

Minutes

**CHARLOTTEVILLE BOARD OF ZONING APPEALS**  
**May 22, 2025**  
**City Space Conference Room**

**Members Present:** Sakib Ahmed, Genevieve Keller, Josh Krahn, Hosea Mitchell, Elizabeth Lynn

**Staff Present:** Patrick Cory, Read Brodhead, Dannan O’Connell

**I. CALL TO ORDER**

The Meeting was called to order by Ms. Keller at 4:01 PM.

**Read Brodhead, Zoning Administrator** – We are hearing an administrative modification today. An administrative modification is something new in our development code. It was formerly an administrative variance, which was within the old code. It allows the zoning administrator to grant a modification of 15 percent or less of any physical dimensional standard in the development code. Setbacks, how much building coverage can be taken up on a site, entrances into the building, how far the space to park, and in this case, it is addressing the build-to width of the building. The code requires me to review and make a finding. I must notify adjacent property owners and allow up to 21 days for them to respond. If I receive an objection within 21 days, the request goes to the Board of Zoning Appeals. The Board of Zoning Appeals is now charged with looking at the information that the applicant presented to see if they should get the administrative modification. I sent 5 letters to adjacent property owners and received 4 objections. It is different from a variance. A variance looks at a 4-step hardship test. In this case, they look at 3 criteria to see if the administrative modification should be granted.

**II. PUBLIC HEARINGS**

**BZA 25-05-001: 2030 Barracks Road  
 Administrative Modification Request:**

Shimp Engineering has requested an 6% (5 foot) administrative modification to build-to width, set forth in section 2.10.6 of the Code. If approved the Applicant will be permitted to construct a building that is 26.67 feet wide. Without the approval of the modification, the Applicant would be required to construct a wider building to meet the 65% build-to width requirement. The Zoning Administrator has received an objection to this request by an adjacent property owner, within the 21-day response period. Therefore, this request is required to be heard by the BZA.

**Mr. Brodhead, Staff Report** – The property is zoned R-B. Kelsey Schlein is here on behalf of Shimp Engineering and the owner. This is in reference to code section 2.10.6, which states that new construction on a parcel zoned R-B is required to have a minimum building width of 65 percent of the primary street. The width of the parcel along Barracks Road is around 103 feet resulting in a required build-to width of 67.12 feet. The applicant is proposing to sublot the parcel and creating 2 separate parcels and 12 units to each parcel. Twelve units is the by right density in R-B zoning districts. There will be a 16-foot-wide drive aisle running down the center of this subdivided parcel to provide access from Barracks Road to the parking lot in the back of the property. 2.10.6-5 allows a reduction of the build-to width requirement for vehicular access no wider than 16 feet plus 4 feet of width. It is 2 feet of clearance on both sides. This is allowed in all the zoning districts to get parking into a parcel. That is going to bring down the total width that the building must take up. It is an exemption. We pull that out of the code before we do the calculation. The applicant is proposing 2 26.67-foot-wide structures. On lot 1, the structure will take up 66.85 percent of the building width and is in compliance. On lot 2, the structure is proposed to be 61.1 percent of the building width. The applicant is seeking a 6-percent

modification because the structure will be less than 65 percent. There are 3 criteria that the code allows me to look at. The first is strict application of the requirement produces an undue hardship. There are critical slopes on the front of the property. A retaining wall will be constructed to allow for pedestrian connections from Barracks Road to the property. It will be 2 5-foot-wide sidewalks connecting the project to the public realm. There will also be a 5-foot-wide landscaping strip along the interior drive aisle. The applicant is seeking to reduce the width of the proposed building by the 6-percent to accommodate a wider access to the properties and provide more green space on the property. If they did not have the 6-percent, they would have to build a wider building and would not have those amenities for the residents of the property. The 2<sup>nd</sup> criteria state such hardship is not shared generally by other properties in the same zoning district. This property is in the R-B zoning district, which extends up the east side of Rugby Road and ending at Howard Drive. The only other parcels within the R-B zoning district that have critical slopes in front of the property is this property and the adjacent property at 2028. There is an existing driveway into 2028 that is outside of the critical slopes. The access is not through a critical slope. The last criteria states that authorization of the modification will not be of substantial detriment to the adjacent properties. If the administrative modification was denied, the applicant would be required to construct a wider structure to meet the 65 percent build-to width. They are asking for a smaller building. I did not feel that it created a substantial detriment to adjacent properties. They are asking for a narrower building than they would otherwise be required to build. Through the analysis, it has been determined that the administrative modification meets the criteria to grant the 6-percent reduction. Lot 2 of 2030 Barracks Road should have the 6-percent reduction resulting in 2 buildings at 26.67 feet.

**Mr. Ahmed** – Can you help me understand the slope of the property?

**Mr. Brodhead** – The critical slope is more than 25 percent. Slope is rise over run. It limits where you can build. You must get a special permit to build on a critical slope. In the past, when we have come to the BZA, cases that get variances (where there is a topography issue) automatically checks that box.

**Mr. Ahmed** – That characteristic is shared by all properties?

**Mr. Brodhead** – You must look at similar properties in similar zoning districts. R-B is essentially a denser corridor. The new development code put them on certain corridors where there is high traffic. Barracks Road is one of them. From this property up to Howard in that entire R-B district, only 2 properties (this one and the one next door) has critical slopes on the front. There is no critical slope where the entrance is. When that house was developed, they cut through that critical slope before there was an ordinance. That is most likely why the driveway goes through that. Those are the only 2 properties with critical slopes according to our GIS map. It is unique because it is 1 of only 2 parcels.

**Ms. Keller** – Is Howard Street a new street that is being created?

**Mr. Brodhead** – Howard Street is an existing cul-de-sac at the top of Rugby Road.

**Ms. Keller** – Am I correct that our charge today is to determine if NDS was within their authority to make this decision? We are not to comment on the quality of the development or its other characteristics. Is that a correct reading of this?

**Mr. Brodhead** – That is correct. Because an appeal was made of my determination, it is now coming to you. Will you grant this administrative modification? It was appealed. The BZA is now charged with looking at whether the build-to width in 2.10.6 should be reduced to allow that thinner structure on lot 2.

**Mr. Mitchell** – The reason that you ruled the way that you did is because of the undue hardship resulting from the critical slope.

**Mr. Brodhead** – It is because of the 3 points that I went through. I felt they satisfied those points.

**Mr. Ahmed** – They must satisfy all 3 points fully.

**Mr. Brodhead** – That is the criteria that I am using to review.

## **APPLICANT PRESENTATION**

**Kelsey Schlein, Applicant** – I am presenting because this is a largely technical grading matter for the reason why we pursued this. We originally pursued the administrative modification request. I am going to go through a couple specific details of that grading hardship that we are dealing with here. We appreciate the time here to present the project.

It is currently one parcel behind The Meadowbrook Shopping Center up from the intersection of Emmet Street and Barracks Road. The property is one parcel. The proposal, with the major development plan, is to create two parcels. This is a request to build a smaller building and a request to reduce the build-to requirement to permit the building to occupy 61 percent of lot 2's frontage rather than 65 percent. We are requesting a building reduction of 1.5 feet effectively. I will get into the details why it is helpful to go through grading plan to talk through what we are up against here.

You can see that lot 1 is 26.67-foot-wide building minus the travel-reduction. It meets the requirements for frontage there. We are not able to meet the requirements on lot 2 for the build-to width. Is this a unique hardship specific to this parcel? This map demonstrates it. What you are looking at is the site (zoned R-B). You can see the R-B in darker yellow here. The pink is the critical slopes. You can see that along this corridor. It is only these 2 parcels that have critical slopes. There is a topographic challenge along the front of the property. This property does have driveway access that falls outside of the critical slopes. It was constructed likely prior to adoption of the critical slopes ordinance. This is a great exhibit showing the unique hardship that this property faces topographic-wise.

Getting into our grading plan and layout, with the city's new regulations, the minimum driveway width is now 16 feet. That 16 feet plus 2 feet on either side is the reduction that we can take from meeting the build-to width requirement. That is the design that we put forth – a 16-foot-wide travel-way width. Under the old code, it was 20 feet. 20 feet is often the minimum fire code requirement for certain developments. In this case, we can meet our fire access requirements from Barracks Road. We do not need to bring it 20 feet into the site. We have kept that minimal, given the code requirements. Given the grade challenges, we were able to grade out plot 1 and tie this back in. As a result of this plan, we were able to present the city with a revised grading plan for the streetscape improvement here, which removed a retaining wall that they had for the entire frontage of the property. We still had to maintain a retaining wall on the front portion of lot 2 here. One thing to note with the 16-foot travel-way, that is tight. It works. It is certainly not meant for high speeds and wide radiuses. We have a retaining wall here. Allowing us to have a 26.67-foot-wide building here permits entering and exiting the site, not having to remove this retaining wall. It is closer to the road because we have a requirement to establish pedestrian connections to the street. We need to incorporate these stairs here to get people from the multifamily building to the street. It requires us to have a retaining wall here. I have called out some highlights. 452 is the existing road grade here that we must tie in to and match the existing grade. That is the contour line here at 470. We are working with an 18-foot grade differential here. We are holding this building high so we can establish a relationship and bring an access aisle that works grade-wise between the 2 buildings through the site to the rear of the property where we have proposed parking behind the buildings. This helps to demonstrate that. We have tried to 'check every box' that we possibly could with a narrower travel-way. We have our buildings close to the street within the build-to zone requirement. We are certainly trying to 'check' as many boxes as we can.

Given the topographic challenges, it would make it even tighter if we had to make this building larger and bring our retaining wall closer to the travel-way.

**David Merrell, Applicant** – This development is meant to meet the needs of the city of Charlottesville for affordable housing. This is going to be an affordable housing development. I was brought here by the military. I am not a native of Charlottesville. When I came to this area, one of the unique things with working at the JAG School is that with over 100 employees, these are military officers and high-level GS employees. There was only about 6 that lived in the city. It was not because those people did not want to live in the city. In fact, they often lived outside Albemarle County because they could not afford it. These are men and women that have served their country as civilians and in the military. This is helping to address that. I want to keep in mind that the conversation today is not about whether we can build on this property. It is about the size, the 1.5 feet that Ms. Schlein mentioned today. I want to keep the conversation to that and to the extent that we have several lots in the city that are going to face this hardship under the new development code. If we are to provide much needed housing for the men and women, not only in the military, but EMTs, our teachers, our police officers, and our firefighters, these are the tough decisions that we will have to make. As long as we are within the code, we should try to advance that.

**Mr. Mitchell** – I like the wider access. I like the increased sidewalk width. Your alternative is a more interesting building. Why do you guys not like the layout with our waiver?

**Ms. Schlein** – From a travel-way standpoint, the retaining wall in one location is about 7 feet tall towards the back of it. That might create an uncomfortable driving condition that close to a retaining wall. There is efficiency in building these buildings the same way for an affordable housing project. That is ideal. The hardship here remains the topography. There is efficiency in affordable housing projects and being able to construct similar units.

**Mr. Mitchell** – You could build this without a waiver. You spoke to the safety with the wall. You can use this option. Why is this proposed layout better for the city than the layout without a waiver?

**Ms. Schlein** – It is a better layout for the city, for the future residents of this site, for pedestrian connectivity, and for the overall flow of the property in allowing a little less space to be occupied by the building, a little more space to be occupied by pedestrian connections. That will ultimately get to a much better product with this waiver.

**Mr. Merrell** – It is easier for walking and biking. The proposed bus stop is going to be in front of our place. Most residents don't want the bus stop in front of their residence. We would welcome it in front of our residence because it serves our residents very well. This helps connect us to that city connection to allow people to move to their place of working.

**Ms. Keller** – Is this discussion expanding this beyond the limits of our purview?

**Mr. Brodhead** – I can't prevent somebody from talking about this.

**Ms. Keller** – I am not trying to prevent anyone from saying what they would like to say. In our decision making, are these criteria what we should be considering? Are we only considering the legitimacy of the decision that you have previously made?

**Mr. Brodhead** – From the code, these are the points that I pulled out from A, B, and C. Some of my notes are tying into the project into the public realm for that pedestrian sidewalk. If they must remove the retaining wall further, you won't have a sidewalk. I noted that in Criteria A. The fact is that this is the only parcel to have

critical slopes other than the neighbor. The neighbor has access through a driveway. It makes that a unique situation. That is the thing that I noted for Criteria B. For Criteria C, I said that they are making it smaller. I have seen other administrative modifications. We have looked at other administrative modifications, which they changed to a variance. They are trying to have less. This is my analysis. This is the information I presented to the neighbors. I wrote out the analysis and sent the packets to everyone. If I had not received an objection after 21 days, I would have signed it, and it would have been done. You might find other things. You are now charged with looking at A, B, and C. You are not saying that staff was correct in the A, B, and C logic. You are saying that this is your opinion. You can now formulate your own opinion.

**Ms. Keller** – Can you also address what Mr. Merrell said? He felt that there were other properties in the future that would be facing this. The report is presenting this as a unique situation.

**Mr. Brodhead** – That could be in a different area of the city. We are not in a flat, grid city. That is why I think the 15 percent administrative modification is in there. We are out of flat land. This is an infill code that we have. That is why that 15 percent modification is there. It gives little spaces here and there.

**Mr. Ahmed** – Can you talk about how giving you this modification on 0.3 would not change the character? I am being specific about how giving 1.5 feet would change the character of the neighborhood in the zoning district. Would it change the character of the zoning district if we were to grant this modification? I am curious to hear how you think 1.5 feet would or would not change the entire character.

**Ms. Schlein** – I don't think 1.5 feet would change the character at all. That is one of the evaluation points to confirm or evaluate whether the request changes the character of the neighborhood. This is a by-right project. If we build the building 1.5 feet wider and brought our retaining wall closer to the street and made our pedestrian connection narrower, we would not be here. 1.5 feet does not change the character. That 1.5 feet is going to make a difference on how this space feels when residents are using that in the future.

**Mr. Ahmed** – Are there, in your assessment of the neighborhood, other homes, properties that are not taking up 65 percent? What is the feel of that area?

**Ms. Schlein** – A lot of the area was developed before the new development code. This is the first time that we are doing this. The question of neighborhood character is an interesting one because character changes over time with a lot of different people. This is a by-right development. If the building was 1.5 feet wider, we would not be here. I don't think that 1.5 feet compromises the character of what could be built by right.

**Mr. Krahn** – If you did not get the waiver, you would go with plan B, which includes a narrower sidewalk?

**Ms. Schlein** – It would be a narrower landscape strip. We will still have to meet a minimum clear width for pedestrians. It might be 3 feet instead of 4 feet. It would be tighter or we could use green space.

**Mr. Merrell** – By making it smaller, we are more within the character of the neighborhood versus if we are not granted it. We will still build it. We will be less in line with the character of the neighborhood.

**Mr. Krahn** – The physical dimension of the sidewalk will be the minimum requirement.

**Ms. Schlein** – We have a 5-foot sidewalk. We would probably be going to a 2-foot landscape strip or a 4-foot sidewalk and a slightly narrower landscape strip.

**Mr. Ahmed** – Is that the sidewalk width of the neighborhood?

**Ms. Schlein** – Five feet is the city standard. We really want to meet that. That is the requirement that they look for everywhere. As we are trying to bring this infill code forward, we must look for opportunities for pedestrians to be comfortable at every opportunity.

**Mr. Krahn** – I am still confused. You are saying that the sidewalks are going to be the same size regardless if you get the variance.

**Ms. Schlein** – We would either reduce the sidewalk. We might have to get some kind of administrative modification, or we would make our landscape strip 1.5 feet instead of 3 feet.

**Mr. Krahn** – You are saying that landscape strip contributes to pedestrian comfort.

**Ms. Schlein** – It contributes to comfort of circulation throughout the site. It brings the retaining wall out of the travel-way.

**Ms. Lynn** – The undue hardship would be to the residents of the property. It would be experienced by those who are using the pedestrian walkway and living in that space. We must clarify that there is an undue hardship.

**Ms. Schlein** – I believe that the undue hardship is on the property itself. This property faces a unique condition given that it has critical slopes along the frontage of it. Every other property along the corridor does not experience the same conditions. That undue hardship is on the property itself.

## **PUBLIC COMMENTS**

**Yates Noble** – I have been a realtor in Charlottesville since 1983. I have been very pro-development for infill. I am for affordable housing in the city. It needs to be in places that are reasonable for traffic flow. The reason that I objected is because of the road and how the road is going to be. I object to the road altogether, and I object to the road spilling into Barracks Road for the following reasons. I have given a copy of this to the people on the Board. This road is not going to be helped by planting small trees. It also does not help the clearcut that is going to happen with the development. Small trees do not equal the old growth trees being cut down. 24 units with a minimum of 50 residents with their guests, deliveries, and emergency vehicles will bring traffic to a stop. This road is going to have an accident coming in and going out. This road in the development is a hazard. It spills into a downward slope. I have been on this road. People will have to come to a stop if they are turning left from Preston into the development. People from both sides will have to stop. I don't know if they will be able to stop coming down that slope. If turning right into that development, they stop traffic both ways. This road, with or without trees, violates the critical slope ordinance. I don't know if the site plan has been approved, but it should not be for that reason. It needs a completely updated traffic and environmental study before any road on a downhill slope is built. This road does not comply with the purpose and intent of the new zoning ordinance. I request that you all read that. This whole thing is in violation of the zoning and building code. It spills pollutants into Meadow Creek with runoff from the parking area. It endangers species. This development must not take place before the lawsuit against the new zoning ordinance is resolved.

**Katie Kaishore** – I think the question is about undue hardship. The commercial developer has purchased the lot that is 103 feet wide. The zoning classification for that lot is 6 units with a provision of up to 12 units if offering affordable housing. The developer is now requesting to split the lot to increase it to 24 units to maximize profit. There is not enough space on that lot for the 24 units. There are a series of special exceptions including this build-to width modification that he is asking for. It is not a case of undue hardship. There have been other similar cases in Virginia. It is a case of self-inflicted hardship. There is an option to reduce the number of units. There is no hardship then. If we take a birdseye view of this lot, you will come up with a different conclusion. It would decrease profit, but it would be better for our community. A different plan would not require this

building modification or the extensiveness of other exceptions. A different and community-oriented plan would be safer for Barracks Road. It is a very busy section of Charlottesville with cars, bikes, scooters, and pedestrians throughout the day. A different and possibly more thoughtful plan would also be better for the environment. Meadow Creek is behind the lot. Our community wants increased housing. We also want it to be thoughtful and carefully planned. On this lot there is no undue hardship if the process is collaborative, and it follows the rules that are outlined in our new zoning guidelines. This lot is suited for 6 units and might work for 12 units. 24 units is too many units. The developer is requesting a change in the location of the driveway, location of the crosswalk, a special exception to build on slopes, a special exception to omit front entry features, a special exception to eliminate tree canopy, and a build-to width modification. This hardship has been created by the developer because he wants to split the 2 lots to increase profit. Without that motivation, there would be no hardship. It is worth noting that every published exchange with the commercial developer in the city, the commercial developer does not offer to adjust or compromise. Our request is that you reject this modification outright and ask the developer to stay within the guidelines that were established for our community. The exception that is being requested is about the width of buildings on 2 lots. At this point, a formal request of the division of the lots has not been requested. Consequently, it has not been reviewed. The sizes of the divisions have not been approved by the city. It is 1 lot right now.

**Clara Belle Wheeler** – I own Meadowbrook Shopping Center. There is a reason that this is a single lot. It is long and narrow. You could not do much with it. Nobody could build on it. The estate has had it forever. The ground is rock. There is a reason that my father did not build right up to the boundary. It would require blasting to get through there. It is still going to require blasting. I think the city ordinance prevents that. I spoke with a contractor this morning. When you start shaking the ground, everyone around it shakes. That is going to put undue burden on the houses that already exist and the commercial property that is downgrade towards 29. All our buildings are going to be at risk. The tree canopy is going to be stripped. No consideration that I have heard today takes into consideration the city's 2.5-year attempt to widen Barracks Road, widen the sidewalk, push back the retaining wall, and build a retaining wall. That has not been settled. You don't know where the footprint of this building could be. You don't know what the end result of whether the city is going to change their retaining wall and sidewalk. What is going to happen to the poor, beleaguered, and contaminated Meadow Creek. You go behind where this property is proposed and look down in that hole. People have dumped everything that you can imagine in that. When they start clearing this property, even more is going to be dumped into this waterway. We put a new 5-foot waterline to take care of the creek under the new CVS. We still must grate to keep trash from going through there. This is a beautiful section of town. It should not have a bait-and-switch from 6 by right apartments to 24 just because somebody divides the property.

## **BOARD DISCUSSION AND MOTION**

**Mr. Mitchell** – With the division of the property, when is that decision made? Does the Planning Commission decide that? Does NDS decide that? Is that a by-right division?

**Mr. Brodhead** – We have the neighborhood planner, Danna O'Connell, here. He can answer those questions. He has the site plan. There are a couple special exceptions. He is handling those. With the way the code is written, this is something that you tasked with doing.

**Mr. Mitchell** – Who makes the decision to divide the property? Is this density of 24 units, with affordable housing, a by-right density?

**Danna O'Connell, City Planner** – If the lots are divided, it would be by-right. The by-right density for R-B is 6 units. It goes up to 12 units if you are building affordable housing units. If the lots are divided into 2 lots, it would be a total of 24 units.

**Mr. Mitchell** – Who decides whether they can be divided? Is that a Planning Commission decision? Is that NDS?

**Mr. O’Connell** – The subdivision is shown on the development plan, or they will need a subdivision plat approved and recorded to legally divide it. That has not yet been submitted. It will need to be submitted, reviewed, and signed by the Chair of the Planning Commission and the Secretary of the Planning Commission, which is usually the presiding planner. It will be recorded, and the lots will be legally divided. That will have to happen before site plan approval.

**Ms. Keller** – The difference between a subdivision and a subparcelization? Mr. Freas has explained it in a public gathering that I attended. We had a conversation about it. It is good for understanding because it is new to all of us, to the public, the Board, and the neighbors. There is a higher density inherent in every parcel regardless of its category in the city.

**Mr. O’Connell** – That has to do with the new zoning ordinance. The subdivision process is the same subdivision process that is in every Virginia locality. It is dividing up a piece of land into different lots based on what the zoning ordinance says is allowable. There is a new process that is included in our new zoning ordinance that calls for sublots. It is a form of subdivision where you can divide up a lot into additional lots that are based on the density of the parent lot. If you have a lot that allows for 6 units by-right and you divide into 6 lots, you are allowed to have those lots, but they can only have 1 unit each on them. The zoning would be based upon the parent lot. The subplot concept is not being used for this project.

**Ms. Keller** – If, for some reason, this project would not go through, would the subplot alternative be available to a future developer?

**Mr. O’Connell** – It would be available. It would be a lesser density. They would be limited to the original density of one lot. It would be 6 units or 12 units with affordable housing.

**Mr. Mitchell** – Is there a legal reason/good land use reason that you would not allow the division of the lot?

**Mr. O’Connell** – No. Engineering would comment on any design issues with the project. With the legal division, the criteria are the size of the lot and whether it has sufficient road frontage. In both cases, it does.

**Mr. Ahmed** – By granting this variance, does that convey with the property into perpetuity or only with this specific site plan that has been presented to us?

**Mr. Brodhead** – You could add a condition if you wanted to. It would only apply contingent on whether they get the subdivision. If it doesn’t, it would go away. You could add that condition.

**Ms. Lynn** – I am still trying to get a sense of where the decisions are located. The concerns raised by the plaintiffs relate to the decisions that are being made elsewhere. With traffic, that is a decision that is being made elsewhere.

**Ms. Keller** – That is not our purview. We have a very limited purview that does not extend to traffic or environmental considerations.

**Ms. Lynn** – There is a series of decisions made elsewhere.

**Ms. Kashore** – Would it make sense to delay the vote because it seems like we are out of order? You are approving a modification to something that is hypothetical. It sounds like there is no precedence in Charlottesville. In other localities, there might be precedence.

**Ms. Keller** – I believe that this is a legitimate meeting. When we are saying that this is new to us, planning, variances, and interpretations of codes are not new at least to most of us. We have done it for quite some time. I think we have the authority to do that. We have not applied this to this particular code. That is what is new. We are getting a handle on this code and the new opportunities that are available under it. I don't think there is any reason to defer it.

**Mr. Mitchell** – It seems to me that the underlying worry is the division of property. That is not within our purview. Based on the feedback we have received from NDS, they feel comfortable with moving forward with the division of the property. We just need to think about whether staff is correct in his reading of A, B, and C.

**Ms. Lynn** – Even if NDS was not comfortable with the decision of the property, we would still only be deciding on A, B, and C.

**Ms. Keller** – I think the ability to subdivide the lot is related to the width of the lot, which is why it ended up in R-B. There are many streets in the city that have a combination of R-A and R-B. Generally, that determination was made by the width of the lot. The nature of it being R-B could potentially accommodate more units.

**Mr. Brodhead** – With the R-B zoning district, the minimum size of the lot must have 40 feet of frontage and 2500 square feet of land area. The lot is 103 feet wide. They have the right to come in and cut it in half. I think the reason that they not done it yet is because they want to make sure that they can build what they want to build. If they can't build it, they then don't want to divide the property. The design and everything that is going on is happening now. Once they get the 'green light,' they will do the subdivision. All the approvals happen at the end of the project. During the design, they are feeling out all their options.

**Ms. Keller** – They can build the 2 units regardless.

**Mr. Brodhead** – They can build the 2 units regardless. That is by-right.

**Mr. Ahmed** – We can stipulate that the variance granted here is for this site plan and design and not so that they have this right to create something small regardless of whatever design they go with.

**Mr. Brodhead** – I would not make it too limiting. It is going to relate to this project. You can do a condition that says that applies to this property owner developing it. If they walk away, someone new might have a different design.

**Mr. Krahn** – If that design required a variance or waiver, they would have to go through the process again. This only applies to this one.

**Mr. Ahmed** – It would vest with the property. Any decision we make here would vest with the sale of the property. They would have a right to build something smaller. That is what we are granting here.

**Ms. Keller** – We would not want to put too many restrictions on that. The engineering studies and the geological studies have not been done. It might be because of the bedrock that the building could not be as deep as it is shown here. It might get into ground studies that would preclude doing that. If we said that it must be the 12 units on each lot, it might not be possible. We don't know that.

**Mr. Ahmed** – I think we should limit the scope to this particular developer and not grant it to the sale of the property to someone else.

**Mr. Krahn** – What would be the negative consequence of doing that?

**Mr. Ahmed** – I think that over time it could erode the checks that are in place that protect the characteristics of the community and the people. If they already have a 61 degree right to build something smaller, someone could come along and want something smaller and continue to vest that over time. You could end up with something that is not to the spirit of the zoning.

**Ms. Keller** – Before you joined the Board, we did have an instance or two where there were obvious applications that were intended to add value to parcels. We started to put a time constraint that the project would need to be started within a certain timeframe so that it is not just a marketing ploy to be able to add value before it is sold.

**Mr. Ahmed** – To sell it, increase the value. Some of the neighborhood people are saying that there is a tension there that we are hearing and respecting.

**Ms. Keller** – The intent of the ordinance was to create more housing and to make land more affordable, not less affordable because of the zoning change.

**Ms. Noble** – I appreciate the developer. I think that the modification is better than the former plan. I have a huge concern about that road. How can emergency vehicles get in there?

**Ms. Keller** – You are going beyond the bounds that I established. The question needs to be directed to me or staff. We will decide if we will have the applicant weigh in.

**Ms. Noble** – What street improvements is the developer planning? Is a stop light envisioned there? Has there been a traffic study done on this segment of Barracks Road other than for pedestrians and bikes? What is the cost-per-unit of the new affordable apartments that are included? How many?

**Ms. Keller** – This is beyond the scope of what we have been asked to consider this afternoon. I will ask staff to address what would be the normal process that NDS would use in evaluating the safety of this road. It would not have gotten this far if you did not believe that it met the city's criteria. If you could elaborate on that, I am sure that the neighbors would enjoy hearing that.

**Mr. O'Connell** – The applicant has submitted a development plan. It does not contain all the environment, erosion, sediment control, and stormwater engineering details. It does contain the basic layout of the project and some of the utilities and the traffic infrastructure involved. This area is subject to a VDOT road project to change up the slope and the area in front of the project. The applicants have had to coordinate their project with that VDOT project and with our engineers. That is their entire frontage they are in the process of deeding to the city to accomplish that road project. Our engineers have looked at this. As far as I understand it, they are OK with the proposed layout. The fire department has okayed the 16-foot driveway to reach the property and parking area. They are working with our engineers to configure the road project to work with this project and the rest of the project. With the traffic study, the new zoning ordinance only requires a full traffic study for projects over 50,000 square feet of gross floor area. Below that, they are not required.

**Motion to Approve – Mr. Ahmed** – I move to grant an Administrative Modification as requested in Application BZA 25-05-001, based on finding that the Applicant has established that the granting of the Administrative Modification would alleviate a hardship due to a physical condition relating to the

property or improvements thereon at the time of the effective date of the Ordinance, and meet the hardship factors a-c detailed in the corresponding Staff Report.

- a. Strict application of the requirement would produce undue hardship.
- b. Such hardship is not shared generally by other properties in the same zoning district.
- c. The authorization of the modification will not be of substantial detriment to adjacent property(ies).

I further move to grant this motion subject to the following condition:

- This administrative modification is to be granted to the current plan of development.

Second by Mr. Mitchell. Motion passes 5-0.

### Discussion following Second

**Ms. Schlein** – Can I suggest a time limit instead of a current owner? That might be fine. I don't want to speak out of my capacity in an engineering and planning capacity. Tying it to the owner when the property is facing the hardship, not the owner, seems like a matter of principle.

**Ms. Keller** – You brought up your point. We might want to discuss this. Please don't do this again. When people from the audience start to, even if it is the applicant, I have seen it happen in too many meetings. It interrupts the flow, and it enters the deliberations. This is our time to talk about it.

**Mr. Brodhead** – I have written in the suggested motion 'variance.' Technically, it is an administrative modification. That is an incorrect word to use. That is not what this is.

**Ms. Keller** – I was going to ask if the owner was the correct word, I am not sure that the application is coming from the owner. I think the application is coming from the consultant/engineer. I was not sure if the wording was right. Maybe the wording should be 'this application.' There should maybe a time limit rather than an individual. We have only done this a couple of times where we put a limitation.

**Mr. Ahmed** – I guess the applicant is the engineering firm.

**Mr. Brodhead** – The applicant is representing the owner.

**Mr. Ahmed** – I would hesitate to tie it to a firm. They are being contracted. The owner might change his mind. That is a possibility. It might give him flexibility to make decisions about the nature of the property, which he has by-right to do what he wishes. Let's give him that power, not to those who are proxies.

**Ms. Keller** – It might be tying it to this plan of development.

**Mr. Ahmed** – It feels that we are trying to add more restrictions.

**Mr. Krahn** – I want to make sure that we say the right words.

### III. REVIEW OF FEBRUARY 2025 BZA MEETING MINUTES

Motion to Approve February 2025 Minutes – Motion passes 5-0.

### IV. ADJOURNMENT

The Meeting was adjourned at 5:15 PM.