

COMMONWEALTH OF VIRGINIA
PRINCE WILLIAM COUNTY
BOARD OF ZONING APPEALS

Brief
May 19, 2025
Regular Meeting
Board Chambers
James J. McCoart Administration Building

Chair Chamberlin welcomed attendees and provided information about the authority of the Board of Zoning Appeals (BZA), noting that its members are volunteers and outlined the meeting's procedures.

Item 1.

Roll Call 2:00 p.m.

Present: Paul F. Chamberlin, Chair
Robert Perry, Jr. Vice Chair
Lucy Beauchamp
Davon Gray
Clarence Hempfield, Jr
Joseph R. Pasanello
Kenneth Nixon, Alternate

Absent: Travis Goodman
Jonathan N. Francis, Alternate
Rex Luzader, Alternate

Quorum present

Chair Chamberlin swore in speakers and opened the public hearing.

Reede Hapner, Recording Secretary, identified the case to be heard at today's meeting of the Board of Zoning Appeals (BZA).

Item 2.

Appeal Case #APL2025-00016, To consider an appeal of the Zoning Administrator's determination (ZNR2025-00093), issued on February 11, 2025, that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate Zoning Ordinance Section 32-250.53, even if it took place within 50 feet of a residential property. The subject property is located in the A-1, Agricultural Zoning District; GPIN: 7202-53-9500; 1261 Mountain Road; in the **Gainesville Magisterial District**.

Staff, represented by Robert P. Skoff, County Attorney's Office, introduced the case as an appeal to the Zoning Administrators' determination letter (ZNR2025-00094), dated February 11, 2025 that the removal of trees on an A-1 zoned property larger than 10 acres in order to clear land for an agricultural use would not violate the timbering ordinance even if it occurred within 50 feet of a residence. The appellant challenges the Zoning Administrators' interpretation of the zoning ordinance.

Mr. Skoff directed BZA members to the Timbering section (Appendix 2 of 2) in the staff report and the letter (Attachment A27), referencing a 50-foot buffer requirement when "timbering". The appellant's position is that his neighbor violated this buffer when he removed trees at 1261 Mountain Road. The property is over 10 acres, zoned A-1 in an agricultural district, and agricultural use is a by-right use. The A-1 district is a default zoning for the entire County and is used in residential communities that have residences on them. Timbering permits are not required to clear the land for these homes; the County does not require a timbering permit when trees are removed to build a shed or fence on an A-1 residential lot or a farm.

Mr. Skoff stated, "that's why we have a zoning administrator to make these determinations because there are often ambiguities and lots of other things that need to be considered."

Note: The appellant is not the owner of the subject property. His property is adjacent to the subject property.

Questions were raised by members regarding the definition of timbering, harvesting, buffing and land clearing as referenced in the code,

Chair Chamberlin asked, would it be fair to say that the Zoning Administrator is the only one authorized by ordinance to interpret the County ordinance according to 15.3-2386 [This should be 15.2-2286 (4)]? Would it be fair to conclude from your comments that the Zoning Administrator considered this subsection in light of the broad scope of spirit and letter of the Right-to-Farm act and concluded that it wouldn't be appropriate to require a buffer zone?

Mr. Skoff responded, "That was one of the factors, I think she mentioned in the letter, too. So that's certainly one of the factors. There's lots of factors, but that is one of them. Another factor too is it takes time for the Zoning Ordinance to update, and this happens all the time. Things need to be changed occasionally. Things are not necessarily written perfectly the first time, new laws and cases come out, requiring change. This [timbering provision] is going to need to be changed to be clarified, it is not the intent; it was never the intent to make this an absolute bar to taking down trees within 50 feet and for whatever reason, I guess no one has just looked at this way, that's why it [the timbering provision] will need to be changed."

Chair Chamberlin asked the appellant, Mr. Hobart, if he was speaking on behalf of the neighborhood or himself.

Mr. Hobart replied that his neighbors had asked him to speak on their behalf, but he was prepared to speak on his behalf.

Chair Chamberlin confirmed that Mr. Hobart would speak exclusively about his property with the understanding that his neighbors would speak on their behalf.

Mr. Hobart shared information packages with the members and staff as a guide to follow along as he presented his points.

He disagrees with the Zoning Administrator's determination that a buffer is not required when removing trees for a farm and he directed members to the code as noted in his handout; Sec. 32-250.53-1; timbering, harvesting, or clearing of wooded areas in A-1 Agriculture districts, as permitted by this chapter, shall not occur within 50 feet of any property lines adjoining areas or other properties which are zoned to a different classification than A-1, or whose primary use is residential. He said "timbering" is what is taking place at the property next to him at 1261 Mountain Road."

Several neighbors spoke in support of the appellant.

Speaker David McKinnett, attorney for the property owner, spoke in favor of the property owner at 1261 Mountain Road. He confirmed the owner has started a "farm" on his A1 zone property, and he has done everything as directed by the County to achieve this. He shared recent photos of the property, which show it is being used as an agricultural farm. He confirmed that the County has inspected the property and determined it to be a farm. He then answered questions from BZA members.

Chair Chamberlin asked the appellant if he wished to rebut the witness' testimony.

Mr. Hobart commented, "Two cows and over \$100,000 worth of heavy equipment; you can decide if that is a farm or not.; the truth does not matter if he is building a farm or a waterpark; the 50-foot buffer rule still applies, and we are entitled to that buffer, I disagree that the Right to Farm Act supersedes local laws, not every farm is cleared or timbered to create a farm, we are asking you to consider the other residences next to it when someone has the idea to create a "new" farm."

Chair Chamberlin asked members if they had questions. They did not.

Mr. Skoff said in his closing comments:

"There appear to be two hearings here, one about this appeal and the other about everything else. I'm not addressing everything else at this time. This appeal is about timbering and the required 50-foot buffer. The rule pertains to timber harvesting and the clearing of wooded areas in A-1 zones, which is not a rule about farms. It's about timbering in the A-1 zone residential areas. This rule would also apply to smaller parcels of land. The word "buffer" is used frequently, but there is a dedicated section on buffers, and their use against timbering operations. This is about the Zoning Administrator's interpretation, which she is by law entitled to and obligated to have. Part of what she looks at are the words, and code sections as well as how these words have been previously interpreted. There are lots of reasons why she interpreted it this way; there has been no evidence to overturn her interpretation."

Chair Chamberlin asked Mr. Hobart for his closing arguments.

Mr. Hobart said, "members of the board, this could not be any clearer. This claim that there's somehow confusion here exists only in the minds of the Prince William County staff. I understand that the rule can be difficult for them to apply as I indicated before. Mr. Chairman, I hold in my hand a detailed description from a prior zoning administrator. "

Mr. Skoff objected to this being presented at the "last second".

Mr. Hobart responded, "it is public record, that PWC should have been aware of."

Chair Chamberlin stated in regard to the objection, it was not appropriate to introduce such new information in closing statements.

Mr. Hobart, said, "I did try raise it briefly in rebuttal. Notwithstanding that fact, I don't think I need to show you evidence of any interpretation other than the plain language of the statute. The words could not be clearer, again simply reading you the plain words timbering, harvesting "or" clearing it's not "and/or", it's an "or" in wooded areas in A-1 agriculture districts, which shall not occur. There is no ambiguity there, "within 50' of any property lines, adjoining areas or other properties, whose primary use is residential. You would have to contort yourself into a pretzel to find that difficult to understand.

When Prince William County then goes further and gives precise definitions of timbering and clearing, complete with examples; timbering and harvesting of trees for commercial products or for foreign use, both of which are present here including but not limited to saw timber, public posts and firewood, which Mr. Hailer has admitted to doing. There is no mention of replanting, there is no mention of forestry that couldn't be clearer and if you interpret the word "or" the way that every logical person does, as an alternative, clearing shall mean removing or causing to be removed, the vegetation growing in the soil. Such removing shall include cutting down trees, removing all or substantially all of a tree, damaging the tree and of particular relevance to this case damage caused to the root system, by operation of heavy machinery, these are not complicated issues. The reason it's complicated for Prince William County is they have been interpreting this rule wrong for a quite a lengthy period of time and I imagine that the consequences of this board telling them that would be difficult for them to deal with; that's not my problem. I didn't write the rule, Mr. Hailer choosing poorly on his property, also not my problem. I didn't choose the property.

One of the reasons that I love the practice of the law is because the law is there to protect us all. The law should be capable of being understood by a person of ordinary intelligence and I submit to you that when you simply read the timbering statute and the definition of that were associated with it there is no confusion. All of the confusion has been generated by a poor decision of the zoning administrator and the County Attorney's unwillingness to correct that poor decision, I ask you to make that much needed correction."

Ms. Beauchamp said for the record that it was brought up earlier by one of the witnesses that in 1995, the previous Zoning Administrator said "no" to removing anything from the buffer, including dead trees.

No further questions were raised by BZA members.

Chair Chamberlin closed the Public Hearing at 4:48 p.m. and asked if there was a motion regarding this appeal.

Mr. Gray proposed a motion to affirm the Zoning Administrator's determination that the removal of trees on an A-1 zoned property larger than 10 acres for agricultural use does not violate zoning ordinance 32-250.53 even when it occurs within 50 feet of residential property. As outlined in Zoning Determination #ZNR2025-00093, issued February 11, 2025, as detailed in Appeal Case #APL2025-00016 discussed today.

Chair Chamberlin seconded the motion.

Mr. Gray stated his rationale for the motion. "There are several things here. Number one, we discussed this last time this issue came up when we [heard the previous case]. It seems to me [this ordinance] needs to be going before the Board of Supervisors to more definitively define how we go about determining whether a property like this is in violation. It's just so vague both at the state [and county] levels. I will state just for the record which one I am referring to here, [Section] 15.2-2288.6 talks about basically the Virginia statute supersedes local ordinances. Then it goes into several different areas where it talks about what that means and the last one here, which is why I'm saying it's too vague is other activities or events that are usually and customary Virginia agriculture operations since this has been designated as such, not a timber operation, I mean again I mentioned this earlier at the beginning of its state law supersedes what we can do at the local level this is actually an issue that the Board of Supervisors and the state delegate and house of delegates need to better define what this means because it keeps happening in different other ways. The other things that I asked for are not related to this case, but I wanted to have it on the record, but as far as with the zoning administrator there was not a preponderance of evidence that she did not do her job and do it with an interpretation that she thought was correct there's not enough evidence to show that."

Chair Chamberlin stated his rationale. "My rationale goes beyond the emotional; I certainly would not care to be a neighbor of the property in question. I believe the BZA should affirm the zoning administrator's determination in ZNR2025-0093 as testified here today and in APL2025-0016. To reach this conclusion, I note the appellant believes a 50-foot buffer zone would be a reasonable restriction on the neighboring lot and such a buffer zone would benefit the general welfare of the affected public. To me, this case depends on an interpretation of what constitutes a reasonable restriction on an A-1 agricultural property abutting A-1 residential properties. The BZA lacks the authority to interpret the zoning ordinance and referenced statutes in the code of Virginia. The only authorities who can interpret the zoning guidelines in the code of Virginia and the county zoning ordinance are the Zoning Administrator and I believe, the Circuit Court.

Section 15.3-2309 requires the BZA to presume the Zoning Administrator was correct in issuing the determination unless the appellant provides a preponderance of evidence to rebut the correctness of the determination. The appellant presented a significant amount of information detailing and addressing various aspects of the code of Virginia and the zoning ordinance, but those arguments don't neutralize the Zoning Administrator's good faith effort to interpret the ordinance in accordance with her understanding of the spirit, intent and letter of the Right-to-Farm act. We don't have the authority to make that kind of determination. Despite feelings about how we might feel about living next door to the property in question, I believe the BZA must affirm the Zoning Administrator's determination. That's my rationale."

APPROVED – MOTION CARRIED (5-2); [VOTING RECORD: Motion Gray, second Chamberlin; Ayes Beauchamp, Chamberlin, Gray, Hempfield, Kenneth Nixon; Nays Pasanello, Perry; Absent from vote None; Absent from meeting Goodman, Francis, Luzader] – see RES 2025-007

The Chair advised the appellant he has 30 days in which to appeal the decision of the Board of Zoning Appeals to the Circuit Court.

Procedures – Break from 4:53 p.m. to 5:15 p.m.

- Item 3.** Approval of February 24, 2025, Brief and Resolutions
Motion to approve February 24, 2025, brief and resolutions as presented;
APPROVED - MOTION CARRIED [VOTING RECORD: Motion Pasanello, second Chamberlin; Ayes by acclamation; Nays none; Absent from vote None; Absent from meeting Goodman, Francis, Luzader] - see RES 2025-008

- Item 4.** Chair Time
Independent Counsel Update

The County's agreement to engage an independent counsel ended on December 31, 2024. Teresa Dakon from DDS (Department of Development Services) coordinated with appropriate County staff and me to engage Mr. Michael May to be our new counsel, effective today. Some Members may remember him as a Supervisor for the Occoquan Magisterial District and former BZA member.

Introduced Kenneth Nixon, newest member to the BZA. This is the first time in many years (since 2017) we have all positions filled.

The By-Laws stand as written mention refresher training every two years, normally do this in the Fall. Members agreed to all attend next year.

Item 5. Vice Chair Time

Thanked Mr. May for his role as counsel, and Mr. Nixon for joining the BZA.

Item 6. Staff Time/Departmental Procedures

None

Item 7. New Business

None

Item 8. Adjournment at 5:45 p.m.