, this is something the BZA can consider in a variance, which is why
8 she thought about this. She said it is going to be so close to the road, and it should be something the BZA looks
9 at as far as the design itself. She asked if she was wrong about that.
10

11 Mr. Rinehart said that in his limited time on the board, he has never talked about architectural review of a
12 structure, and it was simply about the face of the building. He said he would be quiet.
13

14 Ms. Joseph said she was not insulted, but she simply thought this is what she had read. She said since no one
15 jumped on it, she thought it was fine and that she could do this.
16

17 Mr. Herrick said a similar question arose in his mind when there was a proposal to impose conditions. He said
18 what triggers the need for a variance is, or was, the setbacks. He said that specifically, Virginia Code Section
19 15.2-2309 provides that in granting a variance, the board may impose such conditions regarding the location,
20 character, and other features of the proposed structure or use as it may deem necessary in the public interest. He
21 said conditions are allowable, but what triggers the need for it in the first place is the setback.
22

23 Mr. Bowling explained that what this really means is that with this kind of broad-sweeping language, there may
24 be a temptation to go overboard, and so one should be circumspect.
25

26 Mr. Svoboda added that staff trusts the BZA won't go overboard.
27

28 Mr. Rinehart thanked the attorneys for this clarification. He said the concern, now, turning to the applicant, is
29 the reason why he asked that question, which was whether they actually had the foundation spotted by a
30 surveyor and are thinking about any projections that may cause them to go inside of that which the BZA
31 granted. He said apparently, they have already thought of that, but he always wants to caution that, when
32 looking at a variance (and especially that much of a variance), this is so noted. He said it is not the BZA's job,
33 and he just wanted to think outside of the box for them.
34

35 Mr. Svoboda said when the house construction began (which is subject to a different section of the ordinance,
36 so it did not need a variance), there was a physical survey that was done on the property that identified some of
37 the locations and pinpointed improvements more accurately than what is shown on a tax map with an overlay.
38

39 Mr. Rinehart said Mr. Robb had gone down that road. He said the addition the appellant was putting on the back
40 of the house is substantial and amazing, but this was not what the BZA was hearing. He noted that this was just
41 a comment.
42

43 Ms. Joseph said she agreed as it was shown within the 100-foot buffer, but it was apparently okay.
44

45 Mr. Bowling recalled that he had heard some of the board members mention the James River Association.
46

47 Ms. Joseph said this had been her mention.

1
2 Mr. Bowling said this organization did yeoman's work in getting the James River (from the beginning down to
3 the bay) declared a scenic river, which was a major victory and important designation. He said they do major
4 work on the James River. He said the Chesapeake Bay Foundation's website shows that the organization has
5 done a tour from a kayak going down the James, and there is an interesting tour from the bridge at Scottsville
6 down to where the Hardware River comes in.

7
8 Ms. Joseph thanked Mr. Bowling for the information.

9
10 Mr. Rinehart said he has floated that area, and it is a beautiful part of the James River. He asked Mr. Svoboda if
11 the board would have a January meeting.

12
13 Mr. Svoboda replied that typically, January is the organizational meeting, but he believed that it may not be the
14 first Monday.

15
16 Ms. Alley said it would be January 5.

17
18 Mr. Svoboda said it was, in fact, the first Monday.

19
20 Ms. Alley corrected him that it was the first Tuesday, January 5.

21
22 Mr. Rinehart said he would take a moment to wish everyone a wonderful holiday season. He gave kudos to Ms.
23 Alley for taking care of the board the way she had over the past year. He said they were not allowed to give
24 gifts but that the board is indebted to Ms. Alley for keeping them straight.

25
26 Mr. Rinehart also expressed his appreciation to Mr. Herrick, Mr. MacCall, and Mr. Svoboda for their support.
27 He said the Corbetts (from the variance hearing) had complimented them when they said how professional the
28 County is.

29
30 Mr. Rinehart said he spoke for everyone in saying they all looked forward to 2021, which would hopefully be
31 better.

32
33 Mr. Shepherd agreed.

34
35 Ms. Alley thanked the board and wished everyone happy holidays.

36
37 Mr. Shepherd said he appreciated working with everyone and looked forward to more in the future. He said
38 things get better and better as they go along.

39
40 Mr. Svoboda said he also appreciated everyone and that this was not always easy work. He said he appreciated
41 the board's dedication and volunteering.

42 43 **6. New Business**

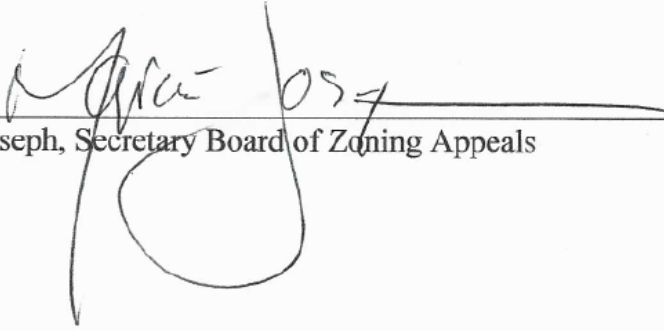
44 There was no new business.

45 46 **7. Adjournment**

1 **MOTION:** At 5:14 p.m., Mr. Rinehart moved to adjourn the meeting. Mr. Robb seconded the motion, which
2 passed unanimously (5-0).

3
4 (Recorded by Marsha Alley and transcribed by Beth Golden)

5
6 Respectfully Submitted,

7
8
9
10 A handwritten signature in black ink, appearing to read 'Marcia Joseph', is written over a horizontal line. The signature is stylized and includes a large loop at the bottom.

11 Marcia Joseph, Secretary Board of Zoning Appeals