

Minutes

CHARLOTTESVILLE BOARD OF ZONING APPEALS
July 18, 2024
City Space Conference Room

Members Present: Josh Krahn, Hosea Mitchell, Matt Morrill, Sakib Ahmed, Genevieve Keller

Staff Present: Patrick Cory, Read Brodhead, Craig Fabio

I. CALL TO ORDER

The Meeting was called to order at 4:36 PM by Vice-Chair Ahmed

II. PUBLIC HEARINGS

BZA 24-07-001: 932 Monticello Avenue

The petitioners file this appeal because the Zoning Administrator improperly failed to act on Karla Bathrick's 2024 application for a Homestay Permit. The Notice of Violation should be reversed, and the Zoning Administrator should be directed to issue the 2024 Homestay Permit.

Read Brodhead, Staff Report – The applicant applied for the Homestay Permit via mail with a copy of her driver's license in January 2024. Our department, Neighborhood Development Services, now uses a permit portal called Cityworks that we use to process all permits. It was entered into Cityworks and assigned a permit number on February 8th, and it was denied on April 4th. The homeowner must reside in the residences as his or her primary residence for at least 185 days of each calendar year. You do not meet the occupancy requirements, therefore not permitted to lease the property for less than 30 days at a time. The applicant should have received this email from Cityworks. It would have prompted her to create an account because she did not submit it via the portal. She submitted it via mail. The way the portal works is that anyone who has an email address is sent a link essentially to create an account and sign into the portal to view the permit. A notice of violation was issued to Mr. and Mrs. Bathrick on May 9th. The applicants were cited for being in violation of Section 3.2.2 of the Charlottesville Development Code, which is the code that regulates all allowable uses in the city. They do not have a Homestay. I am citing them for being in violation of the use ordinance. The Bathricks have hired Ashley T. Hart from Flora Pettit Law Firm to represent them in their case. An appeal was submitted within 30 days to appeal the determination. They have asked the Board of Zoning Appeals to reverse the Zoning Administrator's notice of violation. It has been stated that the determination is illegally erroneous because occupancy for at least 185 days in each calendar year is not a condition of the requirement to be eligible to apply for a permit. Rather, it is a requirement for operating under the permit. The Homestay regulations can be found in Section 3.5.2 in the Development Code. It should be noted that the notice of violation referenced Section 3.2.2, the illegal use in that zoning district. The applicant provided a copy of Mrs. Bathrick's driver's license. In the previous year, she provided a copy of her voter registration card. They both noted 932 Monticello Avenue as the address. She contacted information with the responsive party, which is Guest Houses, a local company that manages short-term rentals in the area. The submittal of information does not guarantee that the application will be automatically approved, which I believe is being insinuated in this appeal, as the proper steps the Zoning Administrator must take in reviewing a Homestay application. The Homestay Ordinance was created in 2015, which allows short-term rentals operated from single-family residence in an effort to prevent the city's housing stock from being bought up and used as short-term rentals. The City Council and Planning Commission added a requirement in the proposed code that requires the owner of the Homestay to occupy the home as their permanent residence for a minimum of 185 days of each calendar year. This is a contentious topic in the city right now. The fear the Planning Commission and Council had is unfolding before our eyes right now in the

city. Additionally, steps must be taken in an effort to prevent the city housing stock from being converted from single-family homes to illegal short-term rental units. It is common where an applicant is employed or if they own properties or if they have other short-term rentals. In this case, it was discovered that the Bathricks reside at 6208 Winnipeg Drive in Burke, Virginia. That is the owner's address on the city of Charlottesville GIS page. It is also the address on record in the Fairfax County Assessor's information. Finding this information swayed me to deny the Homestay application. I have received an email from Mr. and Mrs. Johnson, an adjacent property owner at 919 Bolling Avenue. They echo my findings that the property owners do not reside in that home. They have only met the Bathricks one time when they were completing renovations of the property after they purchased it. In staff's opinion, the appeal does not address whether or not the applicants reside at the home, but rather they improperly refused to review the application.

Mr. Mitchell – I am reading item #9 under Section 3.5.2.8. It says during the period of validity, I am assuming the period of validity is that they have been licensed to operate a Homestay. It says during the period of validity, the owner of the Homestay must occupy the dwelling as a current residence for 185 days. What it does not suggest is that they must occupy the Homestay until the beginning of the period of validity. They can apply for an application without occupying that. Is that accurate?

Mr. Brodhead – The intent of the code is that their permanent residence is half the year. If they choose to live in another part of the country or state or locality for a portion of the time that is up to 185 days, that is fine. I do not understand how they are able to do that in this case based off them claiming and having their bills go to another residence in northern Virginia.

Mr. Mitchell – I get the intent. I am wondering if they are suggesting that there is a loophole that is going to allow them to submit an application, even though they are not occupying the unit at the submission of the application. The way I read this is that it suggests that the 185 days relates to the period of validity. That is going to be the point of contention.

Ms. Keller – Would it be accurate to say that there had been a previous period of validity that there was an application in the previous year based on the voter registration and based on the experience of the first year? That is what you used to deny a permit in the second year?

Mr. Brodhead – I was skeptical from the moment I approved the permit last year whether or not they lived there. I got a request for a Homestay permit before they owned the home. As in, our property records had not been updated yet to reflect that they owned the property. What I have always done is that they must show that they reside in the homes. I go to the GIS page, look up their address, what they are claiming as their address, and that supportive evidence of a voter registration card or ID. When I get an application where they just applied for a license 2 days prior and they are moving from another location, those are the ones that usually proved to eventually not operating incorrectly. I often drive by this property. There is nothing that changes. The lights are on. In this case, I was skeptical at the beginning. Last year when I spoke to Mrs. Bathrick, she told me that they were intending on moving down here and that they were waiting for some renovations to be done with their house. They were going to move in. Until that was done, they were not going to do it. They wanted to make sure that they got the short-term rental permit because that was their intention; to use it for that once they moved in. That is fine. I work with people. I gave them an approval. I don't think that they moved into the property.

Mr. Ahmed – Did you ever issue a violation for their initial lapse?

Mr. Broadhead – I did not give a notice of violation last year in 2023.

Mr. Ahmed – Given where we are with the calendar year, if the permit was to be approved, would they be able to reside in the property to meet the current statute?

Mr. Brodhead – I do not know how many days they have lived there this year. We are halfway through the year right now. If they live there the rest of the year as their primary residence, they could show that they were there, I could issue it to them. Their calendar says that is not what their intent is based off this calendar they provided. They intend on using it most of November and all December.

Mr. Keller – Did they operate last year and make reports?

Mr. Brodhead – That is not handled by me. That is handled by the Commissioner of Revenue. My understanding is that their property agent would submit that.

Mr. Keller – **I would like to disclose that I have a Homestay license. I operate a short-term rental in my residence. I do not believe that effects my ability to be impartial.**

Mr. Ahmed – **I would like to disclose that the neighbor listed on the form is someone that I am employed with in the same organization. We do not have any reporting lines. I am a member of the same organization. I don't think that impacts my ability to be impartial and make decisions about this appeal.**

APPLICANT PRESENTATION

Ashley Hart, Applicant Attorney – What I would like to focus on in my presentation is the language of the ordinance itself. If you are looking at it from a legal perspective, the courts are going to say: What is the plain language? What does the plain meaning of this ordinance say? Is that being followed here? Practically, there are benefits to following the plain language rule. It does provide clarity and understanding. There is not an inconsistent application or unwritten/understood expectations that are not disclosed. I brought copies of 2 different parts of the zoning code that I would like to focus on today. The first is the chart in Section 3.2.2, which is the acceptable uses under RA and the specific provision of the homestay. Our position is that the Bathricks should not have been denied a homestay permit in the first place. We base that argument on the plain language of the zoning ordinance. If you look at that chart, 932 Monticello Avenue is an RA property. Under that chart, they have P star. A use is permitted by right where standards apply. The other packet is the use standards for the homestay permit. Number 5 is what talks about the application for the zoning permit. I would like to talk about specifics of the language here. There are 2 requirements of the application. The first under subsection A is the individual's ownership and permanent residence of the property that is the subject of the application. The second sentence states 'acceptable proof of permanent residence includes the applicant's driver's license, voter registration card, or US passport or other documents showing the address of the property, which the administrator determines provide equivalent proof of permanent residence at the property.' Subsection B is requiring the contact information for the responsible party. Here, what is at issue today is under Subsection A, the acceptable proof of permanent residence. The code is clear. If you provide a driver's license, a voter registration card, or a US passport, that is accepted. The Zoning Administrator is taking the position that that is not acceptable. The language specifically says it is acceptable. It is sufficient. That is what Mrs. Bathrick submitted. She submitted the driver's license with her application. She also submitted the required permit fee. Since she did submit what was required, the permit should have been issued. The only place in the zoning code that the 185-day requirement is listed is in paragraph 9. That was discussed earlier. What does the period of validity mean? What does that apply to? The plain language of that, if we go to the first sentence: 'each accessory use permit for homestay will be valid from the date that the permit is issued through December 31st of the calendar year which the permit is issued. During this period of validity, the owner of the homestay must occupy the dwelling unit as their permanent residence for a minimum of 185 days.' That is a requirement once the permit has been issued. It is not a requirement for the application in order the zoning administrator to grant

the application. I did not see anywhere else in the Development Code where it said 185 days was required. It seems that this 185-day requirement based on the language of the ordinance is something that is examined once the permit is in place to make sure the permit holder is complying with the use standards while the permit is in place. After Mrs. Bathrick submitted her application by mail with the required documentation, she never received any further notice from the city that the permit had been denied. The only thing that she saw when she checked the bank records was that her permit fee check had been deposited. The evidence submitted by the zoning administrator does not show any notice being sent to Mrs. Bathrick. I asked after we received his report. She said that she did not receive any sort of notification. The first notification that they received that the homestay permit was not in place was from their property manager, who Mr. Broadhead messaged through the Airbnb app. I have a copy of that message from Mr. Brodhead to the property manager. This message states: 'My name is Read Brodhead. I regulate the homestay laws in the city. I do not have a permit on file for this property. Please apply for a homestay permit to ensure that you meet all legal stipulations to operate a homestay in the city.' This also does not provide notice that a permit was denied. Once they received word that the permit that they had applied for had not been processed, they pulled their property from the short-term rental platforms. I think it is important when you are administering and enforcing the ordinances, there is clear communication so that everyone understands and is on the same page. Arguably, that was not the clearest communication to say that the permit was not in place. There also have been references made to a complaint by an adjoining landowner. If we go to that use section of the homestay ordinance, it does talk about complaints. Complaints come into effect for purposes of revoking a permit. They do not come into effect for purposes of issuing a permit or reviewing an application. It also requires that the complaints be substantiated. A couple of things about the specific written complaint that was provided. It was made in response to the public notice of this hearing rather than anything that was made at the time of the decision. It makes a conclusory allegation that the Bathricks are not there for 185 days rather than any substantive references to why they are not there for 185 days. As an alternative argument, even if people were to say you need to be there for 185 days in order for a permit to be issued, I don't think there has been sufficient proof here to establish the Bathricks do not have plans to be here for 185 days. We are only in July. There is still a lot left in the year. The records that the zoning administrator relied on, the city GIS system and the Fairfax Tax Assessor's office, I think those records show where bills were sent. They do not show any proof of permanent residence. I think looking at a driver's license, the state of Virginia in issuing that license agreed to issue the license for her at that address. Anyone that has applied for an ID knows that you must submit a lot of documentation to get the DMV to issue a driver's license at that address. Last year, she submitted a voter registration card. Even on balance, the state of Virginia says that it is OK to list her address as 932 Monticello Avenue. I am not sure that the GIS system or Fairfax Tax Assessor's office is proof to the contrary. It is listed addresses primarily for tax bills. I would ask the board in making its decision today to look at the plain language of this ordinance and what is required to issue an application for a homestay permit. The plain language is clear. The permanent residency requirement for an application may be established by a driver's license. That was submitted. This 185-day residency requirement is only applicable and examined during the period of validity of the permit. When it comes to making the decision about whether the permit should be issued in the first place, making that determination is quite frankly impossible. You cannot make the determination in January if an applicant were to apply. It is not a way to determine residency before the year has even started. It is important to look at the plain language of the ordinance because otherwise citizens might be subject to unwritten or unclear requirements about what they are supposed to do to comply. At the end of the day, the Bathricks want to follow the rules. It has been unclear to them.

Mr. Mitchell – You (the applicants) work in northern Virginia area.

Ms. Hart – They work remotely. I don't know where their main office is.

Mrs. Bathrick – We don't have a main office. I split my time between northern Virginia and Charlottesville. With COVID, my job was never going back to the office. They have allowed us to work anywhere.

Ms. Keller – How many days were the Bathricks occupants in the preceding year when they did have a permit?

Mr. Bathrick – We did not add that up. We do know that we have been here combined at different times, approximately 71 days this year so far, with plans to meet the 185-day requirement. November is almost completely empty on our calendar. I think there are 140 days left. That was our plan to meet that requirement for the rest of the year.

Mrs. Keller – Is this a whole house rental? Do you occupy a portion of the house even when there are guests present?

Mr. Bathrick – We are not there at the same time as guests. Either the guests are there, or we are there. We plan accordingly based on the calendar.

Mrs. Keller – You think that you were there 71 days in the preceding year that you had the valid permit.

Mr. Bathrick – It is 71 days so far this year.

Ms. Keller – Can you document that?

Mr. Bathrick – She is asking about 2023, which I don't have the numbers for. We are not quite sure how to document when we have been in the house and when we have not been in the house. We know based on the plans that we have made and things we have done when the property hasn't been occupied. I don't know how to document that.

Ms. Keller – In your opinion, is it a fair assessment on Mr. Brodhead's part that in 2023, the first year that you had a permit, that you did not achieve the 185-day minimum residence or occupancy?

Mr. Bathrick – I would not say it is a fair assessment. We were there when it was being renovated. I think it went into service as a rental in May.

Ms. Keller – Approximately, do you know how many days there were visitors there in that year?

Mr. Bathrick – I would have to look that up. It was maybe half the time from May on. It was probably less than that it had just started up. Airbnbs tend to book far in advance. Business probably did not start until July.

Ms. Keller – Do you vote in Charlottesville?

Mrs. Bathrick – Yes.

Ms. Keller – Can you describe a typical day when you are in occupancy in Charlottesville?

Mr. Bathrick – We work from home. We have friends in the area. We go out to dinner.

Ms. Keller – Do you have any local affiliations, organizations that you belong to, other obligations that help to document that you are an occupant of the city and of this residence?

Mr. Bathrick – We are not affiliated with anyone.

Ms. Keller – That is not a requirement. I am just trying to get a context to me what describes someone who is an occupant of a neighborhood.

Mr. Bathrick – Our plan, long-term, is to retire here. This has been a transition. We bought the house. We knew we were not going to be able to move down here right away. We wanted to rent the property to help service both mortgages. We have always maintained that we wanted to comply with everything. She has been down here. I have been down here. We are meeting the requirements to do that while still maintaining a home in northern Virginia. Our plans have been delayed longer than we had hoped for medical reasons with my family. Our intent is to still move down here permanently.

Ms. Keller – Is it just the 2 of you in your family?

Mr. Bathrick – We have a daughter. She attends school in northern Virginia. I am there primarily 2 to 3 days a week when the calendar allows. Mrs. Bathrick is down here. On weekends, when the calendar is available, we are both down here.

Mr. Morrill – In terms of your permanent residency, if I was to look at your tax return for this year, would that have the Monticello address on it or the northern Virginia address?

Mr. Bathrick – Our tax return would claim the northern Virginia address.

Ms. Keller – Does it reflect your operation of the homestay as part of your tax return?

Mr. Bathrick – It does.

Ms. Keller – Does that indicate the number of days that you are in residence? Sometimes, with a rental or short-stay, you are asked to declare how many days it was available to the public for rent and how many days you used it for personal use. You could break that down for tax purposes.

Mr. Bathrick – I don't believe that it does. It has a dollar number for the rental income and related expenses. I don't believe that it breaks down that way.

Mr. Krahn – Can you estimate how often the house is vacant when you are not staying there?

Mr. Bathrick – Maybe a third/quarter of the time. I really am not that sure.

Mr. Krahn – The days it is available, do you rent it on Airbnb or the other platforms? Maybe a quarter of that time it is vacant and the rest of the time it is occupied by renters.

Mr. Bathrick – Are you asking when it is not booked, how often are we there?

Mr. Krahn – I am trying to get a sense of how often the building is empty. Is it occupied most of the time that you are not there? Is it like 50/50 whether there will be somebody staying there or not? How much use is the house getting?

Ms. Hart – Are you asking when the house is available to be booked and it is not booked, and nobody is there? Is that your question? Would you guys had made it available to book, but it isn't? It is just sitting vacant.

Mr. Bathrick – Maybe a quarter of the time.

Ms. Keller – Are you rented most weekends?

Mr. Bathrick – It depends on the time of year. Certain times of the year are busier than other times. Winter is very slow. This time of year can be very slow. That is when we are primarily there, when it is easier for all of use to be down here.

Ms. Keller – You would characterize it as primarily a weekend rental.

Mr. Bathrick – It varies.

Ms. Keller – How many people typically stay in the BNB at a time?

Mr. Bathrick – It is allowed for 8. It has a bedroom with 2 twin beds. Eight is the maximum with 6 adults. There are 3 rooms with king beds.

Mr. Morrill – Do your credit cards statements go to northern Virginia?

Mr. Bathrick – I am there primarily. They do go there.

Mr. Ahmed – Are you able to prove that you would be in compliance going forward if the decision was to be reversed and you were issued a permit? What is your plan to ensure you are not in violation of the code going forward?

Mr. Bathrick – I guess that is where we are unclear as to what would be needed to document that. If somebody was to ask you if you are at home and nobody sees you, how were you to document that? I don't know. If there is a suggestion, we are open to that. We are very unclear with how to proceed. Our ultimate intent is to be there. There is more than enough time in the year to meet the 110-days that are left.

Mr. Morrill – Is there a reason you are not Airbnbng your house in northern Virginia?

Mr. Bathrick – For my daughter's school, she just finished the 6th grade. We are trying to get her through that. My father was diagnosed with cancer earlier this year. He is up in northern Virginia. That is why I have been tied longer to that area.

Mr. Krahn – If you are not able to operate a homestay the rest of this calendar year, will you apply again next year?

Mr. Bathrick – I want to see what the outcome is here. I don't think that would be our plan based on how things have gone so far with the city.

Mr. Krahn – Do you think that you would put the house on the market?

Mr. Bathrick – Ideally, depending on how things go with family, we would move down here. If we must put it on the medium- or long-term rental, that might be the way we go.

Mr. Morrill – Have you considered renting it as a long-term rental?

Mr. Bathrick – That might be the outcome that we proceed with based on the outcome of today. We did not want to tie it up for too long. We do not know how quickly we can get down here full-time. That might be the route that we must go.

Mr. Ahmed – Do you believe that you have done everything under the provisions to be in compliance in the previous year where you did have a permit?

Mr. Bathrick – We did. We were down here substantially while it was being renovated. She voted down here. Yes, I do believe so. We tried to follow the rules.

PUBLIC COMMENTS

Richard Johnson (919 Bolling) – I am here because I received the notice of this appeal. I live adjacent to the property, behind it, across one of the Belmont alleys. I met the Bathricks when they were renovating the property. I communicated with them about some things around yard maintenance. I would describe our relationship as cordial. They told us that they were making the renovations and planning to move down here full-time. With the complaint, I was responding to the note that I received. I was unaware of the 185-day requirement. Prior to the notice, we had observed the property being used by a lot of short-term rentals. I did not know, under the zoning code, what the requirements were. We have not observed them to be living there full-time. We have observed a lot of short-term rental activity, mostly on the weekends. While I am not able to quantify the number of nights that they stayed there, our observation was very heavy short-term rental use, mostly on the weekends. I wanted to share our experience living in the adjacent property, given the notice and the awareness of this 185-day rule. In this year, there is the understanding and agreement of the city’s intent to maintain housing stock for residents instead of converting to short-term rentals.

BOARD DISCUSSION AND MOTION

Mr. Mitchell –The reason for the appeal is because you would like the Board to reverse the denial of the Homestay license?

Ms. Hart – That is correct.

Mr. Krahn – The whole procedural part is not important to us. We are saying ‘yes’ or ‘no’ on whether or not they can have a Homestay permit.

Ms. Hart – That is what we are asking.

Mr. Krahn – Have there been other situations like this where we have needed the owner to prove their occupancy for the 185 days?

Mr. Brodhead – The way I review their application is the way that I review every application. I look at materials that are presented to me. I look at owner history. I might search them if I am skeptical, or I do not think they live there. I have had owners submit affidavits from an attorney stating that they live there. It depends. We had 200 permits that we approved last year. I have also denied 15 to 20 permits. The GIS information on the city page says that Burke, Virginia is where they get their bills. I live in Albemarle County. I get my bills at my house. I am just using logic. My parents have 2 homes. The residence where they live more is where they get their bills. That is what they claim as their residence. That is what I am going off of. Fairfax County said that this is where (Burke) they get their bills. That led me to deny the permit, despite what their address and voter registration card said.

Ms. Keller – You said that you drove by the property several times in 2023.

Mr. Brodhead – That is correct. It is less than one mile from City Hall. My son used to go to school near Monticello High School. I came in on Avon Street/Monticello Avenue. It always seemed the same. It never changed. You would see the same things. You would observe change. I did not see anything. There are also some Airbnbs on Avon Street that I have cited. That does not have to do with this one.

Mr. Krahn – There is some clear, acceptable proof for the application. Are there any examples of what owners would show to prove the occupancy?

Mr. Brodhead – No. It is based off someone telling me what they do. I don't drive by every homestay every single day.

Mr. Krahn – Do you think we should have more specific guidance for applicants in the future?

Mr. Brodhead – No. I think our code needs a rewrite. It is the first homestay code in the state. There has been a lot of change to all the platforms. We are ready to have a rewrite. There is a lot of community will to have a rewrite. I have not been instructed to rewrite it yet. We have what we have for today.

Mr. Morrill – The intention of the way it is written is where the homeowner would spend most of their time and that would be their residence. I am thinking of the example of living down in Florida and Airbnb your house while you are away. The Florida house is your vacation house. For tax purposes and voting, you would be in Virginia.

Mr. Ahmed – Are there any other examples in the zoning ordinance that establishes a precondition for a permit application to be submitted?

Mr. Brodhead – The home occupation permit. That allows a renter or a homeowner to apply for a home occupation permit to utilize it for a business use. The homestay was decided by the Planning Commission and City Council that the homeowner would be the one that would have the right to be able to utilize it as a short-term rental taking away the ability to have a sublet where you have a tenant rent out to tenants.

Ms. Keller – Were you on the Planning Commission when we developed this? I was. We spent many months on it. I am not sure how much time City Council spent. They were familiar with it. They gave it a good deal of consideration. I remember one councilor added the 185-day requirement, feeling that made this more specific. Otherwise, it was a little vague without the 185 days. I feel confident in speaking for the Planning Commission and City Council at the time of its passage that the intent was to encourage homeownership and residency. Even at that time, we realized that there was a housing issue in the city. We are trying to keep houses occupied rather than have them become exclusively short-term rentals. I feel that 5a and 9 work together and were intended to work together.

Mr. Krahn – What they are saying is that they met the requirements of 5a. Based on that, they met all the requirements.

Ms. Keller – I see that. I see it in the first year. It seems to me that 2023 was that year that the right credentials were presented, and a permit was issued. The observation of that year was that item 9 was not met. Therefore, it was denied. To me, it was using experience of observation. It was denied. Perhaps, that could have been done more specifically during the year.

Mr. Krahn – We decide that they don't do it right. We can say that they did not do it right this year. They can say that they did not realize that they were not doing it right. They can say that they will do it better this year. Is it fair for us to look at 2023 to decide what we should do with 2024?

Ms. Keller – It seems to me it is. Is this a permanent residence? If it was not a permanent residence in 2023, what is changing to make it a permanent residence in 2024 if all indicators in 2023 are that it was not a permanent residence?

Mr. Morrill – Mr. Brodhead, was there a reason you did not revoke the permit last year? Or did you not notice?

Mr. Brodhead – I did not get any complaints about it. As the back neighbor said, he did not know that the 185 days was a requirement. I spoke verbally with the neighbor to the right. She did not communicate about it. I did not put it in my report. She did not understand the rules. You are looking at the zoning department here. We are a complaint driven department. We are focusing more on those. There were not any complaints. I did not have anything last year in my denial. My observations through the last year and into this year was leading me to think that they did not live there permanently.

Mr. Ahmed – The applicants are alleging that you do not have the authority to deny permits. You believe that you do under the reading of this.

Mr. Brodhead – If I am not able to deny a permit, why is there a thing on the permit application that says approve or deny? If I am unable to deny, I would rubber stamp every plan that comes in and get 3 substantiated complaints to be able to revoke a permit.

Mr. Ahmed – Who created that document?

Mr. Brodhead – I did. I also wrote the Homestay ordinance. I was involved in a yearlong process where we brought stakeholders from the whole community. I went to all the Planning Commission meetings and City Council meetings. It took an entire year to pull it through. We worked with the City Attorney's office to get the ordinance the way we have it today.

Mr. Ahmed – It is your belief having been so deeply involved that the context of this ordinance is that the zoning administrator has the authority to deny applicants. Residing in the property is that it is indeed your permanent residence and you do reside there for 185 days is the basis for how you determine whether you issue the permit or not.

Mr. Brodhead – Yes. We have here on the permit application that the applicant must reside in the residence at least 185 days each calendar year. It is noted right there. It is not just saying 'I have a voter registration card.' At the bottom, it says that you have read all the regulations concerning this. You are saying that you intend to operate this according to the rules in the homestay ordinance. Whether the code says that we have not been operating that way since this permit was approved. This is the first appeal that we have had with our homestay ordinance since the inception of homestays in the city.

Mr. Mitchell – I have no issue with subsection 5. They complied with that. It is my belief that the applicant has violated the intent of the ordinance. Unfortunately, we have left the applicant a loophole. The loophole speaks to during the period of validity. The applicant must occupy the property 185 days of the year. It does not suggest that the applicant has had to do that during the application process. It is an unfortunate loophole. If we support the ruling of the Zoning Administrator, it will not survive in the Circuit Court. I believe the Circuit Court would suggest that loophole does exist. We do not specifically say that you must occupy the property when you are submitting the application. It says that you must be in the property during the period of validity. It is unfortunate. I support the intent. Hopefully, we can get this rewritten so that the intent is specified by what you refer to as plain language. The plain language, unfortunately, does not support the intent.

Mr. Morrill – For the 185-day limit, if you were going to revoke a permit based on that, you would almost have to wait until December of the year to make the full determination, unless the property was just used as a short-term rental. You can say starting in June, with the last 180 days, you won't meet that requirement.

Mr. Mitchell – My worry is that this does not specifically say that you must be there when you submit the application. It just says that you must be there when the application is approved. The argument that their attorney is making is just that. They don't have to be there when they submit the application. They must be there once it is approved for 185 days. That loophole exists. It is not spelled out in subsection 9.

Ms. Keller – I would agree with you for year one. Given this is year two, I would think there would be experience that would support item 9. Mr. Brodhead would have been within his purview to have requested proof of residency for 185 days. I agree with you that one could take that. The intent of this ordinance was that it would be more than these documents. I think city councilors talked about what would be acceptable proof. This is what they came up with; the clincher being number 9 of the 185 days. I agree with you that someone could apply for the permit on the day that they close on the property. They have the intent of residing there 185 days. Things happen. Life gets in the way. It becomes obvious that they are not meeting number 9. In the second year, the permit is not renewed because we have a desire to have housing in our city and have buildings occupied to the extent that they can be. We spent years coming up with a new ordinance that is supportive of that.

Mr. Ahmed – Doesn't that make it so that the applicants, going forward into perpetuity, would be held to that standard? If you are saying that you give them the first year to make the case that they indeed do reside here, you approve the permit and give them that as the initial period where they make the case. If they cannot do that, then every subsequent year, they will never be able to.

Ms. Keller – It is a leap of faith to give the first year. It is a leap of faith to say 'yes.' You have your documents. You have an intention of being permanent residents. You demonstrate that by being present 185 days during the year. If that is not the case going forward, I think the city is within its rights to not renew that or issue it again because it is obvious.

Mr. Ahmed – How would that change? How would you, in their case, determine that they live here.

Mr. Brodhead – I did not cite them in year one. I did not know. I had an assumption based off what I observed from the property.

Mr. Ahmed – I am trying to understand what, going forward, would allow them to get a homestay permit going forward. Is it a gap of a year where they cannot hold it. The next year, when they apply in good faith, it is reissued.

Mr. Morrill – I think 11 covers that. If it is revoked, they are not eligible for the remainder of that year and the next year. The following year would be the test year to see if they meet that 185.

Mr. Ahmed – In this case, it does not sound like it was revoked. These do not exist into perpetuity. You must apply every year to get one. They completed an entire calendar year without the permit being revoked. This does not apply to them. They are applying for a new permit. If it had been revoked, I would agree with you.

Ms. Keller – I think it could have been a better process. I am not convinced that Mr. Brodhead was not within the legality of his positional responsibilities to deny a second year. Although, it could have been done perhaps in a different manner.

Mr. Krahn – The owners must apply every year. In a sense, the clock is reset every January 1st.

Mr. Morrill – Setting aside the 185-day thresholds and going to the initial application, I think the intent is that this will be their permanent residence. The documents ask for proof of permanent residence. It seems like Mr. Brodhead denied the application because he does not believe this is their permanent residence. That is a reason you would deny an application.

Ms. Keller – I don't care where they get their bills. I care that a neighbor does not believe that it is a full-time residence. It feels like a BnB all the time rather than a home that is occupied 185 days. That is the compelling thing. Is it being used as their residence 185 days a year. It appears that has not been the experience. It does not necessarily seem that will be the case going forward. Maybe, there is an intent. They are going to try to do that. Almost trying to do it shows that it is perhaps not a residence in the way we think of a residence. It is taking a house out of our housing inventory.

Mr. Morrill – Any time you are trying to balance days, it does not seem like it is permanent.

Ms. Keller – Our intent is to have our houses occupied. That is why the 185 days are there. It is allowing people to spend a portion of the year elsewhere for a variety of reasons. We are an academic community. Sometimes people have teaching responsibilities in other places, go on sabbatical. All kinds of things happen that make people be absent and want to receive income or have their house under some sort of stewardship while they are gone. That is not our purview. Our purview is to try to keep our housing inventory sufficient and utilized to the extent that we can. That is why it is a requirement.

Mr. Krahn – What is the remedy going forward? What can they do to get good with the staff and BZA to do things the right way?

Mr. Brodhead – I have not put thought into that.

Ms. Keller – In other ways, we would have a condition. The permit could be issued conditional on documentable residence for so many days the rest of this calendar year or the beginning of the next calendar year.

Mr. Ahmed – Are we within our authority to do that?

Ms. Keller – I do not know if we are or not. That is what I am asking staff. I am sure that people applied mid-year. Perhaps, they could re-apply. The residency requirement would be prorated. They know that they are on notice. They would be trying to document that they are there.

Mr. Ahmed – As a board, we are authorized legally to put conditions, it is important for us to see that. Certainly, there is the zoning ordinance and the intent. There is also the applicant who is stating that they are a member of this community and want to be a member of this community. We need to find a way to provide something that feels fair. Going forward, how do we apply a remedy?

Ms. Keller – If they were applying for a physical variance, we would feel comfortable putting in conditions. We have done that. We will continue to do that. This is something that is different. I would think we could put some conditions on it. I don't know. We can make a recommendation that they reapply, and you look at it as a prorated portion of the year from X date through December 31st.

Mr. Brodhead – That is fine. Where is your daughter going to school next year?

Mr. Bathrick – In northern Virginia for the rest of this year.

Mr. Brodhead – You guys can decide on what the condition is. I have 3 kids in my house with my family. I think that if I had a second home somewhere, I would still call myself a resident of Charlottesville. I would not call myself a resident of that second house. You want to be where your family is.

Ms. Keller – All families are different. I have had unorthodox situations. My husband worked in Iowa for almost 20 years. I commuted back and forth between Charlottesville. I continued to vote in Charlottesville. I think things happen in people's lives. We need to be flexible. I do know, for tax purposes, I could probably document where I am every day for the last 30 years. I don't think that is reasonable if your residency is called into question. It is the same with a home occupation. If a neighbor says that there are 5 cars there and only supposed to have 1 or 2 employees, that would be something that you could verify. With cameras today, you see people coming and going or you would see license plates. It seems to me that the burden is on them to prove. I don't know if we can do this. I would feel comfortable if they reapply. How many days are left in the year, you put that in half. They document that they were here.

Ms. Hart – Boards of Zoning Appeals are supposed to decide whether or not the decision of the Zoning Administrator was right or wrong. That is how you need to frame your decision today and whether the denial of the permit was the right or wrong decision.

Mr. Brodhead – I would say that a variance is the one that you could put conditions on.

Ms. Keller – I believe that the Zoning Administrator acted in good faith and made a decision based on his experience. His experience in the city in this or similar position, it was his understanding that this house was not occupied as a permanent residence by these owners. It does not mean that it was not their intent the first time they applied. The experience of a first year led him in good faith to make that determination. I do not believe that he acted wrongly.

Mr. Mitchell – I would suggest that he did act in good faith. He was following the intent of the ordinance. That loophole exists. I think the circuit court is going to see the loophole. They are going to suggest that loophole exists. It is the letter of the law that needs be followed.

Mr. Krahn – I agree that staff acted in good faith. I don't think that is what we are deciding. We are deciding of whether they made the right call. I would like to believe that the applicants are acting in good faith. I would like to believe that. I agree with Mr. Mitchell. I agree with pushing the boundaries of the intent of the code. I am a literal person. I am looking at what the word says. There are loopholes that are ambiguous. There are no criteria for preventing what is being required. If I am in their shoes applying to get a permit, I don't think I have clear guidance about what is expected.

Mr. Ahmed – That is the role of the BZA to decide this.

Ms. Keller – It is why it was appealed to us.

Mr. Ahmed – We can interpret whether staff acted in accordance with how it is written. If we determine that he did read this correctly, there is nothing in here that allows the applicant to move forward in future years in how this would apply to that. That is what is missing. That part is where I hesitate to confirm and affirm that his reading was correct. There is nothing in here allows for future years where the permit process would then be allowed to give the applicants the ability to get a license. This feels like it is a one and done, a permanent exclusion from the ability to get a permit if we were to affirm what the administrator has done. There is no way going forward. Unless there are some major changes in the way that they live and are able to meet some proof,

which isn't in here. They don't know what that it is. I don't think we know what that is. We don't know what the burden of proof will be for the applicants to show that they reside in future years to get this ordinance to get this homestay.

Ms. Keller – The burden of proof is on the applicant. They have not submitted anything.

Mr. Ahmed – It is also not stated here what they would need to do submit.

Ms. Keller – Given this office administers the home occupations and all the other things. If someone is occupying their home and residence and operating as a plumber, for example, and they may move to Albemarle County, but they continue to use that residence as their plumbing office, they would have to show proof that they were at that home so many days a year as an actual resident. They keep clothing, food, there. I haven't seen any proof. They haven't brought us any proof. It is only about the language that they had. They had the right proof to apply for the ordinance because they had driver's licenses and voter registration cards. With number 9, they did not come in saying that this is how many days they have spent here. They would have logs to prove that.

Mr. Morrill – They said that they had planned to meet that requirement.

Mr. Ahmed – As this is written, it does not say that they must prove that to us. If the permit is issued and staff cites them in subsequent months, they then must prove to him. The same is true if a neighbor complains. They would have to prove to Mr. Brodhead substantially. He does have the right in this ordinance to take them to court for not meeting those requirements. That is when the burden of proof starts to be established. Nowhere does it say they must prove anything to us.

Ms. Keller – Nowhere in the zoning ordinance does it tell anyone that they must prove anything.

Mr. Morrill – I go back to the assertion that you just need to provide these 2 documents and you automatically are approved for the permit, which I disagree with. It is the Zoning Administrator's judgment after receiving those documents and doing some research. The crux of this question is: Did the Zoning Administrator make the right call in denying the application?

Mr. Ahmed – I would counter by saying the ordinance states that acceptable proof of permanent residence includes these items. That is what the Zoning Administrator is allowed to do. He is authorized to look at the documents and determine their validity. If they are valid, he is supposed to check the box. Whether that is the truth of the entire process, we have heard from Mr. Brodhead that it is not. He puts in additional work. I believe that the way this is written, the reasons that he can deny are when the documents are not called into question. The proof and their validity are called into question. It sounds like the documents provided by the applicant were valid. He has not issue with the validity of the documents, then this probably means that he should have approved.

Ms. Keller – Do you own vehicles?

Mr. Bathrick – My car is registered in Burke. Her car is registered here.

Mr. Keller – How would you evaluate number 9? How is one to determine that?

Mr. Mitchell – The loophole is in number 9.

Mr. Ahmed – During the use of the homestay, it is valid. The permit is what is being referenced as the object. During the period of its validity, when the permit is valid, they must occupy the minimum of 185 days.

Mr. Keller – If you accept the permit, in effect, you have accepted the obligation of being a resident for 185 days. In a way, it is a promise. The city is relying that once you sign that document, the city is relying upon you to be in residence.

Mr. Krahn – You also have some privileges that come. You have voter registration. You have the privilege of voting in the city of Charlottesville. You don't have the privilege of voting in Burke or northern Virginia. It is not just a promise.

Ms. Keller – Number 9 is a promise. There is an element of reliability. When my neighbor gets a permit, I am relying on the fact that my neighbor is going to be there 185 days a year.

Motion – Mr. Mitchell – I would like to move that we direct the Zoning Administrator to issue a Homestay Permit to this applicant. Second by Mr. Ahmed. Motion passes 3-1, with one abstention.

III. REVIEW OF JULY 2024 WORK SESSION MINUTES

Motion to Approve Minutes and Notes by Mr. Mitchell. Second by Ms. Keller. Motion passes 5-0.

IV. ADJOURNMENT

The Meeting was adjourned at 6:06 PM.