



**FLUVANNA COUNTY BOARD OF ZONING APPEALS**  
Morris Room, Fluvanna County Administration Building  
May 15, 2018  
**7:00 PM (Morris Room)**

TAB	AGENDA ITEMS
REGULAR MEETING	
1	CALL TO ORDER: Chairman, Harold Morris
2	APPROVAL OF MINUTES
	Minutes of April 17, 2018
4	PUBLIC HEARINGS
	BZA 18: 03 – 2428 Richmond Road LLC – Brad Robinson, Senior Planner
4	UNFINISHED BUSINESS
	None
5	NEW BUSINESS
	None
6	ADJOURN

  
Planning/Zoning Administrator Review

*Fluvanna County...The heart of central Virginia and your gateway to the future!*

*For the Hearing-Impaired – Listening device available in the Board of Supervisors Room upon request. TTY access number is 711 to make arrangements.  
For Persons with Disabilities – If you have special needs, please contact the County Administrator's Office at 591-1910.*

**FLUVANNA COUNTY BOARD OF ZONING APPEALS**  
Fluvanna County Administration Building April 17, 2018  
**7:00 PM (Morris Room)**

**Members Present:** Harold Morris (**Chairman**)  
Peter Von Keyserling (**Vice-Chairman**)  
Carol Walker  
Ed Zimmer

**Staff Present:** Brad Robinson, Senior Planner  
James Newman, Planner  
Frederick Payne, County Attorney  
Stephanie Keuther, Senior Program Support Assistant

**Members Absent:** Jason Stewart, Planning and Zoning Administrator/**Secretary**  
Easton Loving

**CALL TO ORDER:**

Chairman, Harold Morris called the Board of Zoning Appeals meeting of April 17, 2018 to order at 7:00 p.m.

**APPROVAL OF MINUTES:**

**Von Keyserling made a motion to approve the minutes of the February 20, 2017 as presented. Seconded by Zimmer. The motion to approve was carried with a vote of 4-0-0 AYES: Walker, Zimmer, Von Keyserling, and Morris NAYS: None ABSTAIN: None ABSENT: Loving**

**PUBLIC HEARING:**

**BZA 18:02 – Kathleen Sharp** – Presented by James Newman, Planner

A request for a variance to Fluvanna County Code Sec. 22-4- 3.E.3 of the Zoning Ordinance to allow for the reduction of the minimum setback from a private road, from 100 feet to 45 feet, for the purpose of building on the 3.5 acre parcel Tax Map 20, Section A, Parcel 43G

The subject property is located in the Columbia Election District along Thomason Lane approximately 1,700 feet southeast of the intersection with Ridge Road (Route 632).

**Von Keyserling:** Is that trail used as drainage?

**Newman:** It looks like an old trail that water could coast down through it, and there is a pond nearby.

**Von Keyserling:** So it's not a normal streambed. **Newman:** It's intended to be a road.

**Zimmer:** What kind of right-of-way is that, does someone have a right-of-way through there?

**Newman:** (Showing pictures of the property taken by applicant) As far as I can tell most of these pictures have been taken along the back area of the property. Correct, Ms. Sharp?

**Kathleen Sharp, Applicant:** They're to the back of where we want to build. And a couple from the side.

**Arthur Todd Sharp:** I am the landowner of the 20 acres behind this property. The last picture shown is the best, looking down the 50ft right-of-way going towards my property.

**Von Keyserling:** Ms. Sharp, when you purchased the property were you aware of the (building setback) triangle that was designated (on the plat)?

**Kathleen Sharp, Applicant:** I didn't purchase it, it was given to me. I didn't originally plan to build on it.

**Von Keyserling:** The only reason you have for not wanting to not build on the designated footprint is because of drainage?

**Kathleen Sharp, Applicant:** I don't want the kids to be in that area with all the mosquitoes, and the water takes a long time to dry up in that back yard. It's just not a healthy place.

**Walker:** Where exactly is the (proposed) building in relation to the overhead lines?

**Kathleen Sharp, Applicant:** I'm exactly 25 feet. I have to be at least 25 feet from the power lines. The same thing in the back, I would have to go back farther for that.

**Von Keyserling:** You can meet that clearance in the designated building area if you use that area.

**Kathleen Sharp, Applicant:** Yes

**Zimmer:** The triangle is the building setback, is that correct? Because it seems that you need to be 25ft away from that overhead right-of-way.

**Newman:** For The plat that was signed off on, the only setbacks that are mention are from the easements and side, not the overhead electric line.

**Payne:** Because that's not a zoning restriction.

**Zimmer:** But is it a restriction?

**Payne:** I'm sure there's an easement for the electric line

**Kathleen Sharp, Applicant:** An inspector that came out told me that it has to be that.

**Payne:** Obviously, the front line, zoning line and the electric lines appear to be pretty much in the same place. So you could assume, assuming that 25ft on each side you're going to be 25ft into the triangle.

**Zimmer:** There's not actually a setback from that easement though right, there's just an easement?

**Payne:** The zoning ordinance doesn't have setbacks for power lines

**Von Keyserling:** You can build up to 25ft from the centerline of the power line.

**Walker:** What type of house are you doing? Would there be a garage? Where will the driveway be located?

**Kathleen Sharp, Applicant:** Just a rancher with the driveway to the side.

**Walker:** Ok, I want to make sure it wouldn't interfere with traffic.

**Morris:** The private road, is that the only road?

**Arthur Todd Sharp:** It has a road maintenance agreement for Thomason Lane

**Walker:** And it's not a subdivision? **Kathleen Sharp, Applicant:** No

**Arthur Todd Sharp:** The 50 ft. right-of-way is coming off Thomason Lane around the cemetery down to my property. That's just serving as my access to the 20-acre plot.

**Morris:** That's your only access?

**Arthur Todd Sharp:** Yes. Is the 100 ft. setback from the center of Thomason Lane or from the edge of Thomason Lane?

**Newman:** From the edge of the right-of-way.

**Von Keyserling:** My concern is the way this is setup up, being a private lane and putting a residence that close to a roadway could be very difficult in the future, if they decide to pave that road.

**Payne:** I'm not sure that's a realistic problem because it's a 50ft easement. If you put a 20ft road in there and centered it on the easement, it would be 15 on each side you would still be within the easement. Though you have a legitimate point.

**Von Keyserling:** I'm still not clear on why clearing some of the woods and building back on the other side of the power line doesn't make more sense for this piece of property. I'm not sure that damp soil and mosquitoes are a legitimate reason. My property has this too.

**Zimmer:** Has a builder with that kind of knowledge said whether you could or could not build there?

**Kathleen Sharp, Applicant:** He said I could but it would cost a lot more money. I am a single parent and I don't have that.

**Walker:** So in other words this is a hardship for you to be able to do this?

**Kathleen Sharp, Applicant:** It's not just that. To give you all some background: our daughter just passed away this past summer and I have to care for my grandson. We need a larger house I still have my own two kids at home. This is my only option right now.

#### **Public Comments:**

**Judy Thomason:** We owned all this land at one time. This is my daughter and I agree with her.

**Arthur Todd Sharp:** I'm the landowner behind there with a 50ft right-of-way. The pictures shown of the right-of-way are where four-wheelers have gone up and down.

**Walker:** The main road is a cul-de-sac basically so there's no chance of it becoming a four-lane highway.

**Kathleen Sharp, Applicant:** No, I own behind it all the way up to the next property, and Mr. Brown owns the other side.

**Robert Brown:** I own two of the properties. I'm here to observe the process, but I don't want anything to interfere with the road. I have over 50 acres in there and at some point in the future I may want to divide some for my family and don't want anything to interfere with the road to do that.

**Von Keyserling:** My impression is with that 50ft right-of-way that you have there for the private road and a house setback 45ft from the edge of that this (proposed) residence wouldn't be impediment to that road being used.

**Zimmer:** What's the zoning there? **Newman:** A-1, Agricultural General.

**Arthur Todd Sharp:** I have a clarification. You said the 100ft. setback from the edge of Thomason Lane, so it's not the edge of the 50ft. right-of-way.

**Newman:** It's from the edge of the 50ft. right-of-way.

**Robert Brown:** Outside the road its 15ft. inside the property line. In other words, the property lines are somewhat near the center of the road as I read the road maintenance agreement this afternoon and 35ft. from the West side and 15ft. on the east side.

**Zimmer:** Are you confident moving this setback to 45ft. is a place you can build and will be out of the way from the electric overhead right-of-way. I want to make sure you didn't figure the 45ft. from the edge of the road, which apparently is not the edge of the right-of-way. Has a surveyor looked at this?

**Kathleen Sharp, Applicant:** We marked it at the edge of the road.

**Robert Brown:** Did the flag people put the flags there?

**Kathleen Sharp, Applicant:** No the house people did.

**Von Keyserling:** It says on the map the right-of-way is 50ft. and the 45 ft. we would approve is from the edge of the right away, and that's the only way can approve property. If we do the 45ft. from there hopefully, they build outside the power lines. If they can't fit it in there then they can't build there. I'm guessing with what you've already done your homework that it leaves enough room for you to build your house on.

**Arthur Todd Sharp:** The overhead power lines can always be moved because the easement is coming through her 3.5 acres.

**Von Keyserling:** Have you ever tried to do that?

**Arthur Todd Sharp:** She could create another easement to go around the corner that supplies the overhead lines for Mr. Brown and Judy.

**Von Keyserling:** You would have to get the power company to agree to that.

**Payne:** If you move the power line that changes the picture dramatically, frankly, if I were seeking this variance I wouldn't be making that argument. It ruins the potential for a hardship.

**Morris:** I think we all agree if we can go from the edge of the 50ft. right-of-way and move your house 45ft. in to the property I think we can do that.

**Judy Thomason:** That's what Clayton Homes did; they measured it from the edge of the property.

**Payne:** I have seen instances where builders have measured wrong. We actually lost a case in the Supreme Court on that issue. The builder measured from the wrong point and the Supreme Court reversed the Circuit Court and

said that was not a hardship under our ordinance. So if I were this applicant I would most assured get a surveyor out there to mark from the line at least.

**Von Keyserling:** Would you be agreeable to getting that dimension checked?

**Zimmer:** Mr. Payne, can we put a condition in our action? I suggest this to protect everyone. 1. To protect the county from having any implications for approving something that doesn't work. 2. To protect the applicant in making sure they measured from the right place, and that they really can fit whatever house they want 45ft. away from the right-of-way (not the road), and 25ft. or the edge of the right-of-way for the power line. I propose putting in a condition that they get a survey or someone who can definitively tell them this is the line you have to measure from.

**Morris:** That should be part of what we agree on.

**Zimmer:** Obviously, that will have some amount of cost, hopefully reasonable.

**Judy Thomason:** Better safe than sorry.

**Payne:** That would be a perfectly acceptable condition.

**Walker:** The home, is that modular or stick built? **Kathleen Sharp, Applicant:** Stick built on a foundation.

**Zimmer:** Does the applicant see that as a reasonable condition?

**Kathleen Sharp, Applicant:** I just don't know whom to get out there.

**Von Keyserling:** There's a local surveyor here in Palmyra that's not terribly expensive.

**Zimmer:** It's cheaper than moving a house.

#### **MOTION:**

**Von Keyserling made a motion to approve BZA 18:02, a request for a variance to Fluvanna County Code Sec. 22-4-3.E.3 of the Zoning Ordinance to allow for the reduction of the minimum setback from a private road, from 100 feet to 45 feet, for the purpose of building on the 3.5 acre parcel Tax Map 20, Section A, Parcel 43G.**

***With the condition that a certified survey of the required dimensions (45 ft. from the edge of the right-of-way, and any setbacks from power lines) be submitted to the Planning Department for review as an Easement/Boundary/ Physical Survey Application.***

**Seconded by Walker. The motion was approved with a vote of 4-0-0 AYES: Von Keyserling, Walker, Zimmer and Morris NAYS: None ABSTAIN: None ABSENT: Loving**

#### **Unfinished Business:**

None

#### **New Business:**

**Appellant Extension Request/Discussion on moving case BZA 18:03 from May 15<sup>th</sup> meeting date** – Presented by Brad Robinson, Senior Planner

The property is located along Richmond Road (U.S. Route 250), approximately 0.16 miles west of the intersection of Zion Road (State Route 627) and Memory Lane (State Route 698). The parcel is within the Zion Crossroads Community Planning Area and the Palmyra Election District.

**Zimmer:** (Looking at aerial images of the property) This is the portion that sits on 250? **Robinson:** Yes

**Payne:** I advise you not to go into detail that you should not be considering the merits of this issue. The issue is that the activities began, there's a notice of violation, and that has been appealed that will be before you. You shouldn't be considering the merits of it, if it's right or wrong tonight.

**Von Keyserling:** If we were to agree to this delay what transpires on the property, do they have to cease and desist?

**Payne:** No, by statute the corrective action on the activity complained of cannot be enforced without court order while it's pending before the Board. So activities going on there can continue until this Board makes a decision.

**Walker:** Is he putting pipes there?

**Robinson:** Storing construction materials.

**Zimmer:** I'm concerned we have some level of obligation to the people that have lodged these complaints. I know of these complaints because they have come up at the Planning Commission.

**Payne:** This board has an obligation to set a hearing within a reasonable time. The statute sets a 90-day period for the decision of the time.

**Von Keyserling:** So he's within rights.

**Payne:** Let me take you through this first. He can always ask for more time. What the Supreme Court said in the Tram case is if the case is not decided within 90 days, it doesn't deprive the board of jurisdiction to hear it. If you wait more than 90 days and decide the case, that doesn't make your decision void in some ways it could. However, the Supreme Court has described this as a requirement that it be decided within 90 days and the statute says, "It shall be" decided within 90 days. (Mr. Payne went into more detail of the Tram case as an example.)

**Walker:** It was Cosner Brothers and he had a salvage yard. So is this industrial or business related?

**Robinson:** An industrial operation was grandfathered in, but non-conforming.

**Walker:** Did he inherit it grandfathered in?

**Payne:** We really can't get into the particulars.

**Payne:** Hypothetically, you have a use that's established in 1950 and it continues in existence, the ordinance is then adopted in a way that would not permit the use but continues in effect. Some people call it grandfathered, it's called a 'lawful non-conforming use.' It's continued and the statute says it remains lawful (it's non-conforming) but it's lawful as long as the use is not discontinued for a period in excess for two years.

**Walker:** But you can't add another type of operation.

**Payne:** That's right. It doesn't make it an industrial property. (Mr. Payne gave another example using a pig farm).



**Walker:** That’s what I wanted to find out. It was non-conforming, but now it’s out of the non-conforming.

**Payne:** That’s what the zoning administrator has ruled because this is a different use. Whether that’s right or not is going to be up to you all to decide. I think the evidence is these residents have made a lot of complaints and there pretty substantial complaints. I think this is an instance where there is evidence of prejudice of someone whom extending the time period. This appeal was filed back on the 15<sup>th</sup> of March and three months from the 15<sup>th</sup> of March should be the June 13<sup>th</sup> and the BZA meeting for June would be the 19<sup>th</sup> that’s more than 90 days after filing.

**Zimmer:** It sounds like extending beyond 90 days, in other words the law might be on the side that no we won’t extend it pass the 90 days not because there would be prejudice to people.

**Payne:** First, you’re required to setup within a reasonable time under the circumstances. I suggest to you that this case can be fully tried in May

**Zimmer:** I think based on having been there and seeing some of the complaints...I think we have a duty to the folks to act a little more expeditiously then to wait until late June.

**Motion:**

**Von Keyserling made a motion to deny the Appellant Extension Request/Discussion on moving case BZA 18:03 from May 15<sup>th</sup> meeting date. Seconded by Walker. The motion was denied with a vote of 4-0-0 AYES: Von Keyserling, Walker, Zimmer and Morris NAYS: None ABSTAIN: None ABSENT: Loving**

**ADJOURNMENT:**

There being no further business, Chairman Morris adjourned the Board of Zoning Appeals meeting of April 17, 2018 at 7:57 p.m.

Minutes recorded by Stephanie Keuther.

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**Chairman Harold Morris  
Fluvanna County Board of  
Zoning Appeals**



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# COUNTY OF FLUVANNA

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## STAFF REPORT

**To:** Board of Zoning Appeals  
**Case Number:** BZA 18:03  
**Tax Map:** 4-A-27

**Staff:** Jason M. Stewart  
**District:** Palmyra  
**Date:** May 15, 2018

**General Info:**

The Board of Zoning Appeals is scheduled to hear this request at 7:00 pm on Tuesday, May 15, 2018 in the Morris Room in the Fluvanna County Administration Building.

**Appellant/Owner:**

2428 Richmond Road LLC

**Nature of Appeal:**

This is an appeal of determination of the Zoning Administrator that the subject property is in violation of 22-4-2 (Permitted Uses in A-1, Agricultural, General) including 22-4-2.2 (Uses Permitted By Special Use Permit) and 22-4-2.1 (Uses Permitted By Right) of Tax Map parcel 4-A-27.

**Location:**

The property is located along Richmond Road (U.S. Route 250), approximately 0.16 miles west of the intersection of Zion Road (State Route 627) and Memory Lane (State Route 698). The parcel is within the Zion Crossroads Community Planning Area and the Palmyra Election District.

**Zoning District:**

A-1, Agricultural, General

**Adjacent Land Use:**

Adjacent properties are zoned A-1, I-1, I-2 and R-1.

**Comprehensive Plan:**

Zion Crossroads Community Planning Area

**Zoning History:**

A salvage yard operated by Cosner Bros. was formerly located on the property for several decades. The salvage yard ceased operation within the last year and was a legal nonconforming use.

**Appellant's Position:**

The appellant's application and basis for appeal seem to be centered around the previous industrial use (salvage and

scrap yard) being present on the property and that allowing him to maintain a contractor's storage yard.

**Zoning Ordinance Provisions:**

The provisions of the Zoning Ordinance pertinent to this appeal are listed below. The complete texts of these provisions are provided as Attachment F.

**Background:**

In November 2017, the Planning Department received a rezoning request (ZMP 17:05) in regards to the subject property to rezone the property from A-1 to I-2. The request was subsequently modified in January 2018 to rezone the front portion of the subject parcel to I-1, and the rear portion to I-2. The property was vacant during this time. The previous salvage yard use had been discontinued since approximately May 2016 and the junked vehicles had been removed.

In February 2018, the Code Compliance Officer received complaints in regards to the condition of the property. Upon inspection, the subject property was observed being utilized as a contractor storage yard by multiple parties including for the Williams Pipeline project taking place in the County. Vehicles have been observed unloading/loading materials and construction equipment is being stored on site as well as welding activities associated with the contractor business and storage yard use.

A violation notice was sent to the appellant on February 14, 2018. The appellant has admitted to staff that he leased the property to at least two vendors for use as a contractor storage yard. He was advised that he would need to obtain the rezoning originally sought to a business/industrial use as well as a site plan in order to comply with the ordinance.

On March 13, 2018, the Planning Commission unanimously recommended denial of the rezoning request. The appellant filed an appeal of the violation letter on March 16, 2018. The Fluvanna County Board of Supervisors unanimously rejected the appellant's rezoning request on March 28, 2018. The Board of Supervisors seemed to be concerned with the appellant's refusal to cooperate with County staff in abating the violation and complying with the ordinance and having industrial uses adjacent to the R-1 zoned subdivision next door, given the nature of the appellant's non-permitted use and the effect it was having on adjoining properties.

**Current Notice of Violation:**

On February 14, 2018, a Notice of Violation was sent to the owner of the subject property. This Notice of Violation was sent in regards to violations of maintaining a contractor's storage yard contrary to the provisions of Section 22-4-2.1 (Uses Permitted By Right) and Section 22-4-2.2 (Uses Permitted By Special Use Permit) in the A-1 Zoning District, and Article 22, Section 22-23-2 (Site Development Plans, "When Required"). The owner of the subject property was advised to abate the violation within

30 days or face further legal action by the County. The Zoning Administrator's determination of a violation was appealed to the Board of Zoning Appeals on March 16, 2018 within the timeframe permitted under the Notice.

**Zoning Administrator's Position:**

This is an appeal of determination that the appellant is in violation of the Zoning Ordinance associated with the subject property at Tax Map 4-A-27.

It is staff's position that the violations have been clearly established through the site inspection process as the subject property being utilized for a contractor storage yard which is not permitted in the A-1 Zoning District. Further, staff is of the opinion that the notice of violation was appropriate and that the property is out of compliance with the cited provisions of the Zoning Ordinance. It is the Zoning Administrator's position that the contractor's storage yard use is not considered nonconforming because there is not any documented evidence of that type use being present on the property in recent history. Also, the Zoning Administrator's position is that the violation still exists and that the attached photographs clearly show a violation of the Zoning Ordinance for maintaining a contractor storage yard which is not permitted in the A-1 Zoning District. It should be noted that no apparent action has been taken to abate the violation. The former non-conforming salvage and scrap yard use is a separate zoning classification than the contractor's storage yard under the provisions of the Zoning Ordinance. The Zoning Administrator's position is the issuance of the Notice of Violation was correct and asks that the Board of Zoning Appeals uphold that determination.

**Suggested Motion:**

I move to uphold the Zoning Administrator's Determination of Violation as detailed in BZA 18:03.

**Attachments:**

- A – Application and APOs
- B – Zoning Map
- C – Aerial Vicinity Map
- D – Survey plat of property
- E – Notice of Violation, Photographs of the Property
- F – Relevant Zoning Ordinance Sections
- G – Citizen correspondence

Copy:

Appellant/Owner: 2428 Richmond Road LLC



COMMONWEALTH OF VIRGINIA  
**COUNTY OF FLUVANNA**  
**Appeal of Zoning Administrator**

MAR 10 2018

Fluvanna County

<b>Owner of Record:</b> 2428 Richmond Rd, LLC	<b>Applicant:</b> 2428 Richmond Rd. LLC
<b>Address:</b> P.O. Box 22 Richmond, Va. 22968	<b>Address:</b> P.O. Box 22 Richmond, Va. 22968
<b>Phone:</b> 434 531 1147 <b>Fax:</b> 434 985 7181	<b>Phone:</b> 434 531 1147 <b>Fax:</b> 434 985 7181
<b>Email:</b>	<b>Email:</b>
<b>Representative:</b> C. Waverly Parker, Atty	<b>Note:</b> If applicant is anyone other than the owner of record, written authorization by the owner designating the applicant as the authorized agent for all matters concerning the request shall be filed with this application.
<b>Address:</b> P.O. Box 559 Stanardsville, Va 22973	
<b>Phone:</b> 434 985 2252 <b>Fax:</b>	
<b>Email:</b> cw.pattorney@parkeresq.com	
<b>Tax Map and Parcel(s):</b> 4-(A)-27	<b>Election District:</b> Palmyra
<b>Acreage:</b> 29.4 A	<b>Planning Area:</b> Zion X-Ranch Community
<b>Zoning:</b> A-1	<b>Deed Book Reference:</b> 931-492
<b>Location:</b> 2428 Richmond Rd., Troy, Va. 22974	<b>Deed Restrictions?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (attach copy)
<b>Description of Property:</b> Improved real estate	

I, Same Morris, for 2428 Richmond Rd, LLC, declare that I have familiarized myself with the rules and regulations pertaining to preparing and filing this application and the applicable sections of the Fluvanna County Zoning Ordinance, and that the foregoing statements and answers provided herein are in all respects true and correct to the best of my knowledge and belief.

Date: 3/15/18 Signature of Property Owner: By C. Waverly Parker, Attorney

Subscribed and sworn to before me this 15 day of March, 2018.

Notary Public: Elizabeth Baker

Registry No. 331967

My commission expires: June 30, 2019

(attach additional sheets as necessary)

**Description of Appeal:**

The use complained of is lawful, because it is a vested right to which the ~~the~~ Fluvanna Co. Zoning Ordinance cannot apply. The decision of the zoning Administrator dated 2/14/18 is unlawful and wrong. That decision is the one appealed.

**OFFICE USE ONLY**

Date: <u>3-16-18</u>	Application #: <u>BZA 18:003</u>
\$125 Fee paid: <u>✓ # 2049</u>	By Authority of:
BZA Hearing Date: <u>May 15, 2018</u>	Disposition:





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### MEMORANDUM

**Date:** April 30, 2018  
**From:** Stephanie Keuther  
**To:** Jason Stewart  
**Subject:** Board of Zoning Appeals APO Letter

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Please be advised the attached letter went out to the attached list of Adjacent Property Owners for the May 15, 2018 Board of Zoning Appeals meeting.



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### NOTICE OF PUBLIC HEARING

April 30, 2018

«Owner»  
«Address»  
«City\_State» «Zip\_Code»  
TMP# «TMP»

#### Re: Public Hearing on BZA 18:03

Dear «Owner»:

This letter is to notify you that the Fluvanna County Board of Zoning Appeals will hold a public hearing on the above referenced item as noted below:

<b>Purpose:</b>	<b>Board of Zoning Appeals Hearing</b>
<b>Day/Date:</b>	<b>Tuesday, May 15, 2018</b>
<b>Time:</b>	<b>7:00 PM</b>
<b>Location:</b>	<b>Morris Room, Fluvanna County Administration Building, Palmyra, VA</b>

The applicant or applicant's representative will be present at the Board of Zoning Appeals meeting for a request for an appeal that is described as follows:

**BZA 18:03 – 2428 Richmond Road LLC:** An appeal of a zoning determination by the Zoning Administrator under Fluvanna County Code Section 22-18-4, that the appellant is in violation of Fluvanna County Code Sections 22-4-2.1, 22-4-2.2, 22-23-2 and 22-19-2 at the property identified as Tax Map 4, Section A, Parcel 27. The subject property is located in the Palmyra Election District along Richmond Road (U.S. Route 250) approximately 0.16 miles west of the intersection of Zion Road (Route 627) and Memory Lane (Route 698). The property is zoned A-1, Agricultural, General.

You are welcome to attend the Public hearing and you will have an opportunity to comment, if desired. The tentative agenda and staff report for this action is available for public review on the County website at: <http://fluvannacounty.org/meetings>. You can also view the report in the Fluvanna County Planning and Zoning Department during working hours (8:00 am – 5:00 pm, Monday through Friday).

If you have any questions regarding this variance request or the Public Hearing, please contact me at 434-591-1910.

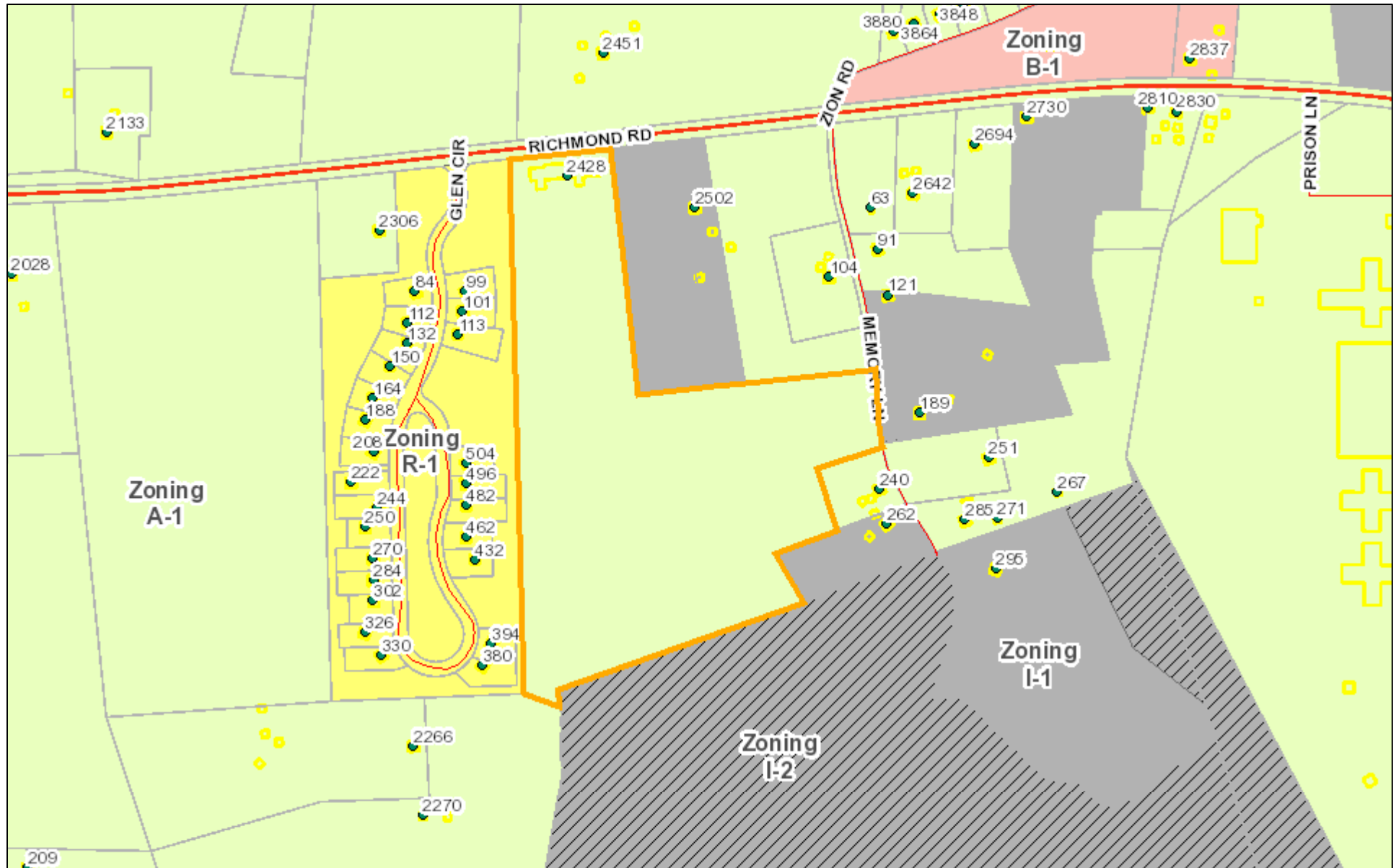
Sincerely,

Jason Stewart  
Planning and Zoning Administrator

## ADJACENT PROPERTY OWNERS BZA 18:003

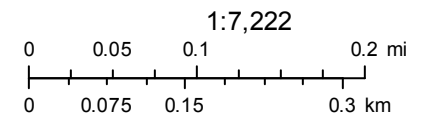
[illegible]

## Fluvanna County, VA WebGIS Parcels - PIN: 4 A 27



March 7, 2018

- |                  |             |                   |                       |
|------------------|-------------|-------------------|-----------------------|
| ● Address Points | — Primary   | □ Parcels         | + Railroads           |
| <b>Roads</b>     | — Secondary | ● Place Names     | □ Building Footprints |
| — Interstate     | — Other     | --- Town Boundary | □ County Boundary     |



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

## Fluvanna County, VA WebGIS Parcels - PIN: 4 A 27

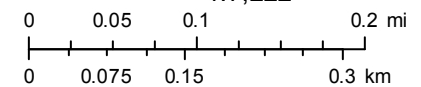


March 7, 2018

**Roads**

- Interstate
- Primary
- Secondary

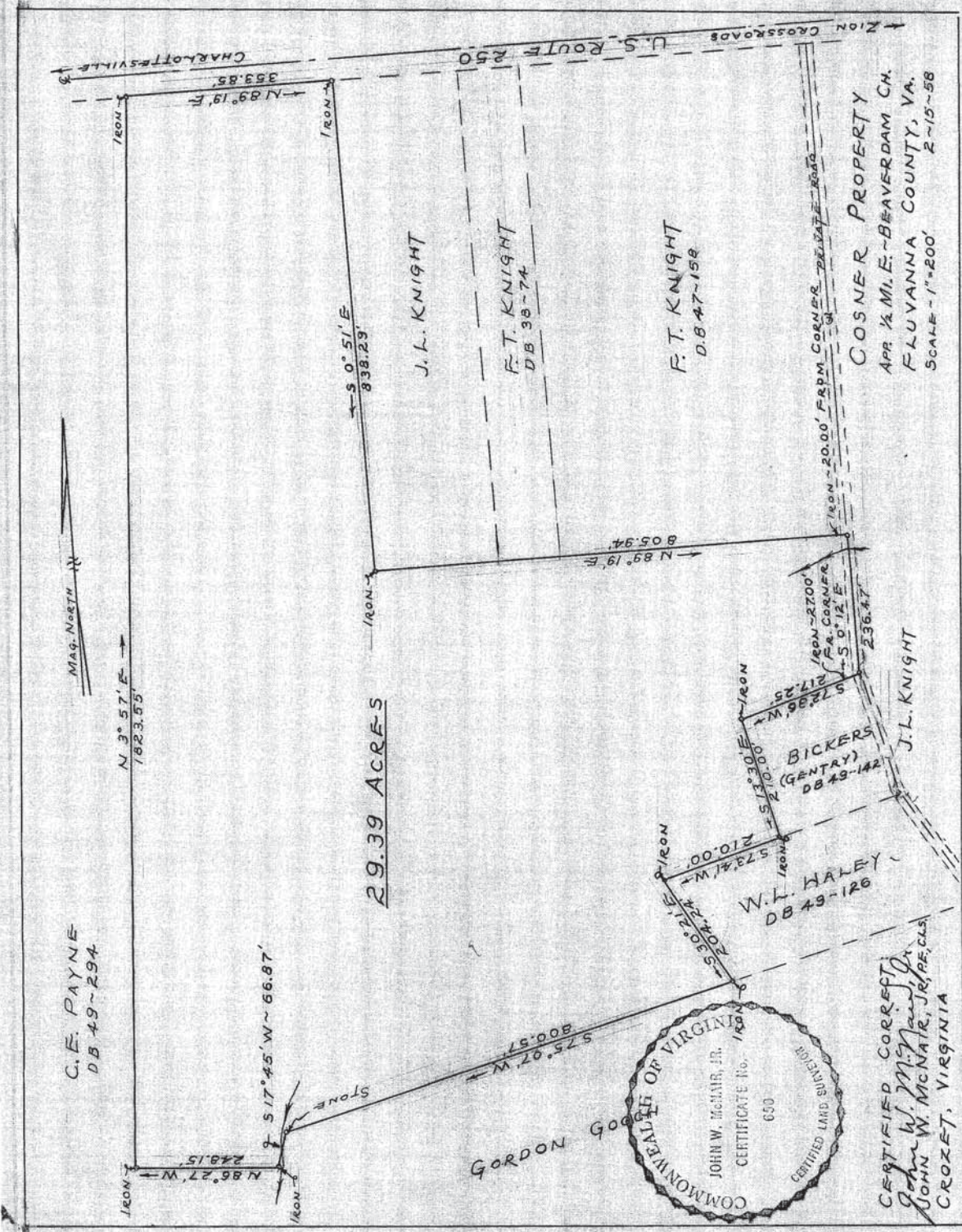
1:7,222



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),



4-(A)-27  
See  
71-168



VIRGINIA: In the Clerk's Office of the Circuit Court of Fluvanna County May 16, 1958.

The foregoing deed and plat was this day received in said office, and there-upon together with the certificate(s) thereto annexed, and the U. S. Documentary Stamps thereon, amounting to \$9.90 duly cancelled, admitted to record at 10:57 A.M.

Teste: Richard F. George Clerk.

MYRTLE M. MANN AND ANNIE B. SULLIVAN

TO: DEED ✓

NELSON A. MILLER AND FANCHON V. MILLER

THIS DEED, Made and entered into this 26th. day of April, 1958, by and between Myrtle M. Mann and Annie B. Sullivan, both single, residing in Kenova, Wayne County, West Virginia, parties of the first part, hereinafter known as the grantors, and Nelson A. Miller and Fanchon V. Miller, husband and wife, of 142 Glen Haven Road, New Haven, Connecticut, parties of the second part, herein-

St. Tax \$7.50  
Tr. Fee 1.00  
Ck. Fee 3.00  
\$11.50

Recd.  
5-26-58  
Accepted





## COUNTY OF FLUVANNA

*"Responsive & Responsible Government"*

P.O. Box 540  
Palmyra, VA 22963  
(434) 591-1910  
Fax (434) 591-1911  
[www.fluvannacounty.org](http://www.fluvannacounty.org)

### **VIOLATION NOTICE AND CORRECTION ORDER**

2428 Richmond Road, LLC  
P.O. Box 22  
Ruckersville, VA 22968  
Attention: Mr. Carroll Morris

Dear Mr. Morris,

An inspection of the property described below revealed a violation of Article 4, Section 22-4-2.1, Article 4, Section 22-4-2.2, Permitted Uses in Agricultural, General, District (A-1), Article 22, Section 22-23-2, Site Development Plans When Required and Article 19, Section 22-19-2, Violation and Penalty. Specifically, the violation(s) consists of:

Utilizing the subject property for a Contractor's Storage Yard which is not permitted "by right" or by "special use permit" in the A-1 Zoning District.

By virtue of the authority granted to the Office by Article 19, Section 22-19-2 of the Fluvanna County Zoning Ordinance, you are requested to correct this violation within 30 days from the date of this notice by: The storage of materials associated with this use must be removed from the property or obtaining rezoning to an appropriate zoning district and site plan approval.

Under provisions of 15.2-2311 of the Code of Virginia, this letter represents an interpretation of the Fluvanna County Zoning Ordinance and anyone aggrieved by this interpretation may appeal to the Fluvanna County Board of Zoning Appeals within thirty days of receipt of this letter. The applicable fee for appeal is one hundred and twenty five dollars (\$ 125.00). Information regarding the appeal process is located in the Fluvanna County Zoning Ordinance Article 18, Sec. 22-18.

**FAILURE TO CORRECT THE VIOLATION WITHIN THE SPECIFIED TIME PERIOD MAY RESULT IN CRIMINAL CHARGES BEING FILED AGAINST YOU IN GENERAL DISTRICT COURT. CONTINUED VIOLATIONS MAY ALSO RESULT IN OTHER LEGAL ACTION INITIATED BY THIS OFFICE AGAINST YOU.**

If you have questions concerning this notice and order, or require further information, please contact Scott B. Miller at 434.591.1910 x1024 or Jason M. Stewart at 434.591.1910 x1060.

Premises Address	Voting District	Zoning	Tax Map Number
2428 Richmond Road, Troy, Va. 22974	Palmyra	A-1	4-(A)-27

Issued on this day: February 14, 2018

  
\_\_\_\_\_  
Scott B. Miller, CZO

Code Inspector, Building & Site Inspector

CODE COMPLIANCE WILL BE VERIFIED ON: March 16, 2018

Cc: Jason M. Stewart, Director of Planning / Zoning Administrator

Cc: Frederick W. Payne, County Attorney

Cc: Jeffrey W. Haislip, Commonwealth's Attorney



Photographs taken by citizens















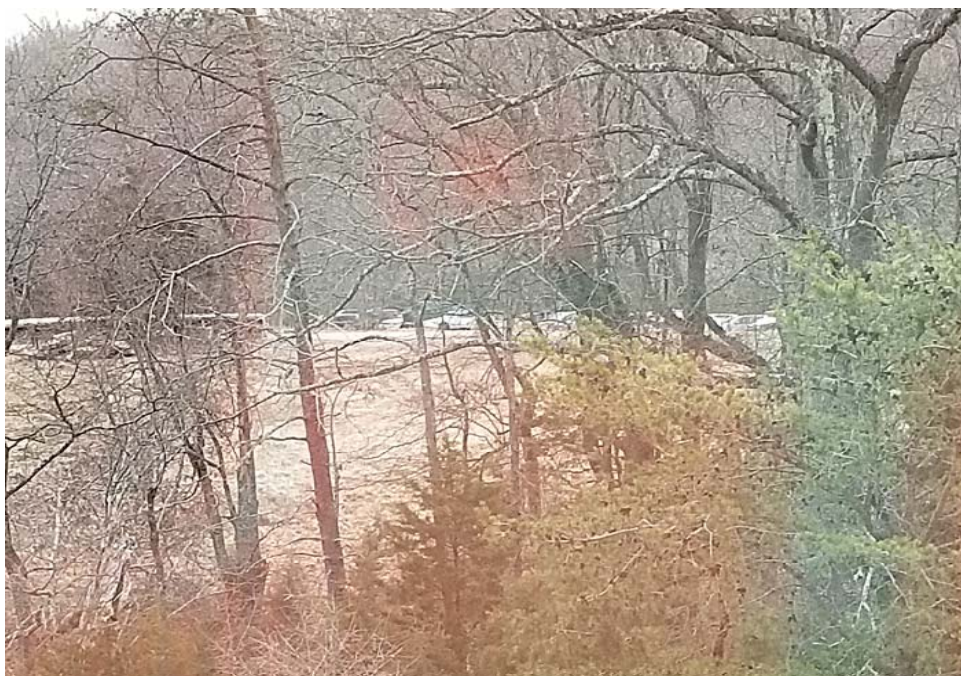








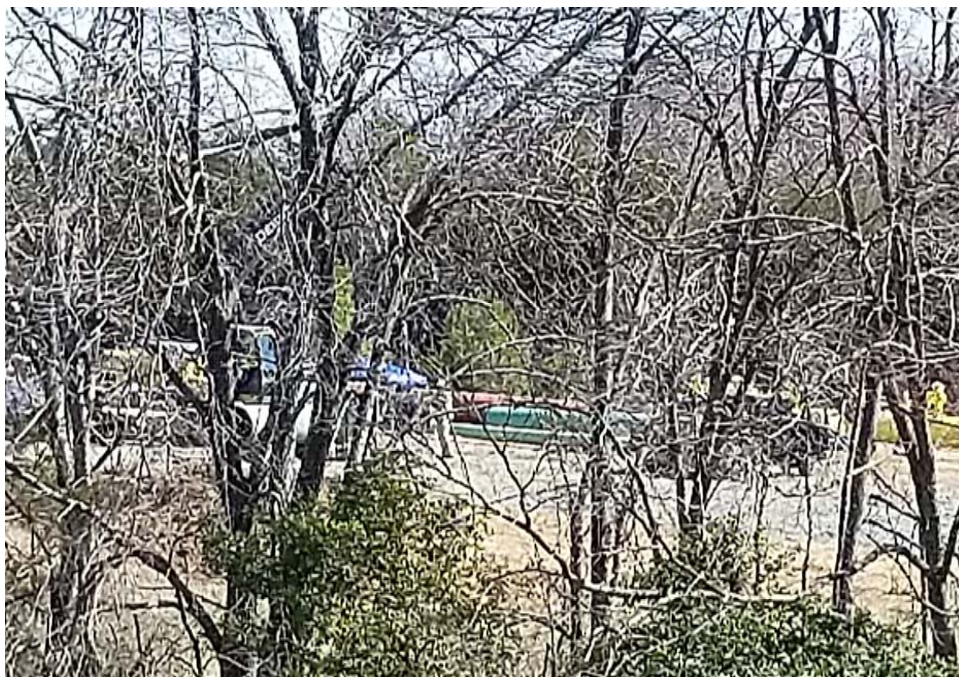










































Photographs taken by staff





## ZONING

7-6-16

significantly limit conventional and roadside strip development, especially on major arteries and commuter routes.

**Sec. 22-4-2. Use regulations.**

In Agricultural, General District A-1, the following uses, together with ordinary and necessary accessory uses, shall be permitted, and no others.

**Sec. 22-4-2.1. Uses permitted by right.**

The following uses shall be permitted by right:

*Agricultural Uses*

- Agriculture
- Conservation areas
- Equestrian facilities
- Farm sales
- Hunt clubs
- Hunting preserves

*Civic Uses*

- Public parks and recreational areas
- Public uses

*Commercial Uses*

- Family daycare homes
- Home occupations

*Industrial Uses*

- Sawmills, temporary

*Miscellaneous Uses*

- Accessory uses
- Cemeteries, non-commercial
- Greenhouses, non-commercial
- Kennels, private
- Marinas, private non-commercial
- Rural cluster developments
- Shooting, private recreational
- Utilities, minor

## ZONING

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Woodstorage, temporary

*Residential Uses*

Dwellings, accessory

Dwellings, two-family

Farm tenant housing

Group homes

Manufactured homes

Mobile homes, as defined in Sec. 22-4-2.3

Single-family detached dwellings, including family subdivisions and conventional minor subdivisions, but excluding conventional major subdivisions recorded after April 5, 2004

(Ord. 9-17-08; Ord. 10-21-09; Ord. 11-3-10; Ord. 11-20-12)

**Sec. 22-4-2.2. Uses permitted by special use permit only.**

The following uses shall be permitted by special use permit only:

*Agricultural Uses*

Agricultural enterprise

Agricultural sales, wholesale

Livestock feed lots, commercial

Livestock sales yards, commercial

*Civic Uses*

Amusements, public

Correctional facilities

Cultural services

Educational facilities

Public assembly

Public recreation assembly

Religious assembly

Sheltered care facilities

*Commercial Uses*

Adult retirement communities

Amusements, commercial

Assisted living facilities

Automobile repair service establishments

Bed and breakfasts



## ZONING

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Boarding houses  
 Butcher shops  
 Campgrounds  
 Camps  
 Car washes  
 Cemeteries, commercial  
 Communications service  
 Dance halls  
 Daycare centers  
 Flea markets  
 Funeral homes  
 Garden center  
 Gas stations  
 Greenhouses, commercial  
 Hotels  
 Kennels, commercial  
 Landscaping materials supply  
 Lodges  
 Medical clinics  
 Outdoor entertainment  
 Outdoor recreation facilities  
 Restaurants, small  
 Retail stores, neighborhood convenience  
 Retail stores, specialty  
 Shooting ranges, indoor  
 Shooting ranges, outdoor  
 Small home industries  
 Studios, fine arts  
 Taxidermists  
 Veterinary offices

*Industrial Uses*

Railroad facilities  
 Resource extraction  
 Solid waste collection facilities

*Miscellaneous Uses*

Aviation facilities  
 Outdoor gatherings  
 Telecommunication facilities

## ZONING

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Utilities, major

*Residential Uses*

Dormitories

(Ord. 9-17-08; Ord. 12-17-08; Ord. 10-21-09; Ord. 7-21-10; Ord. 11-3-10; Ord. 11-20-12)

**Sec. 22-4-2.3. Mobile homes.**

One (1) mobile home per parcel shall be permitted, with issuance, by the Planning Director, of a zoning permit, in the following instances:

(A) Mobile home to be occupied by a bona fide farm tenant with the permit to be revalidated by the governing body every two (2) years so long as the conditions are met;

(B) Mobile home to be occupied because of an emergency medical or moral obligation with the permit to be revalidated by the governing body every two (2) years so long as the conditions exist. For purposes of this section, the term "an emergency medical or moral obligation" shall be deemed to mean a set of circumstances in which a landowner must provide shelter and/or care to one or more persons through the occupancy of the mobile home in order to alleviate a clearly demonstrable danger of serious impairment to the health and/or welfare of any person or persons which is occasioned by a medical disorder or condition or other compelling cause beyond the control of such person or persons and which cannot be remedied in any other reasonable manner;

(C) Mobile home to be occupied by the owner of the property while constructing a permanent single-family dwelling on the same property or reconstructing a single-family dwelling destroyed by natural disaster. This permit shall be for a period of one (1) year only but may be renewed each year by the governing body for a period of not more than five (5) continuous years. In addition, the governing body may grant an additional extension of time for the occupancy of any such mobile home, not to exceed twenty-four (24) months from the expiration of the last renewal period of the original permit, upon a finding that the owner of the property has attempted in good faith to complete such single-family dwelling within the time permitted by law, but has been unable to do so as a result of adverse weather conditions, act of God, bona fide inability to timely obtain satisfactory building materials, or other circumstances or condition beyond the control of such owner.  
(Ord. 10-21-09; Ord. 11-3-10)

**Sec. 22-4-3. Residential density; minimum lot size; dimensional requirements.**

## ZONING

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*Rear:* An open, unoccupied space on the same lot as a building between the rear line of the building (excluding steps and ramps affording pedestrian and wheelchair access) and the rear line of the lot, and extending the full width of the lot.

*Side:* An open, unoccupied space on the same lot as a building between the side line of the building (excluding steps and ramps affording pedestrian and wheelchair access) and the side line of the lot, and extending from the front yard line to the rear yard line.

*Zoning Administrator:* The official charged with the enforcement of the zoning ordinance. The administrator may be any appointed or elected official who is by formal resolution designated to the position by the governing body. The administrator may serve with or without compensation as determined by the governing body.

*Zoning district:* A division of territory within Fluvanna County for the purposes of regulation of its use under the provisions of this Chapter.

*Zoning permit:* Any permit issued by the zoning administrator in accordance with this ordinance.

(Ord. 6-19-96; Ord. 10-18-00; Ord. 9-17-08; Ord. 10-15-08; Ord. 10-21-09; Ord. 6-16-10; Ord. 11-3-10; Ord. 8-1-12; Ord. 11-20-12; Ord. 12-16-15)

### ***Article 23. Site Development Plans.***

#### **Sec. 22-23-1. Statement of intent.**

The intent of this Article is to encourage harmonious development with the surrounding properties in accordance with the guidelines as provided in the comprehensive plan, the requirements of the Zoning Ordinance, and the requirements of other local and state ordinance and policies pertaining to the physical development of a site. This Article will serve to protect valuable resources within Fluvanna County, including unique natural features, historic sites, and significant view; to protect the environment, and to maintain the carrying capacity of the land, including, among other things, the protection of wetland, steep slopes, and other environmentally sensitive areas; to provide safe and convenient vehicular and pedestrian circulation; to provide adequate police and fire protection, water, sewerage, flood protection; and otherwise to protect the health, safety and welfare of the citizens of Fluvanna County.

#### **Sec. 22-23-2. When required.**



## ZONING

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A site plan shall be required for any development, on any site, in all zoning districts in any case in which construction or a change in use of the existing site which increases the number of on-site parking spaces or anything that causes a visible change in the site. A "visible change" includes grading, removal of vegetation in preparation for future development of the site, mining, digging, and riverbank removal, addition to a building that changes the traffic circulation on the site, or any other change which the Director of Planning determines to be cause a significant impact to the public health, safety and welfare.

**Sec. 22-23-2.1. Site plan exemptions.**

The foregoing notwithstanding, no site plan shall be required for the following:

- (1) Construction of, or addition to, a single family dwelling on an individual lot.
- (2) Construction of, or addition to, a two-family dwelling on an individual lot.
- (3) Accessory structures to single-family dwellings, (not meant for commercial use).
- (4) Accessory buildings or structures on property used for the growing of agricultural crops, livestock, or forestry timber when such buildings or structures are necessary for such growing.
- (5) Harvesting of plants or trees growing on the site.
- (6) Clearing of a site for use for agricultural or pasture purposes.

**Sec. 22-23-3. Issuance of permits by county.**

No building permit, or other county permit required prior to the initiation of construction of any building or structure or development, shall be issued by any officer or employee of the county for any development which is subject to the provisions of this article until a site plan has been approved. Compliance with the terms contained on any site plan shall be deemed a condition of each and every permit issued by the county. Any permit issued prior to the approval of a site plan is automatically null and void.

**Sec. 22-23-4. Waiver of minor requirements.**

Any minor requirement of this article may be waived by the Director of Planning where such waiver is consistent with the purpose of this article. For any waiver, the applicant must establish that in his specific case either an undue hardship would result from the failure

## ZONING

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**Sec. 22-19-2. Violation of Chapter.**

Any person, firm or corporation, whether as principal, agent, employee or otherwise, violating, causing or permitting the violation of any of the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$10.00 nor more than \$1,000.00. Such person, firm or corporation shall be deemed to be guilty of a separate offense for each successive ten (10) day period during which any portion of any violation of this ordinance is committed, continued, or permitted by such persons, firm or corporation, and shall be punishable by a fine of not less than \$100.00 nor more than \$1500.00.

**Sec. 22-19-3. Authority of zoning administrator.**

In addition to the foregoing, the zoning administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance, including the ordering in writing of the remedying of any condition found in violation of the ordinance, and the bringing of legal action to insure compliance with the ordinance, including injunction, abatement or other appropriate action or proceeding.

***Article 20. Amendments and Rezoning.*****Sec. 22-20-1. Power of governing body; initiation of change; fees.**

The regulations, restrictions and boundaries established in this ordinance may from time to time be amended, supplemented, changed, modified or repealed by the governing body pursuant to section 15.2-2285 of the Code of Virginia as follows:

(A) By the filing with the zoning administrator of a petition by owners or the contract purchaser, with the owner's permission, of land proposed to be zoned, which petition shall be accompanied by a fee as prescribed by a fee schedule adopted by the governing body; or

(B) By the adoption of the board of supervisors of a resolution of intention to amend which resolution upon adoption shall be referred to the Planning Commission; or

(C) By the adoption by the Planning Commission of a resolution of intention to propose an amendment.



## ZONING

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thirteen for less than a twenty-four (24) hour period. See also *Child day center*, *Family day home*. (Ord. 12-16-15)

*Cluster development*: A development design technique that concentrates buildings on a portion of the site to allow the remaining land to be used for recreation, open space, or the preservation of historically or environmentally sensitive features.

*Commission, The*: The Planning Commission of Fluvanna County, Virginia.

*Communications service*: Establishment primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms. Excluded from this use type are facilities classified as major utilities or telecommunication facilities. Typical uses include, but are not limited to, television studios, telecommunication service centers, radio stations, or film and sound recording facilities.

*Comprehensive plan*: The Fluvanna County Comprehensive Plan.

*Condominium*: A building or group of buildings in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportionate undivided basis.

*Condominium association*: The community association that administers and maintains the common elements of a condominium.

*Connection, water or sewer*: The provision of water and/or sewerage services to any dwelling unit or commercial or industrial establishment.

*Conservation area*: Any parcel or area of substantially undeveloped land conserved in its natural state to preserve or protect endangered species, critical environment features, viewsheds, or other natural elements including, but not limited to, preserves, wildlife management areas and refuges, open spaces and habitat protection areas.

***Contractor's storage yard***: Storage yards operated by, or on behalf of, a contractor for storage of large equipment, vehicles, or other materials commonly used in the individual contractor's type of business; storage of scrap materials used for repair and maintenance of contractor's own equipment; and buildings or structures for uses such as offices and repair facilities.

**Kary Clarke**

504 Glen Circle • Troy, VA 22974  
Phone: 434-401-4187 • E-Mail: the5clarkes@comcast.net

May 9, 2018

My family and I moved to Fluvanna County at 504 Glen Circle, Troy the end of January, 2018. The property behind mine was a vacant lot of land with no indication of the issues to come in the following weeks.

Very quickly, the lot became full of construction materials being stored, pipes, tanks meant to be stored underground, on-going welding, a travel trailer complete with a resident, animals chained to the fence without shelter, and on-going loud activity.

One week night in February, 2018 we were awoken at 1 AM with lights shining into our bathroom. The lights were followed with a beeping sound and were coming from the lot across the way. Whoever was there was unloading a tractor-trailer of equipment using a tractor.

At the neighborhood meeting on February 15<sup>th</sup>, 2018, Mr. Morris was in attendance attempting to request to turn the agriculturally zoned land he purchased (30 acres behind my home, and the Fox Glen Development) into an industrially zoned property. He attempted to explain that the 1 AM wake up was most likely a stray deer having gotten into the compound and thereby setting off the spotlights. As the meeting progressed and Mr. Morris was not getting his point across to the group, he verbally threatened to put junk cars back on the property.

Sunday, March 4, 2018, work was in full swing with tractors beeping at 7:00 AM.

On Monday, March 19, 2018, work was in progress at 4:20 AM.

Sometime in mid-March, the junk cars began appearing on the property. Most of them arrived through the cover of darkness and/or through a rear entrance off of Memory Lane. The pile of junk cars has continued to grow.

On March 29, 2018, the Board of Supervisors of Fluvanna County declined Mr. Morris's request to rezone his 30 acre agricultural property into light industrial and high industrial.

On Friday, April 9, 2018, I contacted DEQ regarding the activity on the M & M Property – junk cars, trailer with resident, welding, etc. The information that came back was as follows:

**“First, there does not appear to be any issues with leaking from the junk cars that have recently been stored on the property. There is no issue with any dumping from the trailer at the front of the property. All waste is pumped out according to the dweller. There is electric and water to the trailer, with a portable-potty outside. The junk cars are from Charlottesville Wrecking, with only two vehicles directly from M & M. It seems that Mr. Morris is now leasing the back property to Charlottesville Wrecking.**

**Yes, there is someone living in the trailer up front - the VP of the welding company that is doing work on the property. The other trailer that made its way to the back of the property was there as storage while waiting for a space at a camp ground. That trailer is now gone, so a space must have opened up.**



**Yes, there is welding activity on the site. They are welding valves onto (or into) the pipes for the pipeline.”**

Work continues on the property with piping materials arriving on Sunday, May 6, 2018. There were at least two loads delivered and dropped at the east side of the property, behind some chipped up rocks.

Mr. Morris has been given several zoning violations and continues to thumb his nose at the rules and regulations of the county property that he seeks rezoning for. He does not want to comply and it is obvious he wants to do what he wants.

Based on Mr. Morris’s comments at the Neighborhood Meeting in February, it is apparent that Mr. Morris is vindictive.

Based on the situation for the past few months and the activity on the property, I do not feel it would be in the best interest of Fluvanna County to grant Mr. Morris his request to divide the property into two separate areas – light industrial and heavy industrial. His apparent lack of regard for the county is evident in his not taking care of the current issues at hand and his continuing to allow the work to continue. Mr. Morris is not a resident of Fluvanna County and I do not feel he has any true vested interest in our home area or surrounding area.

Should the property revert to a junk yard again, it should be a property that operates within the rules and regulations of the county.

Sincerely,

Kary Clarke

From: Joseph Ryan, 113 Glen Circle, Troy  
To: Fluvanna County Board of Zoning Appeals  
Re: BZA 18:03 - Request by M&M Salvage for rezoning to I-1 and I-2

To Whom It May Concern:

My name is Joe Ryan and I live at 113 Glen Circle, in the Fox Glen Subdivision. My house sits right behind M&M Salvage. I am writing to ask that M&M Salvage's request for rezoning to I-1 and I-2 be denied.

Prior to moving to Virginia to be employed by the federal government I was an urban planner for five years in South Carolina. During all of that time I never saw industrial uses being allowed next to residential ones. It simply wasn't done, because these are incompatible land uses.

The previous five months have amply demonstrated the wisdom of that approach. M&M Salvage/Kibby have been conducting industrial-scale operations during that time, from 7:00am to 7:00pm, to include all day on Saturday and Sunday afternoon. Basically, every morning and evening in our subdivision since December has been filled with the loud beep-beeping of heavy equipment backing up, as well as the sound of diesel engines as this equipment moves around, as well as the occasional shaking of my house as heavy items are dropped by this heavy equipment. This was never an issue when the junkyard was owned by Cosner Brothers.

This activity is not only noisy, it is illegal. Being able to operate as a grandfathered junkyard in no way allows the kind of heavy industrial activity that has been occurring on this site since December. In addition, the owner of M&M Salvage has made no effort whatsoever to respond to continuous complaints by residents of Fox Glen during this time.

In summary, the owner of M&M Salvage has shown himself to be completely untrustworthy, in terms of conducting activities on this site that are completely outside of what the property is zoned for and what the grandfathered junkyard uses allow for.

Therefore, his request for rezoning the property to I-1 and I-2 uses should be denied, as he has proven incapable of conducting this level of activity on his property in a way that respects the surrounding residential property owners.

Thank you for your consideration of this request.