

June 3, 2021

PRESENT: Justine D. Tilghman, Chair  
 George A. Coyner, II, Vice Chair  
 Thomas W. Bailey  
 Mark L. Glover  
 Thomas V. Thacker  
 Sandra K. Bunch, Zoning Administrator and Secretary  
 James R. Benkahla, County Attorney  
 John R. Wilkinson, Director of Community Development  
 Kathleen Keffer, Assistant County Attorney  
 Beatrice B. Cardellicchio-Weber, Executive Secretary

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, June 3, 2021 at 9:30 A.M., in the County Government Center, Verona, Virginia.

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The staff briefing was held at 9:30 a.m. in the Board of Supervisors Conference Room where the Zoning Administrator reviewed the staff report for each request on the Board's agenda. Copies of the staff reports can be found in the Community Development Department.

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**VIEWINGS**

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

- MICHAEL GARNETT - SPECIAL USE PERMIT
- TRAVIS LACOMBE, AGENT FOR 1 TRIBE, LLC - SPECIAL USE PERMIT
- TRAVIS BYERLY - SPECIAL USE PERMIT
- BENJAMIN R. GEE - SPECIAL USE PERMIT
- ERIC PISK, AGENT FOR THE FARM AT CHAPEL HILL, LLC - 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.

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 Chair

  
 Secretary

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Mark L. Glover  
Thomas V. Thacker  
Sandra K. Bunch, Zoning Administrator and Secretary  
James R. Benkahla, County Attorney  
Beatrice B. Cardelicchio-Weber, Executive Secretary

ABSENT: None

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VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, June 3, 2021, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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**MINUTES**

Mr. Coyner moved that the minutes from the May 6, 2021, meeting be approved.

Mr. Glover seconded the motion, which carried unanimously.

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**RESOLUTION – DAISY BROWN**

Chair Tilghman read the resolution for Ms. Brown:

WHEREAS, the County of Augusta in consideration of the long and dedicated service of Daisy A. Brown; and

WHEREAS, Ms. Brown diligently and faithfully served the citizens of Augusta County for twenty years in the capacity of a public servant; and

WHEREAS, Ms. Brown was appointed to the Augusta County Board of Zoning Appeals in February 2001 and completed her service in February 2021; and

June 3, 2021

WHEREAS, the Augusta County Board of Zoning Appeals is desirous of expressing their appreciation and thanks to Ms. Brown for her dedicated service.

NOW, THEREFORE BE IT RESOLVED that the Augusta County Board of Zoning Appeals does hereby publicly thank Ms. Brown for her service which she has so aptly fulfilled with diligence and concern for the citizens of Augusta County.

BE IT FURTHER RESOLVED, that this resolution be adopted by the Board of Zoning Appeals, recorded in its minutes, and a copy forwarded to Ms. Brown.

Mr. Coyner moved to adopt the resolution.

Mr. Thacker seconded the motion, which carried unanimously.

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### **MICHAEL GARNETT - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Michael Garnett, for a Special Use Permit to have a gunsmithing business within an attached garage on property owned by Jessica Sheffer located at 1059 North River Road, Mount Solon in the North River District.

Mr. Michael Garnett stated this is mainly just a hobby for me. There are no customers coming and going and no selling of firearms. It is all machine work. He has a full time job at McKee so this is just a hobby.

Chair Tilghman said the Board visited the site this morning. She asked if the applicant is working in the garage?

Mr. Garnett said yes in the attached garage.

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

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

Mr. Bailey stated this would be an asset to the County. He moved to approve the request with the following conditions:

**Pre-Conditions:**

None

**Operating Conditions:**

1. Be permitted to have gunsmithing within the existing attached garage.
2. No employees.
3. No test firing on site.
4. Site be kept neat and orderly.
5. Applicant must reside on premises.

Mr. Coyner seconded the motion, which carried unanimously.

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**TRAVIS LACOMBE, AGENT FOR 1 TRIBE, LLC - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Travis Lacombe, agent for 1 Tribe, LLC, for a Special Use Permit to have short term rentals within the principal dwelling and to have a detached accessory dwelling unit for a facility operator on property owned by Kimball E. Stowers, Trustee of the Kimball E. Stowers Rev. Trust located at 1082 Todd Road, Mount Sidney in the North River District.

Mr. Travis Lacombe stated he is the Manager for 1 Tribe, LLC.

Chair Tilghman asked if there is someone living there full time?

Mr. Lacombe stated yes.

Mr. Coyner stated originally there was another use for the building.

Mr. Lacombe stated they are still using it for retreats as well. We hold retreats and workshops but with Covid-19 pretty much everything was on hold last year. We are basically looking to supplement our retreat business but we still want to do those things as well.

June 3, 2021

Chair Tilghman asked if the retreats would be the first choice?

Mr. Lacombe stated yes.

Chair Tilghman stated the maximum occupancy is eight (8) people.

Mr. Lacombe stated there would be seven (7) in the big house and one (1) person staying in the apartment.

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

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

Chair Tilghman stated the Board visited the site this morning and it is such a beautiful setting and as long as there is someone on premise it should be fine.

Mr. Thacker moved to approve the request with the following conditions:

**Pre-Condition:**

1. Provide a copy of the Certificate of Occupancy for the accessory dwelling unit to the Community Development Department.

**Operating Conditions:**

1. Be permitted to use the existing four (4) bedroom dwelling for short term vacation rental.
2. Be limited to a maximum occupancy not exceeding eight (8) people including the principal dwelling and the accessory dwelling unit.
3. Facility operator must reside on premises.
4. Site be kept neat and orderly.

Mr. Glover seconded the motion, which carried unanimously.

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June 3, 2021

### **TRAVIS BYERLY - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Travis Byerly, for a Special Use Permit to have a short term vacation rental on property owned by Imogene T. Michael located at 4327 Scenic Highway, Mount Solon in the North River District.

Mr. Travis Byerly stated he would like to operate a short term vacation rental.

Chair Tilghman asked if the applicant lives at the site?

Mr. Byerly said he lives next door.

Mr. Coyner asked if the applicant plans on marketing this on the internet?

Mr. Byerly stated yes.

Ms. Bunch said when we met I was under the impression you were going to live there so we will need to see the lease agreement for a facility operator based on the ordinance.

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

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

Mr. Coyner stated the Board visited the site this morning and it is a really nice piece of property. He moved to approve the request with the following conditions:

#### **Pre-Conditions:**

None

#### **Operating Conditions:**

1. Be permitted to lease three (3) bedrooms within dwelling for short term rentals.
2. Be limited to a maximum of six (6) people occupying the dwelling as limited by the Health Department.

June 3, 2021

3. Applicant reside on premise or the adjoining property and be available during rental.
4. Site be kept neat and orderly.

Mr. Bailey seconded the motion, which carried unanimously.

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### **BENJAMIN R. GEE - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Benjamin R. Gee, for a Special Use Permit to have a firewood processing business and outdoor storage of firewood and logs on property he owns located at 2986 Churchville Avenue, Churchville in the Pastures District.

Mr. Benjamin Gee stated he is asking for a permit to process firewood. He has been operating here since 2003. He would like to continue expanding the business and process firewood on site.

Mr. Coyner stated there are some issues about the floodplain.

Mr. Gee said we have addressed those and submitted a site plan. He noted that everything is out of the floodplain. We have plenty of room to operate out of the floodplain. There were still some equipment all the way down next to the river but we are working with that equipment right now clearing brush out and we will be burning it soon. The equipment is there for the cleanup.

Mr. Coyner said the Board saw a marker in the grass at the site.

Mr. Gee said it is from our engineer. The marker is the farthest spot in the field that he is allowed to operate.

Mr. Coyner asked if it can be permanently marked?

Mr. Gee said it would be tough to permanently mark it because we go through there a dozen times a day. I can put some columns out there so you can see it but as far as a permanent marker, it is not possible. I am getting ready to harvest soon and I may have to take that marker down during that process. He said they are operating on the gravel path and you will be able to tell where they are operating.

June 3, 2021

Chair Tilghman asked about pre-condition #3 and if there is enough room to plant trees?

Mr. Gee said he really has tried to let stuff grow up and there are some new trees that are planted on the west end. The whole point of this is that we want to be seen. People drive by and see a pile of mulch or firewood, they will want to buy it. We do not want to screen but so much, we are willing to let what is there grow up.

Chair Tilghman said that you cannot screen from the Staunton side. She asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. Steve East, 409 Vinegar Hill Road, Churchville, stated he is here representing his mother who cannot be here. She owns the property right across the river from Mr. Gee's property. He said his family has no objection, and in fact it is their desire that it is convenient to be able to buy firewood and hopes the Board grant the request.

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

There being none, Chair Tilghman declared the public hearing closed. She said this area over the years has been very flood prone which is why we are concerned because we do not want logs or mulch or anything else floating down the river.

Mr. Bailey said the pre-conditions state to mark the floodplain area. He said we have to come up with something to mark the floodplain maybe with a stake and flags especially during inspections to be sure that nothing goes into the floodplain.

Chair Tilghman said a large marker to reasonably view where the floodplain is. She said it could be down on the edge of the property possibly. She said she can understand him not wanting to put it in the middle of the field.

Mr. Glover said what the Board wants is so that we can see it visibly with the understanding that if he had to move it to bale hay, that is fine, but it goes immediately back up and cannot be down for consecutive days.

Mr. Gee said he would be glad to put a stake on the very far end against the bank but there is a huge oak tree out in the middle of the hay field now. The tree could be a marker because it will be in the way. He said he can set a marker against the bank that will not interfere and you will know that it is so many feet out into the field.

Chair Tilghman said the applicant can paint the marker red if needed.



June 3, 2021

Mr. Coyner said the applicant should be receptive to having the boundary marked so that when the inspector goes out, we do not have to do a big investigation to find out where it is.

Mr. Gee said if he takes it out, he will make sure it gets put back in as close as possible.

Mr. Thacker asked how many logs in the splitting operation?

Mr. Gee said several truck loads because it is their objective to sell firewood and not keep the logs there.

Mr. Thacker said he is concerned about 200 logs and if it floods then you have logs going down to the bridge.

Mr. Gee said we will keep them out of the flood zone. He said he has never seen water up to the road.

Mr. Thacker said it could be an eyesore if you got a great big pile of logs there. He asked if he would object to having a 50 log limit? He said we are in the business of keeping the County safe.

Mr. Gee said 100 logs would be better. He said you know we are in business to make money but we have done everything that is required by the County and the Federal government. We are asking to store our stuff in that area based on the official FEMA map. I will not put an overabundance of items in there. He said the objective is to get it cut as fast as possible, so we can sell it.

Mr. Coyner asked if a limit of 100 would be adequate?

Mr. Gee said if that is what you want to make me do I guess that is what I have to do. I am not saying I am okay with that but I will do it. I do not agree with it because I have made the area out of the floodplain. It might get water in at some time, but that is not what FEMA says and we have other permits now that say we can use that area for storage.

Mr. Glover moved to approve the request with the following conditions:

June 3, 2021

**Pre-Conditions:**

1. Applicant submit an updated site plan to include the firewood processing location, and size of the outdoor storage and display areas.
2. Applicant remove all prohibited items from the floodplain, including the storage container within thirty (30) days.
3. Applicant plant an additional row of six (6') foot high staggered evergreen trees along Route 250 to provide adequate screening of the firewood operation.
4. The area for the firewood operation be permanently marked to identify the floodplain.

**Operating Conditions:**

1. All equipment and materials be kept in the designated areas shown on the site plan.
2. All logs, equipment, and firewood be kept at least twenty-five (25') feet from the edge of pavement.
3. Applicant be limited to one hundred (100) logs stored onsite.
4. No more than seven (7) employees on site per Health Department comments.
5. No processing firewood on Sunday.
6. No materials or equipment subject to flotation be kept in the floodplain, and the limits of the floodplain be permanently marked on site to ensure compliance.
7. All other operating conditions of SUP #03-43, SUP #05-64, and SUP #08-54 remain in effect.

Mr. Coyner seconded the motion, which carried unanimously.

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June 3, 2021

**CODY MARSHALL - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Cody Marshall, for a Special Use Permit to have a towing service and a motor vehicle impound yard on property owned by Gratton Payne Fisher, III located at 1160 Lee Jackson Highway, Staunton in the Riverheads District.

Mr. Cody Marshall stated he would like to have an impound yard for his towing company. He said the area is already fenced.

Chair Tilghman asked how many vehicles would be onsite?

Mr. Marshall said twenty (20).

Mr. Coyner asked how long will the vehicles stay there?

Mr. Marshall said about ninety (90) days.

Chair Tilghman discussed the recommended staff conditions with the applicant. She asked if there was anyone wishing to speak in favor, or in opposition to the request?

Mr. Gratton Fisher stated he is the owner of the land. He said he used to have a trucking business there. He also has some stipulations for the business to operate. I try and be a good neighbor. He is not planning on going in and out of the site frequently and they will try and respect the church in the area.

Ms. Mildred Cooper, 1077 Lee Jackson Highway, Staunton stated that she lives across from Mr. Fisher's property. She said she is not here really either in support or opposition of the request. My concern is that he has actually been conducting business without the proper permitting and that is not a good way to begin business in the area. On the positive side, whoever maintains the property, takes really good care of the property, it's really well maintained at least from what you see from where I live. My family's been in this area for many years and over the last 40 plus years we and other neighbors have been affected negatively when businesses have said and promised things at Special Use Permit meetings then a few years later those same businesses have seemingly forgotten what was allowed in their permits, they have pushed the envelope, they have not followed the stipulations allowed by the permit that they received, and they were just free to do whatever they wanted. This is so unfair to those of us who live near the business, it is unfair to neighbors who should have the right to enjoy the visual and recreational use of their own property and not worry about the negative effects of local businesses who have

June 3, 2021

ignored permit limits. Often what these businesses do can also have a negative effect on the financial value of the neighboring property. I am here just to ask you to be specific in the regulations or stipulations you put on this business and very specific on limits on how far he can extend this business and how large you allow him to be.

Mr. Joe Cochran, 1319 Lee Jackson Highway, Staunton, stated he lives across the street. I have no problem with this as long as he keeps his business behind the hill and he maintains the place beautifully. I have no problem with the business but I do not want any buildings or structures between Route 11 and the top of the hill.

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

There being none, Chair Tilghman asked the applicant to speak in rebuttal. She asked if the applicant keeps all of the vehicles behind the screened fence?

Mr. Marshall stated yes because all are not registered.

Mr. Bailey asked how many tow trucks do you have at your house?

Mr. Marshall stated one but there is also one kept at my grandmother's house.

Mr. Bailey stated condition #4 will keep the applicant from expanding further.

Chair Tilghman declared the public hearing closed.

Mr. Coyner stated we need tow trucks to get cars off of the road. He noted it is a well maintained property and the property owner should be sure that all is handled correctly at the site. He moved to approve the request with the following conditions:

**Pre-Conditions:**

None

**Operating Conditions:**

1. Be limited to three (3) licensed commercial tow trucks at the site.
2. Be limited to one (1) employee per Health Department comments.

June 3, 2021

3. The six (6') foot high opaque privacy fence screening the impound yard must be maintained at all times.
4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside the designated impound area shown on the BZA sketch.
5. Site be kept neat and orderly.

Mr. Glover seconded the motion, which carried unanimously.

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**CHRIS KEMPTON, AGENT FOR SUN SHENANDOAH ACRES RV, LLC - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Chris Kempton, agent for Sun Shenandoah Acres RV, LLC, for a Special Use Permit to add a 30' x 50' pre-fab maintenance building to the existing campground and to add a 12'.6 x 57' porch and to structurally alter the roof system on the existing non-conforming arcade on property they own located at 256 and 348 Lake Road, Stuarts Draft in the South River District.

Mr. Chris Kempton stated they would like to construct a 30' x 50' pre-fab maintenance building and a 12' x 57' porch on what we used to call the blue building.

Chair Tilghman asked if they did not know that they needed a permit?

Mr. Kempton stated they had a contractor that was installing the roof and they said they did not need one.

Mr. Coyner asked if it would be any closer to the road?

Mr. Kempton stated it is going toward the lake, not the road.

Mr. Coyner asked when will they complete the project?

Mr. Kempton said as soon as we get the permit to do the work.

Chair Tilghman asked if the maintenance building will be in the back of the campground?

Mr. Kempton stated yes.

June 3, 2021

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

Ms. Elise Blacka, 351 Lake Road, Stuarts Draft, stated she neither is in opposition or in favor of this request. The last few years the applicant has moved forth with construction before permits are received. Is that what we can expect in the future? In December 2020 I asked for a five year plan for Shenandoah Acres that can be presented to the public. Chair Tilghman asked if there was anyone else wishing to speak regarding the request?

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

Mr. Kempton stated the proper permits will be pulled going forward. The neighbors have my number and they can call me anytime.

Chair Tilghman declared the public hearing closed.

Mr. Coyner stated the applicant plans on enhancing the roof without getting close to the road. He said the maintenance building will enhance the property. Mr. Coyner moved to approve the request with the following conditions:

**Pre-Conditions:**

1. Applicant submit an updated Erosion & Sediment Control Plan and Stormwater Management Plan to reflect the additional impervious areas.
2. Applicant obtain all necessary Building Permits and Demolition Permits and provide a copy to Community Development
3. Applicant submit a current map of the campground showing the locations and number of sewer connections within the campground to the Service Authority for approval and provide a copy to Community Development.

**Operating Conditions:**

1. Be permitted to place a new 30' X 50' pre-fab structure as shown on the site plan and to add a 12'.6" X 57' porch no closer to the road than the existing building and to add a new roof system to the existing non-conforming structure used as the Arcade.

June 3, 2021

2. All operating conditions of SUP #20-55 remain in effect.

Mr. Bailey seconded the motion, which carried unanimously.

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### **ERIC PISK, AGENT FOR THE FARM AT CHAPEL HILL, LLC - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Eric Pisk, agent for The Farm at Chapel Hill, LLC, for a Special Use Permit to construct a new building to be used as a special event facility and meeting place on property owned by The Farm at Chapel Hill, LLC, located at 194 Chapel Hill Lane, Weyers Cave in the Middle River District.

Mr. Eric Pisk presented a Power Point presentation to the Board (copy is in the file). He noted that this is a major unmet need in the County, whether it is Rockingham County or Augusta County, there are venues that generally handle 150 to 200 people max, but really nothing more than that size, outside of a couple of hotels, the Stonewall Jackson downtown, and the Madison Hotel in Harrisonburg. This provides a different type of venue, and of course, this would be a brand new facility. There would be a new entrance. The venue would be west of the driveway and the parking lot would handle the vehicles that would be coming to the event. I asked for seventy (70) events per year. This would be for weddings and fundraising events for charity work.

Mr. Coyner asked what type of building do you envision?

Mr. Ray Burkholder, Balzer and Associates, stated it is going to be very much more agricultural in style to look like a barn, essentially with lower elevation and earth tones and a metal roof.

Chair Tilghman asked if the structure would be one story?

Mr. Pisk stated yes.

Mr. Coyner asked if these events would be corporate meetings or conventions?

Mr. Pisk stated there is such an unmet need for wedding and event facilities that fit in that 250 to 350 range so we think we are going to be quite busy with that. A lot of folks cannot find wedding venues for their big family weddings and they do not want to go to a hotel. They do not want to have it inside of the Madison Hotel in Harrisonburg. In other areas there are event centers that can handle 300, 400 or 500 people.

June 3, 2021

Mr. Coyner said if the events last three to four hours and there are 400 people, there will be a tremendous amount of traffic on our roads.

Mr. Pisk stated the maximum would be 350 and we have some agreements in place with the Madison Hotel in Harrisonburg where people would stay if they came for a wedding and they could shuttle people out to this site to avoid many cars that actually come to the property. He said we have done quite a bit of research and planning.

Mr. Coyner asked if all music would be contained within the building?

Mr. Pisk said we would like the flexibility where we can actually open the walls, if you saw this event center down in Raleigh, you would be absolutely amazed of how beautiful it is, they can actually slide the walls back. He said we would face the event center towards the back of the river, and the music would be moving down towards the area where there are no current homes going down towards the back of the property. It is a long distance from the road to the river.

Mr. Coyner said seventy (70) events is a lot.

Mr. Pisk said we asked for seventy (70) because we plan on doing a fair amount of charity and fundraising events. In order for this to make sense from a business perspective, we have to have fifty (50) events that we can charge for. We may have fifteen (15) charity events in the first year.

Mr. Coyner asked if you envision weddings being spread out throughout the twelve (12) months?

Mr. Pisk stated from a business perspective it is a balancing act and if we can do fundraisers off of primetime wedding season, which obviously would be a big part of what we are doing, then we would spread it over the twelve (12) months. I believe it would be spread over April to late October or early November for weddings.

Mr. Coyner asked if the weddings would take place on the weekends?

Mr. Pisk said most of them would probably be the weekend where Friday and Saturday being the most popular days for weddings.

Mr. Thacker asked if he will provide a food service?



June 3, 2021

Mr. Pisk stated we have not decided yet. He said they have been working with Ray Burkholder with Balzer and Associates and with the Health Department trying to understand the direction if we actually build a kitchen inside the facility or if we have catering options which is what most of the wedding venues in this area do. I think it is probably due to capital expense and it is expensive to put a kitchen in and have that monitored, but we have not quite figured that out yet. He said he does know a fair amount of caterers that could handle bigger events. If it is going to be an actual service inside they would need a fairly decent size kitchen which would have to be included.

Mr. Coyner asked about the alcohol license?

Mr. Pisk said we have not made that decision yet on the direction to go on licensing for beverages for alcohol but we have been in touch with ABC. We would like to have that option because that would greatly restrict weddings by not having alcohol. He said he would hold the license.

Mr. Thacker asked if the existing barn and stables are staying on the property?

Mr. Pisk said yes. There are piles of dirt everywhere because we put in drain tiles into that area because it was so wet with the springs. We put a system in and we have been able to pull all of the water from the different springs. With the drain tiles in we are forcing it down into one area towards the north and it is working.

Mr. Coyner asked how does the horse barn fit into all of this?

Mr. Pisk said this is not part of this request. They are all on the east side of the driveway. This is on the west side which is completely a new facility.

Chair Tilghman asked how many cars can you hold in this parking area?

Mr. Pisk said 200. The parking area will be gravel.

Chair Tilghman asked if the circle driveway will be for deliveries?

Mr. Pisk said yes.

Chair Tilghman asked if the new entrance goes to the parking area?

Mr. Pisk stated yes.

June 3, 2021

Mr. Coyner asked if the new road will handle it all?

Mr. Pisk stated they would go down the existing road, but not the driveway, so you would enter that area to the left toward the north, just before you get to the driveway which is where VDOT recommended. He said the new road will take care of customers, business vehicles, and deliveries. He said the gate will be closed so when people come to the event, the only way they can go is either east on Chapel Hill or they can head into that parking lot.

Chair Tilghman asked if the open side of the building faces North River?

Mr. Pisk said it faces northeast. He said in the design you can slide the doors and pull them back so that the whole level is wide open.

Mr. Coyner asked if the area will be lit? He said there is a Lighting Ordinance in the County.

Mr. Pisk said he is not going to light the parking lot but he will have path lights to get to the venue.

Mr. Bailey said since you do not reside on the property will you have a facility manager?

Mr. Pisk said they will come during the events for now with the possibility of living at the site in the future.

Chair Tilghman asked if the applicant plans on renting the dwelling to the public?

Mr. Pisk stated no.

Mr. Coyner said sometimes weddings can carry on into the night. He noted that it takes a neighbor to be a neighbor.

Chair Tilghman said her biggest concern is this roadway and there is going to be a lot of traffic on a small road and to my knowledge there is no reason that it is going to be improved.

Mr. Pisk stated the road is a moderate volume so it definitely can handle the volume but the question is the dust. He said he is there pretty much every day at the farm and there is a fair amount of dust. They are working with VDOT to try to figure out how to knock the

June 3, 2021

dust down. The tar and chip process is viable. They cannot automatically do it, it has to be requested so if we get approved I will start that process.

Mr. Thacker asked if it would be possible to put some kind of signage up when you are having events on the property? He said by doing that the neighborhood would know that you have something going on that evening.

Mr. Pisk said he would have to do that on his property and I can even send a message out via email informing the neighbors to be on the lookout for traffic. He said as far as the noise and the lighting, we are going to keep the music so that it is not heading towards the neighbors. It will head down to the open area of the property.

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

Mr. Thomas Tourje, 11 Pebble Hall Lane, Weyers Cave, stated my wife and I walk most days down the road and have been very impressed with the improvements that have been made so far and the quality of the materials. The view is great. We are happy with this proposal for an agri-tourism type business, instead of 100 homes.

Mr. Lowell Heatwole, 825 Chapel Hill Lane, Weyers Cave, stated his property is adjoining on two sides and he has been an outstanding neighbor. He said they have cleaned the place up and I'm glad that most of this will stay in agriculture.

Mr. John Smith, 106 James Crawford Lane, Mount Sidney, stated he is the Pastor at Old Paths Baptist Church which is a mile from the facility that the requested venue will be. Our community is not the place for this establishment. I'm thankful to hear and appreciate that the first request was withdrawn but now here we are again, just under a new heading. He did not state that the taproom or brewery that has been withdrawn is off the table permanently. I am in opposition to this permit being given for this establishment because of the traffic. This will produce not only major traffic on Chapel Hill Lane but also Keezletown Road, which we already understand has a decent amount of traffic as well. The operating hours of this establishment can be a great concern because it poses a risk for us in our church. I know we are farmers and the farming community is going to basically be changed by the traffic and also with the music of the planned festivals. I'm not sure how they are going to deal with music, with this being phased down towards the river. He is not against economic development but I'm against things that do pose a risk to our community. Mr. Pisk is not even a resident of Augusta County, nor anyone that is involved in this even is, but yet it is going to disturb the lifestyles of many. He is requesting seventy (70) events per year with 350 attendees, and that is going to completely be out of

June 3, 2021

character with the neighboring properties. It is going to change things. The one gentleman says he enjoys walking but this is going to make a difference. This is going to be a concern. There is no way with that magnitude of events and a multitude of people attending that this will be a suitable establishment and with the recommendation of staff he said they are recommending fifty (50) events per year with 250 attendees and no more than three (3) weekends per month but that is still out of character for the neighboring properties. I think we need to understand that and take that into consideration because it does still pose a risk to us in this community, for two main reasons, traffic and alcohol use. Alcohol will be involved and it is going to have a negative impact and we need to understand that. I am going to give you some facts because I know it was mentioned before that people were talking from feelings. He discussed facts regarding the use of alcohol and the affects it has on us. We need to be reminded of that because it is going to cost us. I know we talked about economic development and also improving the County but the taxpayers pay. This is not going to end up being a benefit to us as a County. I am not against economic development but I just do not believe that this establishment should be in Weyers Cave due to the facts. We have Crosskeys Vineyards and a wedding venue, eight miles, where he is wanting to go to. Valley Pike Farmers Market Event Center is 2.4 miles. I appreciate his efforts and I know he has made some changes. He asked the Board to listen to the people that are here and that will be affected by this because we are the neighbors. He asked everyone who is here today and if it is going to affect you, to please stand. These are the people that are affected negatively. These are our children. These are our families. It sounds good on paper but it is not. It is not the place for this type of establishment. Mr. Thacker said he is in the business of keeping our County safe when he was talking about the logs. I have dealt with it and I have seen the effects of it. We are asking you to please decide what is best for our small farming community. Please consider the impact it has on us because it is going to have an impact. He submitted a petition with 172 signed signatures with people saying look, we do not want this. How do you approve something that is going to affect so many people in our community. Mr. Pisk is not part of this County but we are. Please do not allow for this to take place. If one thing gets put in, what else will follow.

Mr. Cameron Little, 1703 Forest Avenue, Grottoes, stated he is a firefighter EMT here in Augusta County. As the preacher said, I do not want to beat a dead horse too much but I'm concerned about the traffic. One of his bigger concerns coming from a firefighter EMT standpoint is a request for 350 attendees with up to 200 vehicles for each event seems like a good bit. Having 250 attendees there cuts the vehicles back down to at least 125 vehicles per Mr. Pisk's calculations with the number of attendees per vehicle. I have read the staff recommending conditions. In the staff comments, you mentioned that a venue like this would not be out of place in Augusta County and I agree with that, but you also have to think about a lot of other venues like this you don't have to drive through a small

June 3, 2021

rural community to get to it. You do not have to get through any major communities to get there for Crosskeys. Stable Craft which was mentioned last time you drive right on Madrid Road. Being a firefighter, I was able to hear and even see the effects of motor vehicle crashes right outside of Chapel Hill. Around a year ago when a car crashed into one of the houses right off the side of the road. There are many houses up and down that road. There are two churches right off the road and also the fire department. When you have added traffic from such events everybody leaving at one time, and only one stoplight in this little community. The fire department is not very far from the establishment, nor the stoplight. With that added traffic it makes it a little bit harder for the fire department to respond to calls safely in a timely manner because they are having to deal with the added traffic. The Shenandoah Valley is known for having something called karst topography which makes it possible for us to have the springs. Mr. Pisk has told us that there is at least five springs on this property. When you start adding weight of up to 200 vehicles on top of a spring you run into the effects of a sinkhole. I wanted to look at it not just from a natural resource side but also the safety side of it because, as Mr. Thacker said, I'm also in the business of keeping the County safe as a firefighter and EMT and with the sinkhole that is not very safe. It is not a matter of if one will open but when.

Mr. Eugene R. Lareau, 7040 Beards Ford Road, Mt. Crawford, read the agri-tourism definition. I will be pleased when the County gets a noise ordinance that they can enforce. There are times it does not smell very good. At times this area is very noisy with irrigation pumps 24 hours a day, but it is zoned agricultural. I'm speaking against this enterprise which does not fit the guidelines.

Mr. Barth Berry, 2188 Roman Road, Staunton, stated he is speaking in opposition today. The factory I worked for which was adjacent to Middle River, I have to take water samples every month and submitted them to DEQ because we have parking lots and there is runoff. I have to take chlorine and test for basic chemicals and runoff from cars. I'm concerned about the springs. He said with five springs and a venue with 350 cars and 70 plus events a year, we are going to have an environmental impact, and I believe North River would be a Chesapeake Bay watershed. The County will be spending more money in the future to put the stoplight down there as well as widen the roads. It will be the taxpayers that are going to pay a lot more. I work for AccuTech (ASR) so the parking lot is about 500 yards from the river. I know there is a lot of good cars on the road but there are a lot of cars that do drip a lot of oil and people are not aware of it. I think that there will be an environmental impact and just wonder if there has been an environmental study done on this area because there will be impact to North River, due to runoff from the business. The property being so close to the river will be impacted.

June 3, 2021

Ms. Linda Greene, 64 Chapel Hill Lane, Weyers Cave, stated right up the road from this property is the Weyers Cave Community Center which can handle between 350 to 400 people. We have weddings there and a lot of different events. There is also one on Route 340 which is a very large event center. This is in the realm of facts, not feelings. I counted vehicles on Saturday afternoon from 3:30 to 4:45 and five vehicles went by. On Friday evening from 7:00 to 8:00 one car went down the road so that shows on a Friday evening there is not much traffic right now. On Monday, from 12:00 to 2:00 four cars, one feed truck and a truck with a trailer drove by. Saturday evening from 6:00 to 7:15, a pickup truck and two cars. This road is not used much. I was almost hit head on by a truck that was turning into Chapel Hill Lane. He did not even come over to turn into the road, he just cut right across. Keezletown Road is like a racetrack. So in my observation, there is not a lot of traffic on Chapel Hill Lane, so where and how can we handle 150 more cars a day when I can sit out there and count, very few. I would like to read a quote made by one of the supervisors years ago. "We will never pave this road because the traffic will go too fast and it is a dirt road." When a wedding event is over and all the guests leave at the same time, the traffic of 100 to 125 cars will totally block the residents of Chapel Hill Lane to access their driveways. That leaves us locked from everything if we cannot get out on the roadway. We will need the Sheriff's Department down there to direct traffic. Some facts, not feelings, 99% of the people that live on Chapel Hill Lane have resided there for over 32 years. Mr. Pisk wants to come in and destroy our beautiful neighborhood with traffic, amplified music, hundreds of strangers who will have no regard for our well-being, because they will come in and then they will go. Will he be open seven days a week, all hours of the day and night? We will awake to a sunrise wedding or listen to amplified music until midnight with an evening wedding event. Noise just does not go that way. It goes everywhere. I can hear the music from the lawn parties. I can hear the train whistle and the Interstate traffic, so please do not tell me that we will not hear this thing. It will not affect Mr. Pisk because he will not live there. Our area is also the home of many wild animals which will be affected. What amount of taxes will the County receive from this project? Will they be taxed as a business, or is he still under agricultural tax and will it be enough to cover the extra expense for road work because there will be a lot of repairs on that road? Chapel Hill Lane is located in the Agricultural Conservation Area. She read statements out of the Comprehensive Plan. What he is doing has nothing to do with agriculture and it is not tourism agriculture either because he is having an event center that will really have nothing to do with agriculture. The gentleman from VDOT told me that if they did come and pave he said it just would not stop in his driveway, they would have to continue it on down and there would be a new bridge installed. I have questions and concerns that I would like answered. I know last time a lot of them were not answered, but I'll read them off for you: Would like to see a copy of the five year plan. What are his projections for the next year, two or three years? Will he be coming back to add more Special Use Permits for other venues like a bed and breakfast or restaurant or

June 3, 2021

bring back the taproom again? Would he include or need a liquor license through the property? Will he apply for a resort permit which gives us a wide range and he is able to do a whole lot of different things. Does he plan to expand the projects in four different phases? What are his products and his projected sales in the first year of operation, his second, and third year? What are some of the events he is planning for the event center? He really could not give an answer to that either. What does the music festival consist of? Is it indoor or outdoor? Mr. Pisk is opening up his building on the end so that means people will be outside sitting around. It does not say that they are just staying in the building, it leads to open areas. How many people is he expecting for the events or weddings and how much parking for how many cars? I have heard the answer to that was 200. How many days a week? What times of the day and evening? How many employees? How many different events can we plan for a day or week? Will it be catered food trucks or prepared on site in the new building with a kitchen? If you are getting into that you are getting on to a little more deep and more expanded events if you are going to have a kitchen in there. At the community center we have a kitchen. She asked who will carry the ABC license, the farm or venue? Will there be amplified music? What time of the day or night? What are the operating hours? VDOT says the 126 acres adequately accommodates all of the traffic flow? In the picture it shows he is in one small area and it does not show that he has a lot of room to do that. What is the amount of acres he has plotted off for the wedding event center? Has he applied for soil and erosion permits? What has the Chesapeake Bay project said about draining into the river? As citizens, are we to be mindful of his operating hours and not walk the road from 4:00 p.m. to 9:00 p.m. We are concerned citizens and taxpayers of Augusta County. We are opposed to this Special Use Permit. I am a property owner whose land borders his business venture. Like before, Mr. Pisk has never spoken to me, last time or this time, and he has not spoken to any of his other neighbors either. There is a lot of us here representing them. He has not made any effort to try to talk to us about this. I am unable to compromise the integrity of our farming community to this project because this will alter our community and lives forever.

Ms. Melinda Gartzke, 441 Chapel Hill Lane, Weyers Cave stated she is questioning about the 70 events. How long is an event, one day, three days, how long is this event and could it just be the same thing under a little bit of a different name? There will be an impact with sinkholes because of the springs. There are springs in the area where the proposed parking lot is in front of the event center. If there is a parking lot close to that spring and even if it is diverted into North River or wherever. Then aren't you in essence giving a pathway, even if that parking lot is up from the river. Are you giving a pathway through perhaps this marshy area or this spring right down into the river? Another thing that was mentioned was could Mr. Pisk just say, I am having an event, well, couldn't we say, I'm going out for a walk. Why is one preferred over the other in this? Why is it that

June 3, 2021

the residents who have lived there 30 plus years, have less of an ability to use this environment, this neighborhood. Why is it that the person who is coming in with this has such an unmet need but you should go check on the internet and see how many event centers there are around the Valley that were not there probably five or 10 years ago, if it is an unmet need, that is for a larger number of people than perhaps it needs to be in a location, either on a main road or closer to Staunton or Harrisonburg. If people were going to need to be shuttled from that other facility, maybe they could just have their event at the hotel and all these people will not necessarily be shuttled. There might be a vision for agri-tourism but this project is not specifically agri-tourism that I could see. One other thing would be that I have here is the memo from VDOT and it does not state that Chapel Hill Lane is moderate, it states it is a low volume gravel roadway. I do not know what the differentiation would be but I think our other neighbor here is validated that it is pretty low volume. The people who live there already enjoy the rural lifestyle that they live, if they wanted the convenience of a venue right next door to them or if they wanted the convenience of Walmart, five minutes away they would not live out here in rural Augusta County for all this time, but they are willing to make the drive because they like the environment that they live in. Please consider the neighbors who already exist. We need to consider the residents who already reside here in this area that enjoy the natural beauty. The barn is not going to be preserved but rather tore down but if you check out the historical house, you know the other buildings that would be built out front of that, you may want to question it from the standpoint of just the natural and historic beauty. I am not sure how it all fits in but I think the numbers are huge for this area. The traffic and everything has already been spoken to but just wanted to let you know that road was considered a low volume.

Ms. Martha Livick, 54 Fountain Cave Road, Grottoes, stated there is a low volume of traffic that we have on our road. Chapel Hill Road is a scenic road that I was bringing my grandchildren down to sightsee. A lot of the issues that were brought up today were the same as the ones brought up on May 6<sup>th</sup> so I am not going to go into all that. As you can see there is a big opposition to this being brought in on Chapel Hill Lane. I am just asking that you consider what everybody has been saying. The first proposal was withdrawn and there was consideration that it was not needed. I just want you to rethink some of those opposition ideas and open up your heart for what is good for Augusta County.

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

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

Mr. Burkholder stated he addressed some of these concerns last time. We need to get through the site plan process but this is just the first steps because there is a lot more



June 3, 2021

permitting that has to go through. We have to deal with work quality and the Chesapeake Bay. This is no different than parking in your driveway. They have to meet the state guidelines and Health Department. We are talking up to 350 people so that is up to 200 cars most likely, we are probably talking about 150 range. A lot of times, we have 150 cars going to every little church within our community with no backups of traffic. It does not create that kind of congestion with everybody leaving all at one time. They trickle out so just kind of keep that in perspective. This is not out of character with what is happening in many of our community centers or churches today.

Chair Tilghman asked if there are more restrictions on parking lots?

Mr. Burkholder stated probably they had an issue with what was being put in the ground out there at ASR. I think because they are under different regulations because of what has happened. There are standards on any subdivision, industrial, commercial office and it does not matter because we have the same state regulations as across the whole State of Virginia. This is all about the Chesapeake Bay and it all happens in all the headwaters, it does not need to be right on a creek.

Mr. Pisk stated we have done a significant amount of work to actually make the property look so much better than it was. There were comments like big businesses brought in, I can assure you this is not a big business. My family has been thinking about doing something like this for a long time. We just did not find the right location or property to do this and we believe no doubt that we have. What we are trying to do is to be part of the culture, the landscape, the lay of the land, the agricultural side of this is all part of what we are trying to do with the property. My neighbor, Linda, her husband farms my land and makes hay on my land. We want to keep as much agriculture on that 126 acres, which is a fair amount of land. We are a good distance away from the road where the event center is going to be and we are only talking about a handful of acres on the 126 acres. So the character of the landscape is not going to be changed, we are just going to add to it. The fact that I do not yet live on the property, does not mean I do not care about the property or the neighbors. I have spoken to most of the neighbors about this. I reached out to again as many people as I possibly could about this. There are very few neighbors that are actually pushing back against this. With regards to traffic, all my neighbors that I spoke to on the road, they did not come to this forum to support but they had no issues, and that is why obviously they are not here talking about the issue of traffic. It will be about one event per week. That goes to the comment made on the loss of ability to the neighbors to use the road to walk and stuff like that, maybe two events per week. The idea of sunrise weddings and really loud events, I have never been to a sunrise wedding and I have been to a lot of weddings but not even sure if I have ever heard of that. The community center is close by but the event center is going to be a different type of event,

June 3, 2021

it is going to be much more formal. That is what we are trying to do because the need is unmet right now in the County. I do appreciate people who have concerns about the land and the springs with regard to karst topography and sinkholes. I can assure you that Mr. Burkholder is a civil engineer and he knows much more about land and to not build anything on certain structural rock. I appreciate the comments but these are comments that actually do not hold any water in what we are trying to accomplish here on the property. We had a Special Use Permit for a taproom and now we are doing a wedding venue and events. It baffles my mind when I heard it. I never thought I would hear a Pastor pushback on a wedding day. The springs are not going to impact the venue. We would not build an event center on a spring. I believe Ray is probably the best person to answer that question on whether the springs are going to be affected but they are not. The noise is going to be controlled. It is a wedding and we are going to structurally build it so that it has the least effect on neighbors. There are ordinances in play but again we will take that into account when we fully designed this. Several folks spoke on the idea that I am not part of the County. I am a landowner in Augusta County. I do not live on the property yet but there is a good likelihood I will be, because every time I go out there, I realize how incredibly beautiful it is, but to make comments like I am not part of the County, I believe I am part of the County. I have a deed. I am trying to be neighborly, we are trying to do some really great things with this event center, and a lot of charity work. The majority of the time it will be a Friday or a Saturday because that is generally when weddings and these type of events will happen. Will it be concentrated at certain times of the year, I would assume so. But it will be spread out over the 12 months. January and February are probably going to be pretty slow. We did ask for 70 events but one of the operating conditions stated limited to 50 events per year but we would do 10-15 charitable events every year. That will take away from the opportunity to have the weddings. I would like to continue to ask for the 70 events and for a maximum of 300 persons per event because of the unmet need for an event center of this size and quality.

Chair Tilghman asked if at this point are you not planning to put a kitchen in?

Mr. Pisk stated we are working on that because we are still trying to figure out the sewer and possibly using the waste treatment facility.

Chair Tilghman asked if there is sewer available?

Mr. Burkholder stated there is some capacity there but we have actually applied to have the Comprehensive Plan amended so that it could be a possibility because there is a desire to have it because it is so close. We are trying to work with the Service Authority to see what that option is.

June 3, 2021

Mr. Coyner stated right now you are looking at a private system.

Mr. Burkholder stated that is correct if the Comprehensive Plan is not amended, we would have to put in a private system. The whole plan would depend on how many events and if they can support the kitchen and the septic. A lot of this would have to be phased in, as well.

Mr. Coyner asked if the applicant will drill a well?

Mr. Pisk stated yes. The water quality will be monitored.

Chair Tilghman asked about the applicant having a liquor license?

Mr. Pisk stated it is a choice if you want to have alcohol at the weddings or not.

Mr. Coyner stated an event is still an event and the conditions do read no more than three (3) weekends a month even if it is a charity or wedding.

Mr. Pisk stated there is a significant cost to putting in a septic, public sewer would be great if approved. This is a significant capital expenditure and that is why I'm asking for 70 events for this quality of an event center. The charity events takes away from the business model but it is part of it.

Chair Tilghman declared the public hearing closed.

Mr. Glover thanked Mr. Pisk for his presentation and the comments from everyone as well. It is good to see the community represented. We have had an opportunity to go out to this venue twice now, and I can greatly appreciate the concerns of the road. It is a very narrow road and on both occasions that we went out, first time we met a vehicle coming towards us, which as you know is dangerous, and then today there was a truck that was going down that same road which appeared to be a pretty good rate of speed. Given the road conditions and also the fact that many neighbors do not feel that this location is appropriate. The road itself is narrow and the volume of traffic that would be coming down that road, I do not feel that it is adequate for the type of road or the type of traffic that will be encountered. The building does not match up well with agricultural aspects of the area so I would move that the request be denied based on the concerns with the road and not balancing out well with the other community aspects.

June 3, 2021

Mr. Coyner seconded the motion. I would echo what Mr. Glover said. He said his other concern was that 70 events starting out is a tremendous amount to ask the neighborhood to endure. It may be needed but it should be on a better road than here.

Chair Tilghman stated I understand you wanting to have more events but we always try to give the neighbors a break and not have weddings every weekend. Some of you say that you walk on that road right now but it is a dangerous road.

Mr. Bailey said this is a low volume road as per VDOT as far as the number of vehicles going across there.

Mr. Thacker stated this is a nice piece of property and feels that it should be shared with the neighbors. There is only a short distance that you are on Chapel Hill Lane and I feel like the risk is minimal.

The motion carried with a 4-1 vote with Mr. Thacker being in opposition to the motion.

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**MARK BABER – APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR**

This being the date and time advertised to consider an appeal by Mark Baber to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the parking or storing of wrecked or junk/inoperable vehicles in public view or the operation of a salvage/impound yard on property owned by SAKAE, LLC located in the southeast quadrant of the intersection of East Side Highway (Route 340) and Crimora Mine Road (Route 612) in the Middle River District.

Ms. Bunch stated she is the Zoning Administrator for Augusta County. She said that Mr. Baber is appealing a decision I made regarding property he leases from SAKAE, LLC and is in violation of the Zoning Ordinance. I received complaints regarding wrecked or inoperable vehicles being stored on the property. Mr. Baber submitted a site plan and administrative permit application to have a motor vehicle sales lot on this property and the site plan was approved on April 6, 2018 to have 23 vehicles for sale on this property and the motor vehicle sales lot permit was issued on April 10, 2018 with the understanding written on the permit that no wrecked vehicles or inoperable vehicles that could not pass inspection, be brought to the site unless he had an impound yard meeting the requirements of Section 25-58 of our ordinance, meaning that it has to be screened from public view. That was right on the application that he signed. Ms. Bunch read the chronology of events (copy is in the file). There were times when the property was in

June 3, 2021

compliance but there were several times that the property was not in compliance, and it continues to go back and forth. Mr. Baber could apply for an administrative permit to have an impound yard but he would have to screen those vehicles from public view and not have them sitting outside. It is not customary to have wrecked vehicles in a used car lot. I do not really think those vehicles would pass inspection. The white truck in the back looks like it has been rolled. I am requesting that you uphold my decision because the property has been in violation in the past.

Mr. Jeff Adams stated that he represents Mark Baber. The property is currently in compliance. There are no vehicles at all on the property right now. As to the history of the property, a little background is helpful to understand what has been going on and what the disconnect has been and to provide some clarity for my client going forward. I think one of the disconnects is there is a belief that my client is running a towing operation out of this property, and the other property that is on your agenda today, and that is not true. He does run a towing operation but he has a separate impound yard that meets all the requirements of zoning law, and that is not at all a subject for you today. When he tows cars and when cars come in that are inoperable go to that impound yard, and they are not stored or kept at either of the properties that are the subject of today's hearing. I will tell you that periodically he does auction those vehicles. He does not keep them on the property but this property is convenient property for him to exhibit them for auction. This puts him actually in a difficult position because if the position of the County is correct, he would be required to if he had those vehicles on this property for any length of time at all to put an impound lot there. What is happening here is for a very short period of time, he has periodically put vehicles on this property that may not be operable, in order that they might be sold and removed again within in many cases days you have had complaints on the County's own account in which there was an inspection within just a few days, and no vehicles were found on the property. If having a vehicle on that property even for any transitory period of time is a violation that puts my client in the difficult situation of either applying for and putting an impound lot on the property or finding another location. To be clear, I do not think the County has the power to force him to do that. It can order him not to have the cars on the property, but it cannot force him to put in the impound lot. If he does do that the concern is that it could be more unsightly and more problematic for his neighbors, then this very transitory and temporary use. I put back to you and to the County, would that cure be worse than the disease, would it create a higher burden rather than a lower burden on the surrounding landowners. Certainly when it comes to this hearing today, he is fully in compliance, and there was no non-compliance at this time and that was what was requested in the notice of violation that he remove the vehicles within 14 days, and he is in compliance with that. To that degree we believe that this complaint no longer needs to be resolved by you because he has complied with the demand of the County with regard to this property. I also wanted to mention realizing that

June 3, 2021

there are two different claims pending. We have letters of support in general from a number of adjoining landowners, which I wanted to just note and put at least excerpts of those and the entire letter in the record. Timothy Ponton, who is one of the adjoining neighbors, has written a letter of support and by way of excerpts he has said that "I have lived here next to this service station for years, I see no problem with anything they've been doing there or on the lot across the street and I'm glad to have them as neighbors." There is also a letter from Gary Scrogam who talks about "The degree to which Mr. Baber and these companies have improved the lot. We appreciate the work Mr. Baber has done, and supports his efforts in this endeavor." He is the landowner but he is also actually an adjacent landowner and has two lots right in that area. So it is not just that he is a landowner but also his other lot that is not the least in my mind impinged on to the extent that anyone is impinged on by my clients activities. Joseph Barrett who also has written in support of my client and I have those letters and they can be made available to the Board. We believe that in response to the latest notice of violation my client has put the property in compliance within the timeframe that was set forth. We believe there is no current violation. If it is the wisdom of this body, that even temporary usage of the lot in this manner is a technical violation it does throw on him a difficult decision that we believe will impinge even in a more greater way on his neighbors in that area.

Mr. Coyner stated the restrictions on him are no different than anyone else.

Mr. Adams asked if the Board viewed the property today?

Chair Tilghman stated they did not view the property today because we knew it was currently in compliance. I see that this happens over and over again. This is not a one shot deal. We are seeing more than one or two vehicles that are not operable that really should not be on a used car lot. Is he putting them there because he is going to auction them off?

Mr. Adams stated that is correct. I'm not sure that distinction holds in the ordinance. I think the question is of inoperability rather than the manner in which the vehicle is sold.

Chair Tilghman asked if he auctions the vehicles on site?

Mr. Adams stated yes. He is selling them and our position is he is certainly not storing and keeping them there. If the position of the Board is that they would require an impound lot then that is something we will have to consider. I certainly do not believe the County can order him to place an impoundment lot on the property. The original notice of violation, which again to reiterate, we believe that he is now in compliance and there is no current violation but he has fully complied within the timeframe of the notice.

June 3, 2021

Mr. Thacker said they should be in the impound area before they are auctioned off. He asked why can't people just go to the impound lot?

Mr. Adams stated it is difficult to have an impound lot and it is less attractive. It is not open and people can come at the time of their choosing as opposed to a locked secured impound lot where someone has to be given access to come and see the vehicles.

Mr. Mark Baber stated how can you sell something or display it, even for a day or two when it is behind that wall.

Mr. Bailey asked if there is a separate impound lot at another location?

Mr. Adams stated the impound lot is at a separate location. He stated it is difficult to display them and give people access at their own time. They may want to come and view the potential items for sale ahead of time and it is easier if they are displayed and sold in an area that is not secured.

Mr. Bailey asked if those vehicles are purchased at an auction?

Mr. Baber stated we get vehicles all different ways. One of the prime ways is when citizens receive letters from the County about junk vehicles and we purchase those and sell them.

Mr. Bailey stated it is in violation of the ordinance if they are in public view.

Mr. Adams stated we want to emphasize that they are not being stored there or kept there for any length of time. The storage is happening at an impound lot and they are not being kept there for an extended period of time.

Mr. Coyner asked if they are always taken to the impound lot first?

Mr. Adams stated yes.

Ms. Wendy Baber asked what is the definition of inoperable because I think that is the key issue. She said there are some there that run and just because they are wrecked does not make them inoperable.

Mr. Glover said one of the requirements would be that they would have to be able to pass inspection. The vehicles you are referring to, would they pass inspection?

June 3, 2021

Mr. Adams said that is not actually what the code says.

Ms. Bunch says valid inspection and license.

Mr. Glover asked if those have valid inspections?

Mr. Baber said some do and some do not.

Ms. Megan Baber, 2149 East Side Highway, Crimora, stated she is the Office Manager. We do a wide variety of things with vehicles as you will see when we get to the other side of the road and in all fairness, I feel like we should probably discuss both sides before a full decision is made. We do tow vehicles. The towed vehicles go to our impound yard and after 30 days that we have had those vehicles and no one has come and claimed them, we are required by state law to sell them at a public auction. We would do that inside of our current impound yard except for the fact that we also have current vehicles in there as well. And so if you know somebody came in with a DUI and they have not paid their tow fee yet, they can get in their car because we open this lot and they can get into their car and get whatever they need. The same is true for 30 day impound by the state police. If we open our impound lot it will be opening it up for the public. It also opens up cars that are not for auction. So in order to get rid of these vehicles we bring them there for days at a time. The County checks days later and they are no longer there because that is the only legal way that we are allowed to sell them. However, we also have other vehicles that we purchased. We will purchase vehicles, say somebody has untagged unregistered vehicles in their yard and the County is after them and they have to go. They call us and we purchase by check or cash those vehicles. Some of them are without the tires and they will not pass inspection. I do not feel like it is fair because we need some kind of fair amount of time that the vehicles will sit there in order to become operable. I do say that the definition that is listed in the Zoning Ordinance. It is kind of all over the place. One thing lists that it is not in operable condition and that is kind of the same thing that the word inoperable says, it is not very descriptive. Another says that the necessary parts for a vehicle to operate including the engine can be removed but 60 days later it becomes inoperable, if I take the engine out of my car, I am pretty sure it is not going to operate today. So there is a flaw. We feel like to a certain degree they should not apply. We have a motor vehicle dealer license through the Motor Vehicle Dealer Board and in order to get that license, we have to apply with the Zoning Administrator for the permit, which she spoke on. She signed off on both sides of the road for us to have a vehicle sales lot. When we get a car that we are going to sell by Motor Vehicle Dealer Board definition, it has to be inspected before we sell it, it does not have to be inspected before we put it out for sale. It just has to have proof that it was inspected, whether it passes or



June 3, 2021

fails. We have sold plenty of cars that do not pass inspection and I keep trying to personally keep track of that myself. I keep a list of everything that immediately needs to pass inspection and let the person know if the car may or may not pass inspection. The issue was with passing state inspection and yes, eventually it should pass the inspection but it does not require it by the DMV Board.

Chair Tilghman said what we are looking at is we are trying to keep all the motor vehicle lots looking decent. We would not expect to see cars sitting on a lot that may have their front hood off.

Ms. Megan Baber said we are trying to follow the law but the way that we are supposed to get rid of these vehicles feel like we are being punished. Charlie Obaugh's dealership is in the County and I can promise you that every vehicle there does not have a valid license plate on it because the dealer does not have to. We have dealer plates that we are assigned so we can drive on the road legally, so I feel like with that being said, the tag issue should be a non-issue.

Chair Tilghman said the purpose of this ordinance is that we have car lots that we have vehicles that look like you could get into the car and drive off. The paint job may not be the greatest and they may be 10 years old, they do not have to be brand new.

Ms. Megan Baber said we try to do that as much as possible but we still are having an issue with complaints. We are not going to have tags because the state says they are not required. We are always going to be out of compliance across the street selling motor vehicle sales even though there is no damage on the vehicle whatsoever.

Chair Tilghman asked do you have to get a new sticker before the car is sold? Like if I go to a new car dealer, there will not be a sticker on the car if it is brand new but will be there before you leave the lot.

Ms. Megan Baber stated that is my argument. I have pictures that the Zoning Administrator also has of vehicles, one in particular at least three different times, that there was no damage to the vehicle whatsoever and we have personally driven it up and down the road. It has a valid state inspection sticker on it and it has no tags and they have taken pictures of it. That is my argument. You do not want to see wrecked vehicles or junk, although there are no actual written down instructions that say what those are. I can understand that but I feel like we are being harassed on those vehicles that do not have tags or inspection stickers, but we are allowed to do that because we are an automotive dealer.

June 3, 2021

Mr. Adams stated I just want to clarify one thing. I understand what you are getting at with regard to the curb appeal about the attractiveness or unattractiveness. Those really are not the criteria in the code. The code does define wrecked cars but it does not define the cosmetic quality of cars, and that is part of the challenge that my clients are dealing with which I think you have heard, which is that according to a strict reading of the code, if a vehicle did not have tags on it at any given time, it would be considered inoperable. And clearly, that cannot be the standard because if that were the case then, every car dealer, new and used in the County would always be out of compliance. Likewise with the inspection sticker so if they can get some assurance that is not how this is going to be enforced that would help them significantly with that issue because it does seem that there is an inherent tension between how the code is defining inoperable vehicles and how zoning permits used and new car lots to actually sell the cars. I also would just like to reiterate what Ms. Baber said, again, even during the short period of time that these cars have been on this property, there is a very conscious effort to move them as far away from the road as possible and to shield them as much as possible so there is a desire to protect the interests of adjoining landowners.

Ms. Bunch said we understand that a car lot does not have tags and inspections but on properties zoned General Business it does prohibit junkyards. There is a bigger difference than selling a car and having a junkyard. I can read the definition of the junkyard and it also states inoperable is partially or totally dismantled. I understand that you have to sell them but you cannot display them out for sale if they are wrecked. We have other impound lots that are under the same guidelines as they are. We are looking at rolled cars and ones that are crushed so that is the issue. Junkyards are not permitted.

Mr. Benkahla stated if inoperable motor vehicle equipment is anticipated then the vehicles should have an impound yard that is clearly delineated on the site plan that is in compliance with Section 25-58 under the definition.

The Board decided to hear both of Mr. Baber's appeals and vote once they have both been discussed.

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June 3, 2021

**MARK BABER, AGENT FOR MAD PROPERTIES, LLC - APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR**

This being the date and time advertised to consider an appeal by Mark Baber, agent for Mad Properties, LLC, to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the storage of wrecked or inoperable/unlicensed vehicles, development within a designated floodplain in violation of the Augusta County Floodplain Ordinance and a semi-trailer possibly being used for storage on property they own located at 1864 East Side Highway, Crimora in the Middle River District.

Ms. Bunch stated Mr. Baber is appealing a decision I made regarding his property. This one has two separate violations that we issued on the property. We recently received complaints at this site. We inspected the property and Mr. Baber submitted a site plan on May 8, 2017 to have a motor vehicle display lot on this property as well as the existing convenience store and gas station. The site plan he submitted showed a grand total of 12 parking spaces, six of which are required for the gas station and convenience store. So that left him with six that he could use to display vehicles, those being shown up in front along Route 340 and 612. Some off to the side of the building, none behind the building. The site plan was approved and he was also issued a motor vehicle sales lot administrative permit on May 8, 2017 with the same wording that any vehicles that could not pass inspection or inoperable junk vehicles had to be in an impound yard. The property is in General Business so junkyards are not permitted. Ms. Bunch read the chronology of events (copy is in the file). I am asking that you uphold my decision.

Mr. Adams stated there are some challenges that this business faces in running its business and maintaining strict compliance with the Zoning Ordinances of the County. As to this property we vigorously contest basically all of these claims. With regard to the alleged encroachment into the floodplain, I have a letter here from Jeff Gentry and he is here to speak to the Board on behalf of Mr. Baber. The propane tank is not in the floodplain, that is not even a question. He will concede that the retaining wall does encroach into the floodplain horizontally and vertically. My client was using basically a plat and a map and was measuring basically from the creek, and it turns out that in good faith, he did encroach briefly. The encroachment is a minimal effect in the event of a 100 year flood. The propane tank is not in the floodplain.

Mr. Jeff Gentry with EGS & Associates stated we did go out and locate the wall and it was about 75 feet in length. The first five feet of that wall is actually the 100 year floodplain. If you look at the flood study for this you will find that the floodplain does not overtop Route 340 and it is contained inside box culverts based on flood elevations. In looking at this property, the floodplain kind of widens. The maximum encroachment is 9 ½ feet. I am

June 3, 2021

not denying that it is not in the floodplain technically but theoretically, it is probably not going to have any effect on flood heights.

Chair Tilghman asked if the propane tank is in the floodplain?

Mr. Gentry stated no. The propane tank is behind the wall. We have all of the topographic survey of the site. Technically, it is in a floodplain but I think even though it is in the floodplain, it is going to have a very minimal effect on float height. The floodplain heights are basically what we work from because the FEMA maps. Everything we do in our world relative to floodplain is based off of elevations. Even though it is 10 feet wide, it is very shallow, and I believe the Floodplain Ordinance will allow encroachments into the floodplain as long as you do not have a detrimental effect in flood heights.

Ms. Bunch stated it will allow it if they apply for a Variance but you would have to submit a Flood Development Plan approved by our engineer that states that it is not going to have any adverse impact on the neighboring properties and then a Variance would have to be considered before this Board.

Mr. Larry Parr, 37 Crimora Mine Road, Crimora, stated he walked in water over his knees from both sides of the creek. The state would not even let me put rock to keep the water from coming in under my house and fence. He has to try to keep the water from the road coming down into his yard. He said he owns on both sides of the creek. The dirt near the tank is on my property. I have my own survey. I want to be asked before my land is used.

Mr. Gentry stated based on our survey, the wall is entirely on Mr. Baber's property. He said that he stands behind his survey work.

Mr. Adams stated they can see the encroachment not as to the propane tank but as to the wall. We believe that Mr. Gentry's testimony is pretty compelling of that encroachment. If a Variance is required, I would ask this Board to reserve judgment on this matter. Given my clients good faith in this matter and allowing them to submit a petition for that Variance if he decides not to remove the wall, which obviously will be his choice. But again, we think there is complete action in good faith and as to the wall we do not have any material effect as to 100 year flood levels. As to the other claims and I want to make sure I understand them, as much as the towing operation is not run out of this location and it is not, let's keep in mind this location is both a vehicle repair garage as well as a vehicle sales location, and so it is not a surprise that vehicles that have been damaged will be coming and going to his garage that repairs most vehicles. I just do not think that there is any inherent violation there particularly when the timeline is that these

June 3, 2021

vehicles come and go very quickly as they would normally do for a garage. With regard to the truck without tags. Certainly as a person who sells motor vehicles we were not going to strictly enforce the requirement that every vehicle would have a license plate at all times, given the fact that dealers receive dealer plates and no dealer has license plates on all of the dealer vehicles at any given time. Yet that is one of the things that was tagged with the violation and I do not think that can be a violation consistent with the conversation that we had just previously. As to the trailer, the definition of sales lot under the ordinance, it says vehicle sales lot, among the things that can be kept are recreational vehicles, campers, trailers, farm machinery, etc. I do not think that having a trailer is a violation. He said that trailer was inventory for sale. There is not a requirement that any of the vehicles that are being kept for sale have individual for sale signs. Nowhere does it say that about parking in these parking spots.

Chair Tilghman asked how many trailers were there?

Mr. Adams stated now none but there was one trailer. And that trailer has now been moved. It was part of the inventory, it was for sale as it is consistent with the usage. There is two different operations happening on this property in particular because you have a repair garage as well as an auto vehicle lot. The usage as long as it is appropriate for either of those uses is permissible. When we talk about usage whether it is the untagged truck, whether it is vehicles on a rollback that had been damaged, you know, the truck is entirely consistent with the use of a vehicle sales lot. The damage of a vehicle on a rollback is entirely consistent with the usage as a garage for the repair of vehicles. I think that my clients feel they are making a very good faith effort to comply, and I would extend that good faith effort to again the retaining wall. We are not trying to avoid the fact that you know that the methodology he used to cite was incorrect. There was not only a good faith effort to be compliant, but we believe that the operations of this lot in particular were in all entirely compliant. Certainly there is no current performance on whatever standard, you would use for an inoperable vehicle, and how long such a vehicle could be on a wrecker, outside of garage before it is brought in for service. I would ask you to frankly reject all of them in their particulars with the only possible exception of reserving judgment on the wall encroachment if in fact the Variance is necessary to allow my client the time to pursue that Variance.

Mr. Coyner stated there are so many parking spaces on a site plan, but it did not indicate where the trailer was and it did not show vehicles in those spaces.

Mr. Benkahla stated there are six designated spaces on the site plan. The truck nor the trailer were on designated spots, hence the applicant is not in compliance with the site plan.

June 3, 2021

Mr. Baber stated he applied for the license in October, 2017 for automobile sales. The state requires you to have 10 parking spots and to be able to display vehicles. They do not care where they are at, but you have to go to the County for them to say where they will be. Jeff Gentry actually helped him with this. I never did understand why they added more spots but because it is a store we needed extra parking spots. Finally, in 2017 they were designated but I was told but I do not have this in writing that I did not have to park those cars in those spots, just as long as they were not within 25 feet from the right-of-way. The trailer would be setting behind this station because there is room to park it there because it is 45 feet long. It did have a for sale sign on it.

Chair Tilghman asked how many parking spaces are there at that garage total?

Mr. Baber stated we designated on paper 13 but there is 17 there because there were four existing that were in the right-of-way that they would not let us use.

The Board looked at the site plan.

Mr. Baber stated there are four (4) to the right of the building, six (6) to the left, and two (2) on the back so it is actually twelve (12) spots. There are still four (4) others that are in that curve actually in the right-of-way but they are not marked because they encroach.

Ms. Bunch stated if they are not marked on the site plan. They cannot use them.

Mr. Adams stated from our perspective that is an example of our clients being compliant, they are trying to stay within the letter of the law.

Mr. Thacker asked if the garage is a body shop or mechanical garage?

Mr. Baber stated it is a mechanical garage.

Mr. Thacker stated the car on the rollback was sitting there waiting to go to the garage.

Mr. Baber said it was being towed and waiting to go in the garage for repair. He asked if there is anything in the statute on the number of days that you can have a vehicle on a tow truck?

Ms. Bunch stated you cannot have outdoor storage in General Business without a Special Use Permit and you cannot have a junkyard in General Business. He said that his towing

June 3, 2021

operation is not there but the documents that I signed for the DMV have that address listed and any towing operation requires an impound yard.

Mr. Adams stated there is really a confusion about these operations and in a way that is actually very unfair to my client. In some degree the towing operation is wherever he is and so administratively does that mean that they take phone calls and receive phone calls, or does it mean he does not drive past this facility if he is coming from one place. The key is, there is a separate impound yard, which is what the regulations require, there is an impound yard, it is fully compliant, it is not before this Board and to that degree he is compliant. Are we saying that he can only drive from the impound yard, pick something up and not come back and can never park the rollback for any limited period of time someplace else. I just do not think there is anything in the regulations that require that, what the regulations are dealing with is in regard to the junkyards and inoperable vehicle storage, and I just do not think you can call that storage precisely because he has an active towing operation and that vehicle will have to go off that tow truck whether it lands here because it is being repaired here, which some of the vehicles are, or whether it lands in the impound yard. It is not landing here and being stored here and certainly, I do not think you can argue that it is being stored on the back of our truck.

Ms. Bunch stated his towing operation on the DMV form that I signed states that he will be in compliance, and he has this address listed as his towing site so it is clear that there are vehicles being brought to the site. If they are going to be brought there they need to be in an impound area. It gives the appearance of a junkyard. If the vehicles for sale are not in their designated areas on the site plan, then they are in violation of the site plan. The administrative permit clearly states that they store the vehicles within the display areas clearly delineated on the site plan. We have twelve (12) parking spaces on that site plan. Six (6) are for the existing structure and six (6) can be used to display vehicles for sale.

Mr. Adams stated I need to speak to that issue because the notice of violation talked about wrecked vehicles being stored. It did not mention anything about vehicles not being in approved parking areas so I do not believe that this is properly before the Board.

Ms. Bunch stated the reason that I noted the inoperable vehicles behind the building is that they were not licensed and inspected. There should be no display area behind the garage. It is still inoperable if displayed in the areas not approved.

Mr. Adams stated that there was not adequate notice to my client of the issue of the actual location of the vehicles. The second notice certified letter dated April 7, 2020

June 3, 2021

basically has four demands of my client. He said he still has questions about how inoperable is defined. He read each of the demands listed in the violation letter.

Ms. Bunch stated she never received an updated site plan.

Mr. Adams stated there is nothing about where the vehicles are parked in the violation letter.

Chair Tilghman asked if there was anyone wishing to speak in favor, or in opposition to both of these requests?

Mr. Douglas Wright, 91 Crimora Station Lane, Crimora, stated people in Crimora are seeing totaled vehicles. I saw a vehicle on the rollback for 4-5 days. He said most junkyards have a fenced in cage and the vehicles are kept behind the fence. People in Crimora are getting tired of looking at this. Gas and oil could potentially be getting in the creek bed.

Mr. Parr stated he does not want a junkyard in his backyard.

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

There being none, Chair Tilghman declared the public hearing closed on both appeals.

Mr. Coyner stated they have received complaints and then the violation gets fixed and then it reoccurs numerous times. He moved to uphold the decision of the Zoning Administrator on the SAKAE, LLC property for the reasons stated previously.

Mr. Thacker seconded the motion, which carried unanimously.

Ms. Bunch stated she has not received any information. She said the propane filling station requires an electrical permit through the Building Inspection Office. We will need to see the documentation for the floodplain because the floodplain was never addressed, therefore, it is in violation. She asked if there is fill in the floodplain?

Mr. Gentry stated the wall is in the floodplain. The propane tank is out of the floodplain. He can submit a Floodplain Development Plan and Variance for the wall.

Ms. Bunch stated she needed that documentation but it was never provided. She said the retaining wall would need a Variance and a Floodplain Development Plan and if he wants to have an area behind the building to have vehicles for sale we would need a



revised site plan. She stated the County Engineer reviews the plan for floodplain compliance.

Mr. Glover moved to uphold the decision of the Zoning Administrator of the inoperable vehicles and ask that the applicant apply for a Variance and update the site plan on the Mad Properties, LLC property.

Mr. Adams stated the evidence is clear about the wall and they can pursue the Variance. The Board may want to review the letter in violation sent to his client. They have been in compliance with the vehicles other than the issue of the floodplain.

Mr. Benkahla stated the Board may want this appeal to be held for review until the next meeting in order to review the floodplain issue.

Mr. Glover retracted his previous motion. He moved to continue the Mad Properties, LLC appeal at the July 1, 2021 meeting.

Mr. Coyner seconded the motion, which carried unanimously.

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**OLD BUSINESS**

A request by Eric Pisk, agent for The Farm at Chapel Hill, LLC, for a Special Use Permit to construct a 4,800 square foot taproom, to renovate the existing 160' x 60' stable to be used as a taproom and eating area, to have outdoor storage of five (5) food trucks/trailers, two (2) mobile beer taps and to have active and passive recreation on property owned by The Farm at Chapel Hill, LLC, located at 194 Chapel Hill Lane, Weyers Cave in the Middle River District. - Tabled at the May 6, 2021 Meeting -

**WITHDRAWN**

The applicant withdrew this request.

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**STAFF REPORT**

- 20-29            Jessica L. Weinstock
- 20-30            Willard H. or Mary Ellen Showalter
- 20-31            Zachary A. Dean
- 20-32            Nu-Valley Enterprises, Inc.

June 3, 2021

Ms. Bunch stated she sent the applicant a letter because they have not applied for their permits yet for SUP#20-29. She said SUP#20-30 is in compliance. She noted that SUP#20-31 had one vehicle outside the storage area, therefore, she sent the applicant a letter. She stated that SUP#20-32 is in compliance.

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Mr. Benkahla discussed the court cases with the Board.

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

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Chair

  
Secretary