

July 3, 2019

PRESENT: Justine D. Tilghman, Chairwoman
 George A. Coyner, II, Vice Chairman
 Daisy A. Brown
 Steven F. Shreckhise
 Sandra K. Bunch, Zoning Administrator and Secretary
 John R. Wilkinson, Director of Community Development
 Beatrice B. Cardellicchio-Weber, Executive Secretary

ABSENT: James R. Benkahla, County Attorney

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Wednesday, July 3, 2019 at 8:00 A.M., in the County Government Center, Verona, Virginia.

The staff briefing was held at **8:00 a.m.** in the Board of Supervisors Conference Room where the Board reviewed the staff report for each request on the agenda. Copies of the staff reports can be found in the Community Development Department.

On motion of Mr. Coyner seconded by Ms. Tilghman the Board went into closed session under Section 2.2-3711 subsection A.8 of the Code of Virginia, 1950, as amended, for the purpose of Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel, specifically with Michael Lockaby with Guynn & Waddell, P.C. to discuss the appeal of the Friends of Seawright Springs.

On motion by Mr. Shreckhise, seconded by Ms. Brown the Board certified, by a roll call vote, that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under FOIA and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the BZA.

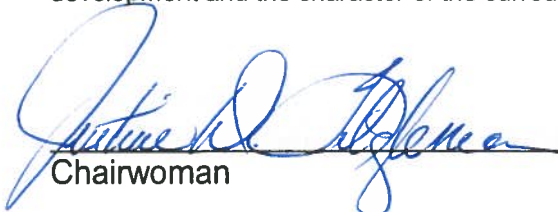
Roll Call Vote was as follows: Yeas: Tilghman, Coyner, Brown, Shreckhise
 Nays: None

VIEWINGS

The members of the Board of Zoning Appeals assembled at the Government Center and went as a group to view the following:

- **KENNETH RAY BRADLEY, JR., AGENT FOR KENNETH RAY BRADLEY, JR., INC. - SPECIAL USE PERMIT**
- **PAUL S. OR CONNIE L. BENDICK - SPECIAL USE PERMIT**
- **JAMES E. OR MARY-ELIZABETH H. TOTH - SPECIAL USE PERMIT**
- **TRACY AND DEBORAH SHAVER - SPECIAL USE PERMIT**
- **ALONDRA AND LEONARDO GONZALEZ - SPECIAL USE PERMIT**
- **JOSEPH K. OR SUZAN HOWELL - SPECIAL USE PERMIT**

At each location, the Board observed the site and the premises to be utilized. The Board also viewed the development and the character of the surrounding area.


 Chairwoman


 Secretary

PRESENT: Justine D. Tilghman, Chairwoman
George A. Coyner, II, Vice Chairman
Daisy A. Brown
Steven F. Shreckhise
Sandra K. Bunch, Zoning Administrator and Secretary
Beatrice B. Cardellicchio-Weber, Executive Secretary

ABSENT: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Wednesday, July 3, 2019, at 1:30 P.M., in the County Government Center, Verona, Virginia....

Chairwoman Tilghman stated we lost a valued member of the Board of Zoning Appeals. She noted Mr. Tom Byerly passed away and she will surely miss his good judgement and input both as a Board member and as a friend.

MINUTES

Vice Chairman Coyner moved that the minutes from the May 2, 2019, meeting be approved.

Ms. Brown seconded the motion, which carried unanimously.

KENNETH RAY BRADLEY, JR., AGENT FOR KENNETH RAY BRADLEY, JR., INC. - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Kenneth Ray Bradley, Jr., agent for Kenneth Ray Bradley, Jr., Inc., for a Special Use Permit to have general outdoor storage for a contractor storage yard on property he owns, located at 391 East Side Highway, Waynesboro in the Wayne District.

Mr. Ray Burkholder with Balzer and Associates stated the property was rezoned to business a year ago. He said they have leased the property to a business and they have had limited outdoor storage with an administrative permit. He said the lighting has

been taken down. He said there were some concerns so they decided to pursue the Special Use Permit. He said they have proposed the eight (8') foot fence for outdoor storage. He said the employees' vehicles are in the front but most of the actual storage is in the rear of the property. He said they would like to maximize screening and will work with staff on the site plan process.

Vice Chairman Coyner stated there were travel trailers there this morning.

Mr. Burkholder stated he did not know about them.

Mr. Kenneth Bradley stated LE Myers parks there but is not living there.

Vice Chairman Coyner said there is one on the side and in the rear of the property.

Mr. Bradley stated no one is living on the property.

Vice Chairman Coyner asked what is the duration of the equipment at the site?

Mr. Bradley stated he does not know. He said they are in between jobs until May. He said maybe 1 ½ years. He said LE Myers will bid and they hope to continue the Doods and Mt. Solon power line project.

Mr. Shreckhise asked what will it be after they leave?

Mr. Bradley stated he may rent it out. He said that may open up areas if a fence is put up there. He said it is now zoned General Business.

Ms. Brown asked if there would only be one business at the site?

Mr. Bradley stated yes.

Chairwoman Tilghman asked if they do not get the bid, then there would not be any vehicles on the lot?

Mr. Bradley stated no.

Mr. Shreckhise asked if there is a name for the project?

Mr. Bradley stated this is LE Myers, a subcontractor through Dominion.

Ms. Brown asked if the equipment is there?

Mr. Bradley stated there is contractor equipment on this lot.

Chairwoman Tilghman asked when will they find out if they are working on the project?

Mr. Bradley stated in the next two (2) weeks.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairwoman Tilghman declared the public hearing closed.

Mr. Shreckhise stated these storage yards are needed and this is a safe place to put it. He said this permit would be specific to this particular project. He moved to approve the request with the following conditions:

Pre-Condition:

1. Submit site plan meeting the requirements of Section 25-673 "Site Plan Contents" of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies.

Operating Conditions:

1. All outdoor storage be located to the side or rear of the building and be screened by an opaque privacy fence a minimum of eight (8') feet high or higher if necessary to completely screen material and equipment.
2. Be limited to Dooms-Valley Electric Transmission Improvement Project.
3. The opaque privacy fence must be maintained at all times.
4. All equipment, machinery, shipping containers, and materials for the business be kept in the designated areas shown on the site plan.
5. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
6. Site be kept neat and orderly.
7. Permit be issued for **two (2) years**.

Ms. Brown seconded the motion, which carried unanimously.

PAUL S. OR CONNIE L. BENDICK - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Paul S. or Connie L. Bendick, for a Special Use Permit to have an accessory building larger than the 1,200 square foot total aggregate allowed on property they own, located at 1301 Ladd Road, Waynesboro in the South River District.

Ms. Connie Bendick stated the building is already on the property.

Chairwoman Tilghman asked if she is planning on selling?

Ms. Bendick stated yes. She said that is when the issue was discovered about not having permits.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairwoman Tilghman declared the public hearing closed.

Ms. Brown stated the Board visited the site today. She said the garage is in the back and cannot be seen from the highway. She noted there are other large buildings on another piece of property. She moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions

1. Applicant obtain building permit and provide a copy to Community Development.
2. Site be kept neat and orderly.
3. No junk or inoperable vehicles to be kept outside.

Vice Chairman Coyner seconded the motion, which carried unanimously.

JAMES E. OR MARY-ELIZABETH H. TOTH - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by James E. or Mary-Elizabeth H. Toth, for a Special Use Permit to have a kennel for personal dogs on property they own, located at 1572 Lee Highway, Fort Defiance in the North River District.

Mr. James Toth stated he would like to increase the number of dogs allowed by one.

Chairwoman Tilghman asked if they are his personal dogs?

Mr. Toth stated yes.

Chairwoman Tilghman stated the Board saw two (2) dogs today.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairwoman Tilghman declared the public hearing closed.

Vice Chairman Coyner stated the Board visited the site this morning. He said this is a well-attended property and they are not breeding the dogs. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Maximum of six (6) adult dogs kept at this site at any time.
2. All dogs be confined within the designated invisible fenced area or inside the dwelling.
3. Dogs be kept inside from 10:00 p.m. until 6:00 a.m.
4. Site be kept neat and orderly.
5. Animal Control to inspect the site **yearly**.

Ms. Brown seconded the motion, which carried unanimously.

TRACY AND DEBORAH SHAVER - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Tracy and Deborah Shaver, for a Special Use Permit to have weddings and special events on property owned by Jerry W. Whitmore located at 453 Badger Road, Mount Solon in the North River District.

Mr. Tracy Shaver stated they would like to relocate their family to the country and they are interested in operating a wedding and event venue. He would like to have small weddings on the weekends on a small scale.

Chairwoman Tilghman stated what is the number of guests that will attend an event?

Mr. Shaver stated no larger than one hundred fifty (150). He said one hundred (100) would be ideal.

Ms. Brown asked what size building will be used?

Mr. Shaver stated the barn is 30' x 40'.

Vice Chairman Coyner stated this is not a small scale with forty-eight (48) events per year.

Mr. Shaver stated this was just a number that was picked out. He is fine with thirty (30) events. He will not hold events in the winter because it is not a climate controlled barn.

Ms. Brown asked how would you advertise?

Ms. Deborah Shaver stated on social media, newspaper, and open houses.

Ms. Brown asked about parking?

Ms. Shaver stated parking will be in the front of the barn to the left. She said there is quite a bit of space for parking.

Mr. Shaver stated they will install another entrance in order to get the sight distance requirement according to VDOT.

Vice Chairman Coyner asked if all events will be in the barn?

Mr. Shaver stated yes.

Vice Chairman Coyner asked if the music will be amplified?

Mr. Shaver stated they anticipate amplified music and if it is a concern it will be inside the barn.

Ms. Brown asked if they will provide food?

Mr. Shaver stated it will be catered only.

Mr. Shreckhise asked if they have spoken with the neighbors?

Mr. Shaver stated they have spoken with some of them but did not speak to the neighbor with the house behind the barn.

Ms. Brown asked about the septic system?

Mr. Shaver stated they would like to have the portable restroom facility initially. He said there is a possibility that the septic will be installed within the first year.

Vice Chairman Coyner asked if the applicants have experience with this?

Ms. Shaver stated she organized and ran children consignment sales and had events there. She had several events for birthdays, weddings, and showers.

Vice Chairman Coyner asked if they will provide alcohol on premise?

Mr. Shaver stated they will not provide alcohol. He said their client would need to obtain appropriate licenses through the ABC.

Chairwoman Tilghman asked if they will purely operate wedding type events?

Ms. Shaver said not necessarily just weddings. She said they may have festivals and events.

Mr. Shaver plans on offering events to the church, neighbors, and community organizations.

Ms. Brown asked if they plan on closing off the other entrance?

Mr. Shaver stated yes, they will only use it for their residence.

Vice Chairman Coyner asked if they will be present during events?

Mr. Shaver stated yes. He said their family will help.

Ms. Brown asked what time would the events be?

Mr. Shaver stated weekends and everyone will be off of the property by 11:00 p.m.

Ms. Brown asked about parking attendants?

Mr. Shaver stated his children and other adults will help with the parking.

Vice Chairman Coyner asked if they have received approval from VDOT for the entrance yet?

Mr. Shaver stated he did not submit his application because he was waiting for the Special Use Permit to be approved. He said they did confirm the sight distance will be met with the new entrance.

Ms. Brown asked if there would be lighting?

Mr. Shaver stated they will install outdoor lighting off of the barn or garage for parking to add more light to the area.

Ms. Shaver stated they will also add landscape lights along the walkways.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. Jerry Whitmore, 453 Badger Road, Mount Solon, stated he is the owner of the land. He currently lives at this residence. He was born here and is respectful of the land. He tried to maintain the property. He also had family reunions and weddings there with music with approximately 85-90 people. He said these are nice people and they will be respectful of the land. He said there should be no problems with this. He feels strongly about this being a good situation. He has spoken to Margaret Staples and Charles and Nancy Harlow and they have no objections.

Ms. Pamela Mason stated she also lives at the site with Mr. Whitmore. She regrets that they have to leave it. She said they are moving to Wyoming and the sale is contingent upon the approval of the Special Use Permit. She said they have always had several outings and gatherings there that were quite large. She said there would not be an issue with noise. She is in favor of this opportunity for the County and City of Staunton.

Mr. James Harlow, 520 Badger Road, Mount Solon, stated he sent an email into the Board. He said there are events in a barn, already one (1) mile from where he lives. He said it is noisy and he can hear it from the property already. He said this is 300 yards from us. He said they are good neighbors but he can only tolerate 1-2 a year. He said there will also be a problem with alcohol. He said the intersection at Route 42 could create a problem if alcohol is involved. He hopes they keep the community quiet and peaceful.

Mr. Charles Harlow, 437 Badger Road, Mount Solon, stated his main concern is the single lane road. He said there are five (5) poultry houses and about 75 tractor trailers going in and out of there and they do not obey the speed limit. He does not necessarily oppose this but if it is approved, you want them to be aware of the traffic. He would not want to see anyone land in a ditch. He said it is a lot of traffic for a single lane road.

Mr. Shreckhise asked if the birds are moved during the day?

Mr. Harlow stated yes, all day and night and it could be 3-4 days in a row.

Mr. Shreckhise asked about weekends?

Mr. Harlow said he is sure they do.

Chairwoman Tilghman asked if they bring the feed during normal business hours?

Mr. Harlow said they do depending on the size of the birds.

Chairwoman Tilghman asked if there was anyone else wishing to speak regarding the request?

There being none, Chairwoman Tilghman asked the applicant to speak in rebuttal.

Ms. Shaver stated there are poultry trucks and she would like to get a schedule and speak with the farmers. She said safety is a big concern. She will work around the schedule of that so that there are no conflicting events for the safety of all.

Mr. Shaver will accommodate the neighbors and if they have concerns he will readjust so that they are not impacting the neighbors. He said his primary goal is to raise his family and if there are any impacts, they will make adjustments or shut it down completely.

Ms. Shaver said they will only have thirty (30) events maximum and she does not even expect to have a handful. She said it all revolves around their family schedule. She said their events and activities with their kids will be their priority.

Chairwoman Tilghman said the barn does not have heat or cooling.

Mr. Shaver stated it does not have heat or air.

Chairwoman Tilghman asked if it has electricity?

Mr. Shaver stated yes.

Chairwoman Tilghman stated you are aware that a sewage treatment system would need to be obtained in the future.

Mr. Shaver stated yes.

Ms. Brown asked if the road in front of the house is state maintained?

Mr. Shaver stated yes. He will put an entrance in according to VDOT standard. He wants to know the schedule so we can coordinate the events around that. He does not want to cause any safety issues.

Chairwoman Tilghman declared the public hearing closed.

Mr. Shreckhise stated this is not an ideal place for a wedding venue but they seem aware of the neighbors' concerns. He said the applicant may want to start off with twenty (20) events.

Chairwoman Tilghman stated she is concerned with one hundred fifty (150) people in that size building. How many are allowed in the barn?

Mr. Shaver stated it probably would not accommodate one hundred fifty (150) with seating. He said their client could get a tent to accommodate that number for the eating area. He said the ceremony could take place in the barn.

Chairwoman Tilghman stated the clients could be forced to be inside the barn due to inclement weather.

Mr. Michael W.S. Lockaby, Gynn & Waddell, P.C., 415 S. College Avenue, Salem, stated normally if the Building Official determines it to be an agricultural structure, they would not put a maximum occupancy on it. He said if the Board would like to put a lower number on the request and in the future if the applicant wants a higher number they can come back to apply.

Vice Chairman Coyner stated he would feel more confident with the applicant starting out with a smaller number. He asked if one hundred (100) would work?

Mr. Shaver stated starting out yes. He is comfortable with one hundred (100) people inside the barn and with a tent they could possibly accommodate a lot more.

Vice Chairman Coyner stated it is a straight road and not crooked. He said with the new entrance it will be safe and feels that it could work.

Chairwoman Tilghman asked about the lighting?

Ms. Bunch stated if they add lighting it will need to meet the ordinance requirement of any lighting over 3,000 lumens needing a photometric plan. She said we can add that to the operating conditions.

Vice Chairman Coyner moved to approve the request with the following conditions:

Pre-Condition:

1. Obtain VDOT entrance permit and provide a copy to Community Development.

Operating Conditions:

1. Applicant will install a sewage treatment system approved by the Health Department within **two (2) years**.
2. Be permitted to operate for **two (2) years** using a portable restroom until the septic system is installed.
3. Be limited to **twenty (20)** events per year but no more than **three (3) per month and only one (1) per weekend**.

- 4. Be limited to a maximum of one hundred (100) attendees or less per event.
- 5. The existing entrance will be closed during events and the field entrance will be used per VDOT comments.
- 6. No outdoor amplified music after 10:00 p.m.
- 7. Events cease by 10:00 p.m. and all persons off the property by 11:00 p.m.
- 8. Applicant must be on the premises during events.
- 9. Site be kept neat and orderly.
- 10. Permit be reviewed in a year and renewed if all of the conditions are met.
- 11. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.

Mr. Shreckhise seconded the motion, which carried unanimously.

ALONDRA AND LEONARDO GONZALEZ - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Alondra and Leonardo Gonzalez, for a Special Use Permit to continue the existing restaurant on property owned by Ethel M. Baber, located at 2542 East Side Highway, Crimora in the Middle River District.

Ms. Alondra Gonzalez stated she would like to open a restaurant.

Chairwoman Tilghman asked what would the hours of operation be?

Ms. Gonzalez stated 11:00 a.m. until 8:00 p.m., six (6) days a week.

Chairwoman Tilghman asked if they would be closed on Sundays?

Ms. Gonzalez stated she would close on the slowest day.

Chairwoman Tilghman stated the applicant will be limited to three (3) employees. She asked if she is fine with that stipulation?

Ms. Gonzalez stated yes.

Chairwoman Tilghman stated that is a Health Department regulation due to the septic.

Ms. Gonzalez stated it is only her brother and herself and occasionally her mom helping.

Chairwoman Tilghman stated there can only be three (3) people at any one time. She asked if there was anyone wishing to speak in favor, or in opposition to the request?

There being none, Chairwoman Tilghman declared the public hearing closed.

Vice Chairman Coyner stated this has been an existing restaurant for years. He said this would be a great building for the business. He moved to approve the request with the following conditions:

Pre-Condition:

1. Obtain Health Department approval and provide a copy to Community Development.

Operating Conditions:

1. Be limited to three (3) employees.
2. Site be kept neat and orderly.
3. No junk or inoperable vehicles to be kept outside.
4. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.

Ms. Brown seconded the motion, which carried unanimously.

JOSEPH K. OR SUZAN HOWELL - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Joseph K. or Suzan Howell, for a Special Use Permit to have a short term vacation rental on property they own, located at 2250 Indian Ridge Road, Stuarts Draft in the Riverheads District.

Mr. Joseph Howell stated the property is for sale and he needs this income in order to help with expenses. He has had the property for years.

Mr. Shreckhise asked if this is his primary residence?

Mr. Howell stated yes.

Mr. Shreckhise asked if the applicant will stay in the home when it is rented?

Mr. Howell stated most of the time. He said he is there when they come.

Vice Chairman Coyner stated this is a short term rental mainly weekends or a week.

Mr. Howell stated yes, a week at the most.

Vice Chairman Coyner asked if they will advertise on social media?

Mr. Howell stated yes. He has a realtor advertising also.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to the request?

Ms. Elizabeth Howell, 2054 Indian Ridge Road, Stuarts Draft, said that she owns the right-of-way and pathway to thirteen (13) acres. She said her right-of-way is next to the 2250 driveway. She said that she has pictures from the website. She lived there and took care of her mom. She was the last family member to live there until both she and her sibling were given a no trespassing notice to not come onto the property. She said the entire house is open for rental and there does not seem to be a limit on the stay. She noted it is a minimum of two (2) weeks and is open all through the year. She said there are many fire hazards on the property along with only a small bathroom and a half bathroom with a leaking tin roof. She also has a picture of the obstruction of her view and the muddy driveway. She said it has been like that ever since 1969. She said there is a lot of traffic on Indian Ridge Road. She noted the septic is caving in and there is a large hole in the back of the house covered with ivy. She presented copies of the Airbnb website.

Chairwoman Tilghman asked if there was anyone else wishing to speak regarding the request?

There being none, Chairwoman Tilghman asked the applicant to speak in rebuttal.

Mr. Howell stated he evicted his sister and she is angry with that and she will do anything to cause him problems. He said this was a difficult thing for all of us. He said all of the items with the house have been corrected.

Chairwoman Tilghman asked about the bathrooms.

Mr. Howell stated there are two (2) bathrooms. He said one is a full bath and the other a half bath. He said the septic works fine and is fixed.

Mr. Shreckhise asked about the Health Department comments?

Ms. Bunch stated the Health Department had no issues with the request as long as it was rented out to a single family and not room by room.

Chairwoman Tilghman declared the public hearing closed.

Vice Chairman Coyner stated the Howell property is for sale and they would like to have income during that period. He said the dwelling could easily accommodate eight (8) people. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be allowed to lease the existing four (4) bedroom dwelling for short term vacation stays.
2. A maximum of eight (8) persons occupying the dwelling.
3. Applicant must reside on premise and be on site when the property is rented.
4. No weddings, special events, or outdoor amplified music
5. Site be kept neat and orderly.

Ms. Brown seconded the motion, which carried with a 3-1 vote, with Chairwoman Tilghman being opposed to the motion.

OLD BUSINESS

JOHN WILKINSON, AGENT FOR APPALACHIAN AGGREGATES - SPECIAL USE PERMIT

A request by John Wilkinson, agent for Appalachian Aggregates, for a Special Use Permit to reopen a closed quarry operation and manufacture crushed stone in conjunction with the Interstate 81 widening on property owned by Spottswood Farms, LLC, located on the east side of Interstate 81 in the Riverheads District. – TABLED AT THE MAY 2, 2019 AND JUNE 6, 2019 MEETINGS

Vice Chairman Coyner moved to bring the request forward.

Mr. Shreckhise seconded the motion, which carried unanimously.

Mr. John Wilkinson stated there were major concerns around the hydrology of water, wells, and springs. He is open to any further questions. He said Stan Johnson and Kevin Andrews are both here to answer any further questions. He noted that Mr. Bibb is here from the Department of Mines also. He accepted the twenty (20) conditions that were under the 2003 Special Use Permit along with an additional one that Ms. Bunch included regarding the mitigation water issue. He noted they do have a mitigation plan. He said they would abide by the mitigation plan and it goes above and beyond with what DMME requires.

Mr. Shreckhise stated the Board does not want to leave this open ended and it only be for the repair of Interstate 81. He asked do you know what section of I-81 you would be doing?

Mr. Wilkinson stated they are in the preliminary planning for on and off ramps from 194 up to exit 300. He said the funding starts this month. He noted the final plans are yet to come but they are right around the corner.

Mr. Shreckhise asked if this will be a supply for the new road or resurfacing?

Mr. Wilkinson stated yes, both.

Mr. Shreckhise asked about a mileage limitation?

Mr. Wilkinson stated they can limit traffic in residential areas. He is concerned about putting a limit on the areas of I-81 that they can service with this quarry. He would not want to state that during the public hearing, due to his competition finding out.

Vice Chairman Coyner asked if the quarry will have all of the rock needed for the project?

Mr. Wilkinson stated it is primarily limestone which goes in the top coat only.

Chairwoman Tilghman asked if it is normal for different quarries to supply rock to different sections along the road?

Mr. Wilkinson said yes.

Chairwoman Tilghman said there was one question from the public that there was a fear of water pollution or losing their well. She would like to call on your associate to explain exactly how this works.

Mr. Wilkinson stated they would be successful up to 15-20 miles in either direction.

Vice Chairman Coyner asked if this would be a four (4) year timeframe?

Mr. Wilkinson said this is the first part of a ten (10) year plan but it could go beyond that. He said the bulk will be in the first ten (10) years depending on funding.

Mr. Kevin Andrews with Marshall Miller & Associates stated it is part of the regulation to have a mining plan. He said they would do a full inventory. He said if the well or spring is impacted within a certain area then they have to mitigate. He said the information is collected. He said they will look at how well it affects the wells.

Chairwoman Tilghman asked if the inventory is taken before?

Mr. Andrews stated yes. He said this is good for both sides.

Chairwoman Tilghman asked if they will evaluate each well before the mining starts?

Mr. Andrews stated yes so that it is documented.

Ms. Brown asked when will the wells be checked again?

Mr. Andrews stated they will conduct specific monitoring. He said when it gets further away it may change the monitoring sequence sometimes, down to one, monthly or quarterly. He said it would depend on what they see on the initial investigation.

Mr. Shreckhise asked how far away would you inspect?

Mr. Andrews stated the number discussed last time was 1,000' from the quarry boundary. He said it is a reasonable number and that is why it is used regulatory. He said it is still best to look at it case by case. He said it is in the company's best interest to include anyone on or around the line.

Chairwoman Tilghman asked if they would look at anyone on a spring and well?

Mr. Andrews said yes especially if people use those wells. He read the offsite mitigation plan to the citizens.

Mr. Lockaby stated if they would take the water off your property in a manner that would result in an issue with quality or quantity of a spring going dry it is quite possible they could get a civil action because it would be a private civil nuisance. He said the problem is proving the well went dry. He said the situation would force the person to buy your property. He said it would be a strong private cause of action.

Mr. Shreckhise stated there were concerns at the last meeting about the water and this relieves his concerns. He realizes it is a safety issue wherever you are mining from. He said they should set the limitation on mileage and a duration of the permit.

Vice Chairman Coyner stated it would be hard to set a timeframe.

Mr. Shreckhise asked if the Board can legally limit mileage? He said it is going to be at least a ten (10) year project but they would not want to keep this in operation after I-81 is complete.

Mr. Lockaby said the Board can legally but there is a potential problem with prosecution with discovering and proving the violation.

Vice Chairman Coyner asked if twenty (20) miles each way would work?

Mr. Shreckhise stated 15-20 miles so that they are not bidding on the contract of a forty (40) mile stretch.

Vice Chairman Coyner stated twenty (20) would be reasonable. He said this is a necessary thing that we have to have.

Chairwoman Tilghman read the recommended operating conditions from staff.

Vice Chairman Coyner moved to approve the request with the following conditions:

Pre-Condition:

1. Submit site plan meeting the requirements of Section 25-673 "Site Plan Contents" of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies.

Operating Conditions:

1. Mining to be limited to Areas B and C as shown on site plan.
2. No operation or structures be located within two hundred foot (200') from all property lines as shown on the site plan.
3. Applicant will install a sewage treatment system approved by the Health Department prior to operation.
4. A berm to be constructed and pine trees planted to screen quarry operation from Interstate 81. Berm to be installed and pine trees planted within six (6) months of commencement of mining operations.
5. The mining operation should be set up in 15 plus acre phases and shown on the site plan prior to commencement of mining operations.
6. Reclamation plan be submitted to the Board.
7. Each phase must be reclaimed as soon as possible, but not later than six (6) months after a new phase has been commenced.
8. Hours of operation be Monday-Friday, 7:00 a.m. to 6:00 p.m. and Saturday, 7:00 a.m. to 12:00 Noon, and during daylight savings time Monday-Saturday, 7:00 a.m. to 9:00 p.m., no Sunday operation.
9. All local, state and federal regulations must be complied with.

- 10. Debris, including residue rock and stone and other waste material stored on the property must have originated from the property and not brought in from other sites.
- 11. Survey of contours and intervals shall be submitted upon the request of the Board.
- 12. Whenever the applicant amends the permit with the Department of Mines, Minerals, and Energy, they must notify the Community Development Department.
- 13. Permit be issued for five (5) years and renewed if all stipulations are met.
- 14. Pre-blast survey to be completed (check to determine condition of well and residences) prior to mining in each area.
- 15. Mining to start no sooner than six (6) or seven (7) months prior to start of the expansion and widening of I-81.
- 16. Term of use will be limited to the period of the need for aggregate for construction of I-81 and for disposal of any remaining aggregate excavated on site prior to completion of construction, subject to review and renewal requirements.
- 17. Dust to be suppressed by water on site and recirculated; water truck to be on site at all times to maintain any site and road dust not equipment related.
- 18. Blasting to be small "shots"; no more than three (3) times per week.
- 19. Plant to be portable; five (5) to seven (7) individuals to operate plant.
- 20. Quarry/mining to have minimal effect on livestock.
- 21. Appalachian Aggregates will mitigate any off site disruption of water service determined by a third party consultant.
- 22. Applicant be limited to operate twenty (20) miles in either direction.

Mr. Shreckhise seconded the motion, which carried unanimously.

* * * * *

JOHN WILKINSON, AGENT FOR APPALACHIAN AGGREGATES – VARIANCE

A request by John Wilkinson, agent for Appalachian Aggregates, for a Variance from the required setback for a mining operation on property owned by Spottswood Farms, LLC, located on the east side of Interstate 81 in the Riverheads District. – TABLED AT THE MAY 2, 2019 AND JUNE 6, 2019 MEETINGS (no public hearing held for the Variance yet)

Vice Chairman Coyner moved the request be brought forward.

Ms. Brown seconded the motion, which carried unanimously.

Mr. John Wilkinson stated he would like to propose a change and would request a Variance to the two hundred (200') foot setback. He said in 2003, the first time that the quarry was issued a Special Use Permit there was a one hundred (100') foot Variance off of the property lines and along with that and through the years the mine plan was developed. He said during the mine plan there was a lot of consideration given to the footprint that would be left and also with the operation of the mine plan you have sediment ponds, which you want your water to drain to a sediment pond so it defines out before you discharge. He said the haul roads and plant components are made up of a portable plant and is required in one of the conditions. He said whenever you have a limited amount of property such as what we are dealing with and such as that property is squeezed in one direction or another it affects ultimately the mine plan and the footprint. He said specifically when you look at the drawing here you have the Spottswood Quarry. He said around the perimeter of the pond, you can see that the two hundred (200') feet actually comes over into what was once the operating part of the mine so between this one hundred (100') foot area and the one hundred (100') foot of extra area here, it actually sterilizes about 450,000 ton of rock. He said rock is what they are mining and it really is taking away from our operation. He said on top of that, we have this area that at one time it was a haul road because you are going to be mining this part of the operation. He said we had a haul road, sediment ponds, and earth berm that was already pre-determined to start the mining operation. He stated at our last meeting on June 6th, Mr. Chittum got up and spoke and he is the adjacent property owner and he had two concerns, one was his well and the other was in a statement he made that he was fine instead of the two hundred (200') foot Variance, one hundred twenty-five (125') foot against his property and what he went on to say was that he did not want this part of the quarry to egress towards him and we would honor that. He could see seventy-five (75') foot of the two hundred (200') foot and he is the only property owner that is affected in this Variance. He said the other part is against I-81 so as far as any distance, it is important to us more than it is to I-81 so it is not a matter of encroaching on anybody else's property but it goes right against the

property line (blue line) and as you can see it crosses from there two hundred (200') foot away so it is not really protecting anybody or any property owner. He said that is enough case that he can bring to see if you will give him a Variance on this two hundred (200') foot.

Ms. Brown asked how many feet is that from the Interstate?

Mr. Wilkinson showed the Board where the two hundred (200') feet is. He guessed close to seven hundred (700') feet.

Mr. Shreckhise asked if the quarry would still be seven hundred (700') feet from the Interstate? He said it is seven hundred (700') foot now isn't it?

Mr. Wilkinson stated it will remain the same in that area. He said what it allows them to do is use this to travel on this area. He stated they are not blasting and going towards the Interstate. He said it is a matter of the way we mine and taking our route to a plant to crush it up here.

Chairwoman Tilghman asked if they are using it like a road?

Mr. Wilkinson stated yes. He said just to ease your mind on the mine plan, what we will do is mine this right here and come across this and channel the rock so we are shooting away from the Interstate at all times.

Mr. Shreckhise asked how close is your mine and road going to be from the Interstate?

Mr. Wilkinson said probably a guess of four hundred (400') feet from the edge of the highway.

Ms. Brown stated four hundred (400') feet from the edge of the road. She asked if you would be going in both directions on the road that you are telling us about?

Mr. Wilkinson stated this part right here is the right-of-way into the property and when we get to this point, this is the way we will use our on and off road equipment to pass. He said as far as mining, we will not mine this but the way the condition reads right now is it operating so if we put a sediment pond in this area like it once was, he is sure you would consider that as operations and that is why we would like the Variance. He said it gives us a way to drain this property into its lowest point.

Chairwoman Tilghman stated you have a little over eighty-six (86) acres, correct?

Mr. Wilkinson stated yes.

Chairwoman Tilghman asked if the eighty-six (86) acres are all in the blue area or just the red?

Mr. Wilkinson said this is the property and the red is the actual permit.

Chairwoman Tilghman stated there is a part of the eighty-six (86) acres that you are not considering.

Mr. Wilkinson stated no what they are trying to do is stay in this area as much as possible. He said they may have stockpiles back in this area but we do not want to mine any further north than we have to and it keeps the footprint smaller.

Chairwoman Tilghman asked what size are the sediment ponds that you are talking about?

Mr. Wilkinson stated it is actually designed for all of the runoff of the property. He said it is sized according to the acreage and he cannot give you a total amount but Mr. Bibb may be able to. He said they are generally 100' x 200' and there is one in our mining plan and he just does not know it off the top of his head. He said it is already designed.

Mr. Shreckhise asked if these sediment ponds are going to be far off of the Interstate that nobody will run off the Interstate and end up in the pond?

Mr. Wilkinson stated no. He said here is a picture of the sediment pond.

Mr. Shreckhise stated he would like to figure out how far this pond is away from the Interstate.

Mr. Wilkinson said in this drawing it is probably 75'-100' off of the Interstate.

Mr. Shreckhise stated 75'-100' feet. He said if you get a truck going pretty quick, he could end up in that pond.

Mr. Wilkinson stated it is possible. He said I-81 is designed with guardrails as well.

Vice Chairman Coyner asked what is the depth of a normal sediment pond?

Mr. Wilkinson stated most that he has seen is 6' to 15'.

Mr. Shreckhise asked what is the difference in elevation between where the road is going to be and the Interstate? He asked if you are going to be ten (10') foot below it or above it? He knows you can't tell me exactly, but an approximate.

Mr. Wilkinson stated he drove there this morning and he could not see it but he looked at it again from the Interstate and it probably is down on the far end twenty (20') feet down to the existing land.

Mr. Shreckhise asked how many?

Mr. Wilkinson stated twenty (20).

Ms. Brown said the lane that she sees that is the little tail that looks like it is going out to the Interstate, what is that (to the left)?

Mr. Wilkinson stated it is the existing right-of-way coming in on Exit 213. He said this is an existing right-of-way when the quarry was first put in for egress to the Interstate.

Vice Chairman Coyner asked what is the depth of the quarry that is there now?

Mr. Wilkinson stated the existing high wall is 45'-50' at its highest and to his understanding it is twenty-five (25') feet below the water.

Vice Chairman Coyner asked how deep would you go down?

Mr. Wilkinson stated with all of our engineering right now, 100'.

Vice Chairman Coyner asked what do you do with all of that water that is in there then?

Mr. Wilkinson said it will be pumped out. He said when we mine, we mine this area. He said to do that we have to remove the water.

Vice Chairman Coyner asked how many tons will you be taking out?

Mr. Wilkinson stated to the middle of the road, 2-4 million.

Vice Chairman Coyner asked if the quarry as we see it today, will expand?

Mr. Wilkinson stated yes, all the more reason for the Variance. He said they are trying to keep the footprint right here as small as possible. He said it is more economical for us to do that as well.

Chairwoman Tilghman stated you are not going to mine in any other part, you are just going to make the hole bigger?

Mr. Wilkinson stated yes, they will mine in this direction. He said they will mine from south to north.

Chairwoman Tilghman asked if there is a reason other than economics that you are not looking at any other part of the eighty-six (86) acres?

Mr. Wilkinson said the rock in this area is uncovered and the mining plan is to go up here and mine to the south. He stated once again, when we blast close to the Interstate, they would want to pull our blast to the east instead of toward I-81.

Ms. Brown stated you are trying to get the rock that is exposed right now?

Mr. Wilkinson stated yes.

Chairwoman Tilghman stated there is plenty of that rock.

Mr. Wilkinson stated there is. He said they have some core hole data along the ridge that shows that it is confident rock.

Vice Chairman Coyner asked when they get into operation, how often would you blast?
A daily event?

Mr. Wilkinson stated it will be as the rock moves, they would blast.

Chairwoman Tilghman stated she thought we had a limitation on that.

Mr. Wilkinson stated you do and it says two (2) to three (3) times a week.

Chairwoman Tilghman stated blasting needs to be small shots, no more than three (3) times a week.

Mr. Wilkinson stated that is pretty common.

Chairwoman Tilghman asked if there was anyone wishing to speak in favor of the request?

There being none, Chairwoman Tilghman asked if there was anyone wishing to speak in opposition of the request?

Ms. Linda Sacchieri, 557 Spottswood Road, Greenville, stated she has questions about the distance from the highway. She says there are accidents every Sunday on that particular spot. She has seen people on the median and she has seen people on this side, rollover trucks all of the time. She can guarantee almost every Sunday. She is concerned that the sediment pond is not seventy-five (75') feet from the highway, maybe it is but as you can see from that picture, there is the highway right there. She said any truck that is going to go over, is going to go over and there is always accidents. She is a nurse and she has attended to people that have been injured on that highway. She has concerns and she knows it has already passed but if we can keep anybody from getting injured or hurt. She said that is her concern.

Mr. Thomas Bibb, Engineering Manager, VA Division of Mineral Mining, stated he wanted to cover a couple of issues that are in our regulations that you may or may not be familiar with and provide some additional information for you all. He said one of the requirements is the screening berm on a perimeter of the permit. He said to mine rock, they have to scoop up the dirt that is on top of it and put it someplace and we also want to screen those operations from the public, it provides a noise barrier and a visual barrier. He said they are going to generate it and it will have to be stored someplace as part of the plan, we typically see perimeter berms and that berm would be a minimum of ten (10') feet tall and would be placed on the edge of the permit. He said with a ten (10') foot berm between them and I-81, it will certainly provide some protection and consideration for any potential vehicular traffic departing the roadway before it got to the sediment ponds.

Mr. Shreckhise said right now the way you look at the property, they already have the screen from existing vegetation so they might decide not to do the berm.

Ms. Bunch stated it is part of the operating conditions.

Mr. Shreckhise said in other words, there is existing vegetation with cedar trees and all between the Interstate and the quarry now, so you do not look at it so they would not need to put in anything.

Mr. Bibb stated you all could consider a condition of some berm and some height.

Chairwoman Tilghman stated we have a condition in here that says a berm to be constructed and pine trees planted to screen the quarry operation. She said berm to be installed and pine trees planted within six (6) months of commencement of the mining operation. She would assume as long as it has been a berm there originally, that it has probably worn down.

Mr. Bibb said it probably may very well be.

Ms. Bunch stated what is there is old.

Chairwoman Tilghman asked if there is a standard height for berms normally?

Mr. Bibb stated typically they see ten (10') to fifteen (15') feet with a five (5') foot crest so that puts it twenty (20') feet out. He said it is a substantial berm and that could be addressed. He said they do have a screening berm standard and that screening berm would also provide some protection for vehicular traffic. He said that was the only point he wanted to make. He said 2531-420 is the screening berm standard that we have in our regulations.

Chairwoman Tilghman asked if they have any standard for how far a holding pond should be away from a road? She asked if there are any regulations?

Mr. Bibb stated no, not per say. He said with mining permits, they are the erosion and sediment control. He said they have the authority for erosion and sediment control within the permit area. He said unlike other places where DCR and the localities cover that, we are the guys who actually regulate that on mine permits. He said their standards for sediment control are basically double the size of DCR's standard. He said they require twice as much volume for sediment control typically as you would do for a shopping center or a parking lot. He said our pond is a pretty good size. He said it is an 1/8 of an acre per disturbed ground. He stated you can get into pretty good volumes and that has to fit on there somewhere. He said they are going to construct those ponds. He said that is to everyone's advantage because nobody wants any dirty water leaving the site and that is the principal way of cleaning it up.

Chairwoman Tilghman asked if there is someplace else where this sediment pond could be located or if this is the obvious place you would put it?

Mr. Bibb stated you want it near the sediment producing activity that is taking place. He said you want it as close to that as possible so that you maximum your ability to capture the sediment. He said typically you try to put it close and in this instance, you are looking at one of the principal sources is going to be the processing area so you would want them in fairly close conjunction to the processing area. He said we have not seen the mine plan yet. He said we will see them and approve them before they authorize them. He said those are the two points he would like to make from their standpoint. He is not saying yay or nay, but that is how we would look at it.

Chairwoman Tilghman said as they begin work, they are building the berm. She said in the conditions they have six (6) months to complete it once they commence. She asked if that is because they are taking earth out?

Mr. Bibb stated they have to prepare the area before they can actually mine it. He said they have to pull out the material that is not going to be used. He said clay into a crusher is not a good deal.

Chairwoman Tilghman asked if the berm would be completed before they start the actual mining operation?

Mr. Bibb stated it would be close. He said typically the berm construction is parallel with the mining. He said if there is a minimum berm, you can start on that and then add more material as you go. He said they see some places where they construct the berms first and if it does not require a great deal of material, then certainly it would be a possibility.

Ms. Kelly Nordhausen, PO Box 431, Greenville, stated she lives directly east of the mine. She understands that this is going through and is fine with that but she is wondering as far as what he just stated that they are blasting east. She has a lot of buildings and a lot of property and she owns dog kennels and several different things. She asked what will be the mines' responsibility for any damages done to her property and will she be responsible for any legal expenses incurred in proving that her windshield is broke, a rock went through her roof, this type of thing. She is also speaking for her neighbors because they are going to be in the line of fire. She does understand that this needs to be done and she is all for improving I-81 but her biggest concern is going to be legal expenses that she will incur in trying to replace a roof because a rock went through it.

Mr. Michael W.S. Lockaby stated he was going to ask if the gentleman from DMME has a regulatory process for people to make complaints to for compensation.

Mr. Bibb stated they do not deal with compensation but certainly the facts would be established for a citizen to take action. He said what typically happens and he does not want to say that we have never had a fly rock incident but they are very rare. He said the last one we had was three (3) or four (4) years ago. He said they take those very seriously and typically if you have a fly rock incident in Virginia we are going to shut it down. He said the second thing would be to figure out what happened and who was responsible. He said they certify blasters in the Commonwealth and they cannot blast without our blessing. He said there are a few folks that we certify and we train them and monitor that very closely.

Ms. Nordhausen stated one thing she would like to point out is that she does not have a blasters license but she trains federal dogs for explosives and do federal level and military, and police K-9s. She said her partner is a master blaster and has his federal license and she is very familiar with explosives and she does know just when you think you have everything laid out, something can go wrong. She said it is an explosion. She does have a dog business and one of the things she trains is on a federal level and she does EOD dogs which is explosive ordinance detection and she is extremely familiar with explosives and how they work. She said her partner in crime has a Federal Master Blaster license and where she is familiar with explosives, they do go wrong. She is looking at an ounce of prevention and she is looking at what is going to be her case somewhere down the line and it can be something as minimal as a car windshield or something as major as a roof. She said hopefully this never happens but she would like to have some idea because of her experience with explosives. She said you can have all of the training in the world and all of the experience in the world and it depends on whether you are using TNT or C4, it does not matter, an explosive is an explosive and things go wrong. She is looking for a little clarification on what is going to be her legal responsibility because she is sure the gentleman here at Appalachian Aggregates are here with the best intentions but she is quite sure if she were to call them up and say excuse me, my well just went dry or if she has a big hole in her roof, they are going to lawyer up immediately. She stated that is in their best interests to do that and she understands that. She said what she is looking at is that there is no way to fight big brother. She would not have the resources but from what this gentleman here was saying it looks like she would contact the Virginia Mining Department and they would come into play. She said this is what she is looking to see.

Chairwoman Tilghman stated they are basically the overseers.

Mr. Lockaby stated you still might need a lawyer at some point in order to get the judgement yourself. He said this is not legal advice, just the way he is thinking in the matter, but blasting is a strict liability thing in Virginia. He said so that means that DMME determines that you are at fault, it is really going to be easy to go to court to get a judgement against you because there is not even a question of negligence if you have been blasting and you are at fault. He said if you have been blasting and you have damaged something that is pretty much the end of the story.

Ms. Nordhausen stated she is wondering that but what is the probability of them saying a rock fell from the sky and went through her roof. She said realistically looking how is that. She also has a little bit of a legal background, how can she prove that. She will spend fifteen years of her life trying to prove something.

Mr. Lockaby said that you should call the gentleman from DMME.

Ms. Brown asked where are you located?

Ms. Nordhausen stated she is in Greenville. She said her parcel is 86B on the map. She said that is why she is a little concerned when they said they are going to be blasting to the east because that is going to be her sitting there waving at them.

Chairwoman Tilghman asked if there is anyone else wishing to speak in opposition to the request?

There being none, Chairwoman Tilghman asked the applicant to speak in rebuttal.

Mr. Wilkinson stated if you look at the quarry and go east there is a pretty good substantial ridge so it would be highly unlikely to have a blast that may reach that residence. He said they are regulated by Division of Mines and also Mine Safety and Health Administration. He said there is plenty of outlet and they are monitored by those when we drill and blast as well. He said we contract that out to professionals that are well trained.

Mr. Shreckhise stated their concern is that the traffic off of I-81 does not run into your sediment pond and the other concern is that there is a berm there to keep them from running off something that they should not and that it is screened somewhat from the highway. He said right now it looks like it is screened pretty much from the highway with the existing vegetation. He asked if there is a berm or something constructed between where you are going to put the sediment pond or would you need to construct that?

Mr. Wilkinson stated they need to construct that. He said you are right, there is vegetation especially parallel with the pond where the existing water is and it is well established.

Mr. Shreckhise asked if there is a berm beneath that?

Mr. Wilkinson stated not that he knows of.

Mr. Shreckhise asked if there is room in your operation to put a berm beside that so that you do not have to tear that vegetation down?

Mr. Wilkinson stated that would be the way to go about that. He said they would go farther north and make a bigger earth berm. He said that is where we would put the sediment pond.

Mr. Shreckhise said he thinks what the Board would want is that you construct a berm behind the vegetation and also in front of where the sediment pond is.

Mr. Wilkinson said when you say behind, are you talking about toward I-81?

Mr. Shreckhise stated no, the other way.

Mr. Wilkinson stated yes.

Chairwoman Tilghman said not to disturb the vegetation.

Mr. Wilkinson said that is a good idea.

Mr. Shreckhise said he would rather see that you not destroy the vegetation and if we grant this one hundred (100') foot, we do not want it for mining or anything except ensuring more safety for the operation and also for your convenience as far as having the road there.

Ms. Bunch stated you are going to have to amend the operating conditions that you just adopted if you change the berm location and how it is constructed.

Mr. Shreckhise stated the Board can talk about that.

Chairwoman Tilghman declared the public hearing closed.

Mr. Shreckhise stated as far as giving this extra land, if the adjacent landowner is satisfied.

Ms. Bunch stated this is an ordinance requirement. She said the ordinance states that all buildings, structures, and operations will be setback at least two hundred (200') feet from all property lines. She said it is a Variance and not just a matter of the neighbor's agreeing.

Mr. Shreckhise stated this is something that we can consider.

Ms. Bunch stated the State is very strict. She stated our legal counsel can advise you on that one.

Mr. Lockaby stated the first standard for a Variance is that the property interest from what the Variance requested is that the property was acquired in good faith and any hardship was not created by the applicant; second, the granting of the Variance will not

be of substantial detriment to adjacent property and nearby properties in the proximity. He said that would be the neighbors saying, hey that is not much of a problem to me, would fall under that second standard. He said you are hearing that they do not think that will be a substantial detriment to them. He said that the third is that the condition or situation is not of so general or recurring that the Board of Supervisors could amend the ordinance to fix the problem with the ordinance. He said the fourth standard is that it does not result in the change of the use of the property; and fifth the relief or remedy is not available through a Special Use Permit. He said that point that you just brought up definitely goes strongly toward their not being a substantial detriment, but you will still need to look to whether the property was acquired in good faith or whether the Board of Supervisors could adopt a rule that would provide for this without you having to take action which to say is there anything funny about this property as opposed to other mines that makes it so that this would be that such a general rule could not be formulated to deal with this situation.

Mr. Shreckhise stated which probably isn't the case. He does not think that is the case with the adjacent property. He is not incurring something that some other mine would not incur too, therefore, we should not give the additional land towards the neighbor. He said his situation between the Interstate does not fit the same rule. He said in other words, another company could have the same problem. He said it is just an economic problem.

Vice Chairman Coyner stated that is what it boils down to, economics.

Ms. Bunch stated that is typically not grounds for a Variance.

Vice Chairman Coyner stated this piece of property does have sufficient rock on it without using that.

Ms. Brown stated you still want to protect surrounding areas with the two hundred (200') foot.

Vice Chairman Coyner moved to deny the Variance.

Ms. Brown seconded the motion, which carried unanimously.

* * * * *

MICHAEL W. SHARP, AGENT FOR FRIENDS OF SEAWRIGHT SPRINGS - APPEAL OF THE ZONING ADMINISTRATOR'S DECISION .

This being the date and time advertised to consider an appeal by Michael W. Sharp, agent for Friends of Seawright Springs, to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the decision to forego requiring a Special Use Permit for a water withdrawal business on property owned by Flow Beverages, Inc. (formerly owned by Seawright Mineral Springs, LLC), located at 40 Seawright Road, Mount Sidney in the North River District.

Ms. Sandra Bunch stated she has been the Zoning Administrator for Augusta County since 2016. She said the reason for this hearing is an appeal of my decision to not require a Special Use Permit to continue the withdrawal and hauling of water from the property. Her decision to not require a SUP was based on a vested right of the property for this use as evidenced in a 1996 Zoning determination letter and my reaffirmation of that decision in my Zoning determination letter dated 12/4/18. She said Augusta County and as far as we can determine the State of Virginia considers the withdrawal of water a basic fundamental right and a landowner has the right to utilize the water resources on his or her property without the need for permits. She presented the history of the property to the Board:

- Water has been extracted and shipped from the property for over one hundred (100) years.
- The property is zoned General Agriculture and has been since 1947.
- In 1996, a Zoning determination letter was sent to Seawright Spring Water Corporation stating that they can continue to extract, market, package and sell in bulk and bottles (cases) and ship, which includes nine (9) tankers and (3) trailers per day as the previous owners did, and a Special Use Permit would not be required unless it was expanded.
- The Zoning determination was never appealed, therefore, the extraction and hauling of water is a "thing decided" or vested right.
- In 2004, a Special Use Permit was granted to expand and rebuild structures and to add (6) 20,000 gallon water tanks. Extracting and hauling water was not part of the SUP request because that use was a vested right per the 1996 Zoning determination letter. At that time, all adjoining property owners were given written notice of the public hearing and it was advertised in the local newspaper for 2 successive weeks. According to the minutes of the public hearing no one in the

July 3, 2019

community spoke in opposition to the permit to expand and no appeal was filed after the Board's approval.

- In 2009, another Zoning determination letter was written by John Wilkinson, Zoning Administrator at that time, and was sent to First American Title Insurance Co. affirming the water extraction and hauling is a by right permitted use and no Special Use Permit was required to continue within the limits of the 1996 determination letter.
- In 2018, she issued a Zoning determination letter, which was requested by Protrae Law, LLC, attorney for Flow Beverage affirming that the water extraction and hauling is a by right permitted use and no Special Use Permit is required to continue within the limits of the 1996 determination letter.
- Flow Beverage, Inc. purchased the property in reliance on my determination letter with the intention of exercising their vested right to continue to extract and haul water.
- The County has been consistent in upholding these determinations for the last 23 years that the extraction and hauling of water is a by right permitted use and has never required a landowner to apply for a Special Use Permit to extract and haul water from their property, nor has the County required a landowner to get a Special Use Permit to allow others to extract and haul water from their property including for uses such as filling cisterns or swimming pools, or for offsite irrigation or watering of animals.
- She would like to point out several items in your packets showing the use on this property:
 1. The 1920 Annual Report from the State Board of Health to the Governor of Virginia. The table in this report for commercial springs states Seawright Springs bottled 1,000 ½ gallon bottles of water per day at this site.
 2. There is a 1986 Washington Post news article titled "Is Bottled Water Worth the Price" The article describes Safeway Grocery Store brand spring water as follows: Safeway spring water comes from Seawright Spring in the Shenandoah Valley. *This water is transported by tanker trucks to the Safeway plant in Landover, MD where it is bottled.

3. An email from DEQ, dated 5/1/2019, stating in 1988 the well was pumped at a rate of 365 gallons per minute for 16 straight days. There was no documented impact on nearby wells.

Ms. Bunch said in summary, the applicants are requesting that I require a Special Use Permit for the extraction and hauling of water, however, the Zoning Ordinance does not have a category for extracting and hauling of water and the Zoning Administrator does not have the authority to add categories into the Zoning Ordinance. She said these categories are determined by the Board of Supervisors. She stated if the BZA has any questions, I'll be glad to answer, and I would like to point out that John Wilkinson, previous Zoning Administrator is here to answer any questions.

Mr. Michael W. Sharp with Botkin Rose, PLC, represents Friends of Seawright Springs, stated the property was recently purchased by Flow Beverage. He will address two issues, standing to challenge the December 4, 2018, letter and if it is appropriate given the County ordinance. He said they ask that the determination be overturned. He said the Zoning Administrator letter of December 4th is incorrect and should be considered void by this Board. He said there was a Zoning Certificate issued in 1996 that allowed for nine (9) tankers and three (3) trailers per day and that was the extent of the determination of that letter and that the property is in a General Agriculture district. He said in General Agriculture it permits agriculture uses and the ordinance defines what those are. He said this is nothing specific that would allow commercial extraction of water, water harvesting, water manufacturing, marketing or the commercial distribution of spring water. He said it is not in the ordinance. He said the agriculture definition does not encompass commercial water harvesting process. He said if you look at the 1996 zoning letter, it says marketing, packaging, and selling. He said the words extraction is not in the letter. He said words matter. He noted the 1996 Zoning Certificate does not exist. He said they have a cover letter but he does not know what the references are. He does not even know what specific property it is applied to. He said with nine (9) tankers and three (3) trailers, there is no basis in the ordinance to say these numbers. He said the deed history of Seawright Springs Water Corp. shows they never owned property. He said it is a non-conforming use and even if the zoning certificate is a thing decided the non-conforming use does not continue forever especially when abandoned. He said the zoning certificate is void six (6) months unless it is started. He said it should be considered void if it is discontinued. He said the property has been dormant for years. He said if it is discontinued two (2) or more years you lose the vested right and non-conforming use is abandoned. He said it is abandoned and lost and cannot be relied on in the future. He said a Special Use Permit was issued non-transferrable and the proposed site never completed. He asked why did they need a Special Use Permit in 2004 and do not have one now. He said they had limited knowledge of what is going on the property because Flow made it difficult for us to know. He said it was a \$15 million investment and they

received a \$250,000 grant and created 250 jobs. He said how could they not be expanding on the property and bringing that many jobs. He said in the December 4, 2018 letter, words matter, extraction never appears. He said it never appears that Flow was never told they can extract. He does think that matters. He said there is a difference between a homeowner and a commercial operator. He said the letter was based on a non-existing erroneous zoning certificate. He said there is not a site plan that Flow submitted. He noted water extraction in General Agriculture zoned property is bound by action of the Board of Zoning Appeals. He said in argument, the decision was wrong and messed up and nothing you can do about it. He said the good faith and action of the Zoning Administrator was unfair and inappropriate. He said there was no knowledge of a letter to Flow. He said Flow did not take ownership of the property until April 3, 2019. He said it was announced on April 30, 2019 and there were plans to keep the project quiet based on emails. He said they could have appealed before if they knew about the project. He said the vested rights were specific in the letter, nine (9) tankers and three (3) trailers. He said this is a blank check. He said it does not say that they can extract or increase amp service or construct buildings. He said this does not define what tanker and trailer is, it is a passive response by the Zoning Administrator. He said the thirty (30) day appeal could not have been acquired because they did not receive notice from the party. He said it does not require notice to landowners but they can still petition the court. He said this is fundamentally unfair and we are giving the Board of Zoning Appeals an opportunity now before we go to circuit court. He said the neighbors drive the roads every day. He said water is critical and the neighbors actually noticed an effect on their water loss since Flow's use. He is not saying the project cannot go through but look at the Special Use Permit process. He said a step was skipped. He said they did not do a traffic study and there were mistakes made in the process. He said the 1996 Zoning Certificate was inappropriately relied on and the use was abandoned and should not be relied on again. He said they should excuse the mistakes and do this the right way and get this in the Special Use Permit process.

Mr. Shaun Mooney, 110 Winding Creek Lane, Mount Sidney, stated he has two properties near the spring. He asked the Board to vacate Ms. Bunch's decision and hit the reset button, they are not asking for their project to be discontinued but to go back to the community to be sure they have their concerns addressed which the County refused to do up to this point. He is here representing himself and thirty (30) citizens that band together to support the financial legal counsel we retained. He said there are 133 residents who signed the statement, which is essentially most of the community. He said majority of the people have concerns. He said they have a lot of concerns and questions about what will happen in the future. He said this will impact the community for decades. He stated with Flow doing the project, this scales well beyond anything in recent memory. He said this decision matters. He hoped they would tip back the scale back into

equilibrium. He presented a Power Point Presentation "The Friends of Seawright Springs" to the Board (copy is in the file).

Chairwoman Tilghman asked if there was anyone wishing to speak in favor, or in opposition to this request?

Mr. Brian Harvick, 92 Helen Lane, Mount Sidney, stated he moved here from Atlanta and sometimes political stuff just happens. He is disappointed and stunned that we did not know. He pays attention to what happens and he loves it here but he does not want this.

Mr. Aaron Tammi, 826 Burkes Mill Road, Mount Sidney, stated this will affect the water underground. He farms in the area and does not need to share the fence line when it comes to water. He has seen evidence of all of this. He said the vested right is scary because nothing has happened in so long. He has come here to ask that this is handled properly and he is concerned with the lack of transparency.

Mr. Christopher Simonetti, 129 Seawright Road, Mount Sidney, stated he is an adjacent neighbor and he is against this. He said it is an all water spring that flows on his property. He said it bubbles in the spring and there is an overflow of foam that occurs in the creek since they have started. He said there has not been any trucks there in seven (7) years.

Mr. Stephen East, 75 Gray Fox Road, Mount Sidney, stated his property connects to Seawright Springs. He is here about the wells. He said homes have been there since 1982.

Mr. Leo Tammi, 826 Burks Mill Road, Mount Sidney, stated they have a farm and he is one landowner away from Seawright Springs. He said when they moved to the property, he needed a Special Use Permit for a studio apartment. He said that this process was not followed here.

Ms. Robin Hawks, 112 Winding Creek Lane, Mount Sidney, stated she built a house about a year ago and wanted to have peace and quiet. She has a vested right to live in an agriculture area. She is concerned about safety. She passed the tanker truck the other day and she had to stop for him to get through on the road. She said the Zoning Administrator made a bad decision on limited information. She said that Gerald Garber told her that he did not know Flow was taking water from the borehole. She said Marshall Pattie did not even think about Seawright Springs when they made the decision about Flow at Mill Place. She said no one considered us or the roads, water, or how we thought about the process. She noted that Flow did not do their due diligence.

Mr. Don Hawks, 112 Winding Creek Lane, Mount Sidney, read the mission statement for Augusta County. He said the Administration Office, Zoning Office, and the Board of Supervisors did not follow the mission statement. He said one, it is too long, talks about planning and goals, and none of that has happened. He said the government needs to reset and look at the mission statement. He said they are anxious to help the corporation but keep the citizens in the dark. He is concerned about traffic. He hoped they would help the government be trustworthy to regain the trust of the citizens, be accountable and admit when they made a mistake and go back to the drawing board. He said if the County wants to follow the mission statement they need to take responsibilities for their mistakes.

Mr. Gerald Mace, 511 Salem Church Road, Mount Sidney, stated the only reason he is speaking today is because he has a spring that goes out to Naked Creek. He said when they bore the hole in 1988 it did affect the wells and springs. He said the borehole itself is tied into his spring. He said by giving them extended rights, it is like giving them a blank check. He said there are legalities and he has concerns about it. He said when they extract the water, it can pull water aquifers that are not always tied into that source. He said it can change the flow in house or downstream.

Ms. Cindy Birt, 107 Gray Fox Road, Mount Sidney, stated she is worried about the well and the tanker trucks. She said young drivers are going to get into accidents there.

Mr. David Griffin, 224 Lebanon Church Road, Staunton, stated he is concerned about the well and there has been no adequate studies. He is also concerned about the property values. He learned when the governor came and he had no idea about it. He agrees with Mr. Mooney. He said the Board should go back and look at this more closely and be able to express their opinions and viewpoints.

Ms. Suzanne Berry, 859 Burkes Mill Road, Mount Sidney, stated she grew up here and her mom's property is part of what Seawright Springs is today. She said the spring that ran parallel with Seawright Spring is dry and it shows how the water declined over the years. She is concerned with traffic because this an elderly community too. She said she was very embarrassed at the Board of Supervisors meeting on the way they acted towards us. She does feel sorry for Flow Hydration because they were sold a bill of goods and this is not the right way to handle that.

Chairwoman Tilghman asked how long was the spring dry?

Ms. Berry stated over the years they walked down to it. She said eighty (80) years ago the rain water flowed down through there briskly. She said there is no water there now.

Ms. Kim Hull, 482 Salem Church Road, Mount Sidney, stated she is an adjacent property owner. She did not lose her well but she did lose water pressure during the testing period.

Mr. James Benkahla stated this Board's decision is to uphold the decision of the Zoning Administrator. He said the County has several legal issues that this Board has to consider and decide whether the appeal was timely. He said the County's position is to determine if the decision made on December 4, 2018 was correct. He said it was not appealed within thirty (30) days. He said Section 15-2-2311 requires a determination be appealed within thirty (30) days like it or not and next issue is whether or not they have a vested right. He said the code is clear at this point. He said the property owner relied on that determination and it has been more than sixty (60) days since the determination was made. He said the law does not allow the County to reverse or modify or interfere with the vested right of the property owners. He asked if the parties have standing to bring the appeal? He said each show that they live close enough to the property. He said each show individually how they are harmed and that it is not shared by the public generally. He said those are the issues. He said the statement of facts letter from 1996 is relevant to the Zoning Certificate and their current operation of bulk bottles and shipping and nine (9) tankers and three (3) trailers. He said there were no substantial changes and they operate as the previous owners did. He said any expansion requires a Special Use Permit. He said it did not say extraction but common sense would dictate that you have to be able to get the water in order to bottle and transport it. He said the Zoning Analyst and Dale L. Cobb, was carbon copied on the letter (Director at that time). He does not think it matters that it referenced the zoning certificate. He said the definition of the zoning certificate is an official finding that the proposed use complies with the Zoning Ordinance. He said the reason it is issued is so the owner can go to the Commissioner of Revenue to get a business license so when it expires, it does not affect the zoning. He said if it expires the applicant can get another zoning to get their business license. He said that sets forth the use. He said they obtained a business license from the Commissioner of Revenue. He said the letter from 1996 sets forth the uses and limits of the use. He said the property owners had a right to appeal but that was never done. He said in 2004 they expanded the operation and added a 24 x 36 building, six(6) two-story tanks, and a 20 x 20 gazebo. He said there was no request to extract because the water trucks in 1996 was a permitted use. He said they have conducted this for twenty-three (23) years. He noted in December of 2018, the Zoning Administrator reiterated what was allowed in 1996 and then this appeal was filed six (6) months later. He noted there is a thirty (30) day timeframe which is noted under Section 15.2-2311A. He said in 1993, the thirty (30) days do not start until the statement is written. He said there are no requirements for a determination on a right of appeal on someone else's property. He said a Special Use Permit or rezoning, we are required to notify property owners. He said no one in the vicinity would have gotten notice of the determination letter, it does not exist

and is not required. He said it would never be a final decision and would always be up for an appeal which is why there is a reason for the thirty (30) day limitation because it would be impractical to give notice. He said if landowners and developers move forward with the property, the County cannot change their position after sixty (60) days. He said this decision was made twenty-three (23) years ago and that was never appealed and it has been well over five (5) months. He said there is a vested right Section 15.2-2311C where the Zoning Administrator makes a decision and it has been more than sixty (60) days, the decision cannot be changed by the Zoning Administrator. He said with the Special Use Permit application requirement the adjacent property owners get a notice and it is advertised in the newspaper. He said that happened in 2004. He said if anyone was interested they should have received notice. He said no one came to speak. He noted that the traffic issues are not the question or if the tanker truck will create harm to individuals. He said the extracting of water from a well is a permitted use and Flow is bound to the determination of that as well where they cannot have more than nine (9) trucks and three (3) trailers. He said in an agriculture district, everyone in the County has to deal with truck safety issues, log trucks, water trucks and tractors, sometimes we have to share the road and move over to let them pass. He said everyone has to deal with it. He noted there are three (3) schools on this highway and there are schools on all secondary roads all over the County. He said these are harms shared by everyone, not just these landowners. He said the landowners have to have standing. He said since he has been here he has never seen the Board of Zoning Appeals issue a permit for a company to withdraw water from the property or transport the water. He said if that is the case the Augusta County Service Authority would need a Special Use Permit and they have not been here to do that. He asked the Board to uphold the decision of the Zoning Administrator.

Mr. John Hawthorne, Protorae Law, stated he is representing Flow Beverage, Inc. He said the concerns do not usurp the legal rights. He said the letter from December of 2018 they were relying on the laws of Augusta County and the Zoning Administrator. He said Flow Beverage employed 28 people on the spring site and manufacturing facility. He said Flow has also built out a manufacturing facility in Verona and purchased the spring site itself all in reliance of the Zoning Administrator's determination letter. He said Flow Beverage has exceeded over \$2,000,000 into the economy. He said it is a matter of law on whether or not we should be here with them and if the timely period of such an appeal. He read Section 15-.2-2311A states within thirty (30) days. He said the cases made a good argument but there are no actual notices requirement to citizens within the statute. He said no actual notice requirement of thirty (30) days from when the letter is issued. He said no appeal was done until May 5, 2019, with six (6) months that went by which well exceeds the thirty (30) days. He said they did not bring the appeal within thirty (30) days. He said this lacks standing, however, by the decision needs to show a harm that is not shared by the public in general and not speculative. He said the Board heard from Mr.

Mooney and all different people around. He said the concerns are valid but they are concerns held by the public in general. He said no such study was ever needed by VDOT. He said they only talked about speculation. He said based on what Flow Beverage has extracted within the property itself whether or not the well went dry, bubbles and foam, is all speculation. He said they do not have standing with the appeal and the harm that is being claimed would not be shared by the general public but it would also be speculative they lack standings within the process as well. He said the vested rights is simple, Section 15.2-2311C is that the recipient relies on the zoning determination letter. He said the zoning determination letter states clear language which they rely on even if it is incorrect within sixty (60) days. He said they relied on this letter. He said the government affirmative action 15.2-2307 with 2311C they can rely on that to do the business they were determined to do. He noted that Flow did rely on it. He said they used the December of 2018 letter to buy the property on April 2019. He noted they are putting in \$15 million to the County and have employed 28 people. He said they relied on this. He said these are all local people driving their trucks. He said they do not want to hurt anyone on the roads but they do have a vested right to bring in nine (9) trucks and three (3) tanker trailers. He said that Flow Beverage decided to open in the United States and they chose Augusta County. He said they take seriously the safety concerns and they are contracting locally with truck companies. He said there are a number of reasons to uphold the decision of the Zoning Administrator:

1. 30 days passed – should not be allowed to have the appeal
2. Lack of standings
3. Flow itself has a vested right on the property 15.2-2311C that allows them to conduct the activity on the property

Chairwoman Tilghman asked if there was anyone else wishing to speak regarding the request?

There being none, Chairwoman Tilghman declared the public hearing closed.

Mr. Sharp stated it is a disappointing day that the County argument is that the neighbors did not meet the procedural requirements due to the County and it is an impossible position to meet. He said the appeal is a cruel and fundamental unfair process if this is the way we are going. He said the Supreme Court ruled in a case *Matthews vs. Eldridge* and discussed how we address due process they were deprived of property rights because they needed the notice and opportunity to be heard. He said for this reason they filed the appeal of the decision of the Zoning Administrator to the Board of Zoning Appeals after thirty (30) days. He said they never got a notice and never had the opportunity to be heard. He said the Board of Zoning Appeals should do this now. He said this is a ludicrous argument to suggest of members of the appellants are not

acquired property and none are close to the property. He said some are adjacent and some are a little closer away. He said the Simonettis have seen impacts, people are driving on these roads, children are driving on the roads, and he asked to deny them. He said Flow can do whatever they want without anyone challenging them. He said it is important to look at the exact language of the determination very vague letter. He said nine (9) tankers and three (3) trailers and not approve a specific plan because the general language and it does not use extraction, not a governmental action, a more passive advice from the Zoning Administrator even if it is decided today, passed sixty (60) days and it is a vested right. He said the only vested right specific terms are on the letter. He said the letter has no limitation on how much water and how many people, it is too vague. He said now Flow can operate and it is vague, therefore, we do not know what is approved. He said for that reason he does not think that is a good reliance on behalf of Flow. He said an employer of 28 people and do all that we want in terms of commercial extraction of water. He does not think it is clear cut as the County makes it and the Board of Zoning Appeals can hear the case.

Chairwoman Tilghman said both parties are aggrieved.

Mr. Shreckhise stated he feels the County is wrong on both sides. He said the buyer of the spring, people around the spring, the Zoning Administrator to make the decision, and us to make the decision were all wronged. He said someone will lose on this.

Chairwoman Tilghman said the State was involved in bringing these people here. She does not know what the Board of Supervisors knew. She said they did not know anything about Seawright. She said it is a great concern that Flow has been misled. She was not on the Board during the 2004 Special Use Permit but the majority of these landowners were not owners then. She said that 27 landowners were sent notification. She said only 4-5 could say that they got notice in 2004. She said not one person showed up. She said you do not know if it is important unless you come to the meeting. She said that may have been a big clue that something bigger may come down the road.

Mr. Shreckhise stated they never said extract on the Special Use Permit.

Chairwoman Tilghman said if someone is opposed they may look at it differently and thought twice. She noted public input is so important.

Vice Chairman Coyner stated the question is whether Ms. Bunch made the correct decision.

Mr. Shreckhise stated that is the question, did she do the right thing based on the right information.

Vice Chairman Coyner stated with the Board of Supervisors there are certain times you cannot put everything in the newspaper. He said you have to respect confidentiality.

Ms. Brown stated they always back the neighbors up but this time their hands are tied due to the law.

Mr. Shreckhise stated perhaps we should go down through the questions provided from legal counsel.

Mr. Lockaby discussed the questions that the Board should consider when making their decision.

Ms. Sandra Baker stated from 1965-2003 they owned the spring and it has always been considered agriculture. She said the public has continuously up to right now filled jugs and got water. She said over one million gallons of water flow out of the spring daily. She fully supports Seawright Springs and it is a great opportunity for the County and the State and there is great historical value to it. She supports it.

Mr. Shreckhise said at some point this is water mining and in order to mine, a Special Use Permit is needed, but who decides this?

Mr. Lockaby stated the Zoning Administrator determined the agriculture use when nine (9) tankers and three (3) trailers were granted for agriculture use.

Mr. Shreckhise stated who decides this because now it is unlimited.

Mr. Hawthorne stated the limitation of nine (9) trucks and three (3) tankers were affirmed in the 1996 letter and they relied on that when the right was created at that point. He says they cannot go unlimited.

Mr. Shreckhise stated the letter also said without significant changes. He said there has been significant changes with the well pump vs. getting water in the ground.

Mr. Hawthorne stated the borehole has been used. He said this is not a significant change.

Ms. Bunch stated there was a borehole noted in 2004 on the site plan submitted. She said an affidavit was also used.

Ms. Baker stated they did sell to Shenandoah Water.

July 3, 2019

Mr. Lockaby stated the Board can come back for more discussion to either reverse or affirm entirely or partly or may modify the decision of the Zoning Administrator based on 15.2-2312.

Mr. Shreckhise moved to table the decision to the August 1, 2019 meeting. He noted the public hearing has been closed and there will be no further discussion.

Ms. Brown seconded the motion, which carried unanimously.

* * * * *

MATTERS TO BE PRESENTED BY THE PUBLIC

Teresa and Mark Sprouse, 800 Churchmans Mill Road, Stuarts Draft, read a letter addressing concerns regarding Pilgrim Christian Fellowship Special Use Permit #19-1 that Stacey Payne operates at 822 Churchmans Mill Road (copies are in the file).

Ms. Bunch stated staff can send a letter regarding violations of operating conditions and any additional uses. She stated we cannot enforce the barking of the dogs, it is a civil matter.

Chairwoman Tilghman asked how many dogs can be there at a time?

Ms. Bunch stated the operating conditions did not address a number.

Larry and Dawn Beasley, 828 Churchmans Mill Road, Stuarts Draft, stated their property borders this on the back and the side. Mr. Beasley said they have forty (40) dogs and they plan to double the number with the last year. He said there is not enough parking on the street. He noted there are nice cars parked dropping off their dogs for the doggie day care. He stated the doggie day care is listed on their sign. He said they own two properties and he has a tenant and it has been a nightmare for him because he is a day sleeper.

Ms. Beasley stated you cannot see at the end of the driveway.

Mr. Beasley said there are well over one hundred entrances and exits.

Ms. Bunch stated VDOT did not have any issues. She said you would need to contact VDOT regarding that.

Mr. Beasley stated with their well and septic and with forty (40) dogs there, it could be an issue.

Ms. Bunch stated that is the reason we needed to know everything that they are doing. She noted it was not advertised for grooming and that is why the Health Department did not comment regarding that. She has to send two notices of them violating their operating conditions. She said they would need to come back to modify their application and take the request back to the Board to add any additional uses.

Ms. Beasley stated so many people come and go. She said there are too many dogs. She said nothing has been said about the doggie day care. She said there needs to be a limit.

Ms. Bunch stated they would need to come back before the Board for that. She said they will send a letter regarding the violation of the operating conditions. She stated if they decide to modify their Special Use Permit, you will receive notification as an adjacent property owner.

MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR

IRA BIGGS, AGENT FOR COUNTRY LANDMARKS, LLC - EXTENSION OF TIME REQUEST

A request by Ira Biggs, agent for Country Landmarks, LLC, for a Special Use Permit to modify operating conditions of Special Use Permit #15-35 to allow additional storage area and to increase the number of trips per day on property it owns, located on the north side of Skyview Circle adjacent to the railroad, just east of the intersection of Lee Highway (Route 11) and Skyview Circle, Verona in the Beverley Manor District.

Vice Chairman Coyner moved to approve the ninety (90) day Extension of Time.

Ms. Brown seconded the motion, which carried with a 3-0 vote, with Mr. Shreckhise abstaining from the vote due to a conflict of interest.

STAFF REPORT

18-42	Pennwood D, LLC
18-43	Scotland Land Company, LLC
18-44	Robert L. Whitson

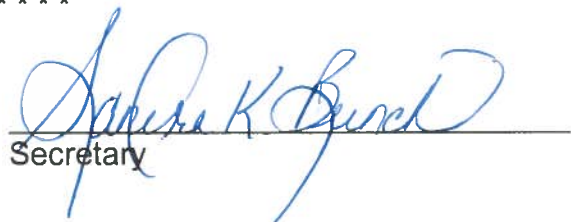
Ms. Bunch stated SUP#18-42 and SUP#18-43 were both denied. She said SUP#18-44 is in compliance.

Ms. Bunch discussed the court cases with the Board.

There being no further business to come before the Board, the meeting was adjourned.



 Chairwoman



 Secretary

