

November 4, 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
 Leslie Tate, Senior Planner
 Caroline Stoerker, Planner I
 Beatrice B. Cardellicchio-Weber, Executive Secretary

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, November 4, 2021 at 9:30 A.M., in the County Government Center, Verona, Virginia.

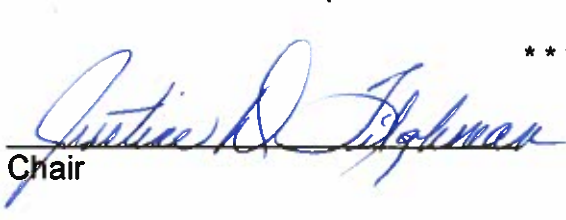
The staff briefing was held at 9:30 a.m. in the Community Development Conference Room where the Zoning Administrator reviewed the staff report for each request on the Board's agenda. Copies of the staff reports can be found in the Community Development Department.

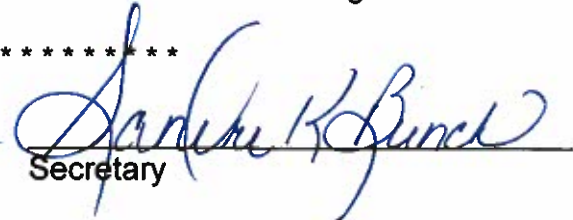
VIEWINGS

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

- RANDALL CALDWELL, AGENT FOR MMJ REAL ESTATE, LLC - SPECIAL USE PERMIT
- TIMOTHY SMITH AND MICHELE KIELTY, AGENT FOR SMITH KIELTY FAMILY TRUST - SPECIAL USE PERMIT
- TIMOTHY W. OR JULIA ANN SURRATT - SPECIAL USE PERMIT
- MARK A. KINCAID - SPECIAL USE PERMIT
- IRA J. BIGGS - SPECIAL USE PERMIT
- ALEXANDER DENSON, AGENT FOR WAYNE AVENUE SOLAR I, 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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Beatrice B. Cardellicchio-Weber, Executive Secretary

ABSENT: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, November 4, 2021, at 1:30 P.M., in the County Government Center, Verona, Virginia....

MINUTES

Mr. Coyner moved that the minutes from the October 7, 2021, meeting be approved.

Mr. Glover seconded the motion, which carried unanimously.

ZONING ADMINISTRATOR OF THE YEAR

Chair Tilghman recognized Sandra Bunch for receiving an award as Zoning Administrator of the Year from the Virginia Association of Zoning Officials. We are very pleased that she was honored because we all know she does a good job.

RANDALL CALDWELL, AGENT FOR MMJ REAL ESTATE, LLC - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Randall Caldwell, agent for MMJ Real Estate, LLC, for a Special Use Permit to continue the mini-

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warehouse facility and to have outdoor storage of RV's, boats, and licensed vehicles on property they own, located at 1462 East Side Highway, Waynesboro in the Middle River District.

Mr. Randall Caldwell stated I am the owner of the property. I purchased this last month and are looking to keep it all the same as it has been used.

Chair Tilghman said then there would be no changes at this time.

Mr. Caldwell stated that is correct.

Mr. Coyner stated the Board received a complaint about lighting that was changed.

Mr. Caldwell stated he was not aware of any changes but we can certainly look into it and downsize the lights if need be. One of the neighbor's manages this property.

Mr. Coyner stated the Board visited the site this morning. He said this is a neat property.

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. Bailey stated there is no change in the operation of the facility. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Maximum of thirty-five (35) vehicles including RVs, boats, trailers, and licensed vehicles be kept in the designated areas shown on the site plan.
2. No junk or inoperable vehicles, RVs, or junk boats or parts of vehicles, RVs, or boats be permitted onsite.

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- 3. No tractor trailers.
- 4. Site be kept neat and orderly.

Mr. Coyner seconded the motion, which carried unanimously.

TIMOTHY SMITH AND MICHELE KIELTY, AGENT FOR SMITH KIELTY FAMILY TRUST - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Timothy Smith and Michele Kielty, agent for Smith Kielty Family Trust, for a Special Use Permit to have a short term vacation rental on property they own, located at 2708 Barrenridge Road, Staunton in the Beverley Manor District.

Mr. Timothy Smith stated he is the owner of the property and would like to use this as a short term rental.

Chair Tilghman asked the applicant if he plans on living at the neighbors when rented?

Mr. Smith stated we will stay with my nephew who lives next door when the property is rented.

Chair Tilghman asked if they plan on booking rentals online?

Mr. Smith stated yes.

Mr. Coyner asked if the applicant plans on renting during the week or weekends?

Mr. Smith stated primarily weekends but would be open to whatever will work.

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. Thacker stated this is a very nice piece of property and it is desirable for a weekend getaway. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Applicant be permitted to lease the three (3) bedroom dwelling for short term rentals.
2. The total occupancy shall not exceed six (6) persons maximum.
3. The applicant or a facility operator must reside on premise.
4. Site be kept neat and orderly.

Mr. Coyner stated the view is beautiful at this site.

Mr. Glover seconded the motion, which carried unanimously.

TIMOTHY W. OR JULIA ANN SURRATT - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Timothy W. or Julia Ann Surratt, for a Special Use Permit to construct two (2) accessory buildings exceeding the nine hundred (900) square feet total aggregate allowed on property they own, located at 552 Keezletown Road, Weyers Cave in the Middle River District.

Chair Tilghman asked if the garage will be towards the back of the property?

Mr. Timothy Surratt stated yes.

Chair Tilghman stated it looks like it will be adjacent to the neighbor's garage.

Mr. Surratt stated yes, the building will be 35' from his garage.

Chair Tilghman asked where would the other building be?

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Mr. Surratt stated to the right of the garage.

Mr. Coyner asked about the little building at the site?

Mr. Surratt stated that will be removed.

Mr. Bailey asked if the structure will be for your personal use?

Mr. Surratt stated yes.

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. The property is well kept and this would not be out of character with the surrounding area. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Applicant be limited to a 24' x 32' garage and a 10' x 16' accessory building.
2. Applicant obtain all necessary building permits and inspections.
3. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
4. Site be kept neat and orderly.
5. No further expansion.

Mr. Thacker seconded the motion, which carried unanimously.

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MARK A. KINCAID - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Mark A. Kincaid, for a Special Use Permit to have a motor vehicle and tractor repair business on property he owns, located at 1870 Calf Mountain Road, Waynesboro in the Wayne District.

Mr. Mark Kincaid stated I want to work on tractors, cars, and pickup trucks in my garage.

Mr. Coyner asked if this is just side work?

Mr. Kincaid stated he resigned from his job in August and now he plans on doing this and working on the farm.

Mr. Coyner asked if family members will help?

Mr. Kincaid stated he has two (2) twin boys that will help with the business.

Mr. Coyner asked if they will have outside help?

Mr. Kincaid stated no.

Chair Tilghman stated the Board saw a number of vehicles at the site today. She asked if they are your personal vehicles?

Mr. Kincaid stated yes the VW bugs are mine. There are four of us living there and we have several vehicles.

Chair Tilghman asked if there will be vehicles stored onsite?

Mr. Kincaid stated that is not the plan but if I had to, it would be behind the garage.

Mr. Coyner stated the applicant should be sure that they do not accumulate a lot of vehicles at the site.

Mr. Kincaid stated they will keep the property well maintained.

Mr. Coyner asked how long have you been there?

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Mr. Kincaid stated fifteen (15) years.

Mr. Thacker asked if the 70' x 100' vehicle area will be fenced?

Mr. Kincaid stated there is a natural buffer area on two (2) sides. There will be an eight (8') foot fence on the other sides of the property.

Mr. Glover asked if the applicant will be advertising or just operating by word of mouth?

Mr. Kincaid stated word of mouth.

Mr. Coyner asked if the property goes down to the creek?

Mr. Kincaid stated yes. The creek goes through our property.

Mr. Bailey asked if customers will come to the house?

Mr. Kincaid stated yes to either drop off or pickup their vehicles.

Ms. Rebecca Kincaid stated she will advertise her husband's business online.

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. Glover stated the Board viewed the property this morning. He said there has been no concerns from the neighbors. He moved to approve the request with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be permitted to use the existing 30' x 50' garage for tractor and motor vehicle repair and to establish a 70' x 100' vehicle impound area behind the garage.

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2. The 70' x 100' impound area be screened by natural vegetation on the eastern and southern boundary lines and the existing eight (8') foot high wooden privacy fence remain along the western boundary line and be maintained.
3. All natural vegetation and trees remain.
4. Hours of operation be Monday – Saturday, 8:00 a.m. to 7:00 p.m.
5. No Sunday work.
6. No employees other than family members.
7. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
8. Site be kept neat and orderly.

Mr. Bailey seconded the motion, which carried unanimously.

IRA J. BIGGS - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Ira J. Biggs, for a Special Use Permit to construct mini-warehouses on property owned by Normel, Inc., located at 21 Laurel Hill Road, Verona in the Beverley Manor District.

Mr. Ray Burkholder with Balzer and Associates is here to represent Ira Biggs. They plan on creating the site plan and working with VDOT on the entrance. He said they can use the existing entrance of the carwash as well as have an entrance on Route 11.

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

Mr. Fred Wills, PO Box 133, Verona, stated he is the Chair Trustee for the Verona United Methodist Church who is responsible for the cemetery. I want to ensure that no extra stormwater comes onto the cemetery and the retention pond not be put against the cemetery. I do think this is a good use of the property.

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

There being none, Chair Tilghman asked the applicant to address the concerns of the neighbor.

Mr. Burkholder stated everything will drain south away from the cemetery.

Chair Tilghman declared the public hearing closed.

Mr. Thacker stated this is a good use of the site. There is already a concrete pad there. There will be some traffic but not a big amount of daily traffic coming to the site.

Mr. Coyner stated the option of coming in on Route 11 or Route 612 is great. He moved to approve the request with the following conditions:

Pre-Conditions:

1. Submit site plan meeting the requirements of Section 25-673 "Site Plan Contents" of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies including a complete Erosion and Sediment Control Plan and Stormwater Management Plan.
2. Applicant obtain building permit and provide a copy to Community Development.

Operating Conditions:

1. All buildings and structures must be setback at least two hundred (200') feet from Lee Highway (Route 11).
2. No activities such as sales, repairs, painting, or servicing of goods, equipment, or vehicles shall be permitted inside or outside the mini-warehouse units.
3. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.
4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
5. Site be kept neat and orderly.

Mr. Thacker seconded the motion, which carried unanimously.

ALEXANDER DENSON, AGENT FOR WAYNE AVENUE SOLAR I, LLC - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Alexander Denson, agent for Wayne Avenue Solar I, LLC, for a Special Use Permit for approval of a small solar energy site on property owned by Rae Enterprises, LLC, located along the south side of Wayne Avenue, Stuarts Draft in the South River District.

Ms. Jessie Robinson with Borrego and Mr. John Bennett with AES presented a Power Point Presentation to the Board (copy is in the file).

Mr. Coyner asked if the panels tilt?

Ms. Robinson stated yes.

Mr. Coyner asked what is the height of the panels?

Mr. Bennett stated fifteen (15') feet at the highest.

Mr. Coyner asked what is the height off of the ground?

Mr. Bennett stated the lowest point is 10".

Mr. Coyner asked if the applicant would be receptive to having sheep on the property to maintain the land?

Ms. Robinson stated that is not currently in the plan and we have not done it before but we are open to it.

Mr. Coyner asked what is the fence height?

Ms. Robinson stated seven (7') feet per electrical code.

Chair Tilghman stated this site is in the middle of the property. She asked if the land can still be farmed?

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Ms. Robinson stated there is an access road that runs parallel to the railroad west and east. The parcel on the left is a different parcel and there is a ditch that runs through the center of the property. There currently is an underground power line and they are working with Dominion to move it.

Chair Tilghman stated the applicant should leave room for a potential future greenway. One has not been established yet but there is a potential of a greenway in the future. The greenway cannot be put against the railroad.

Mr. Bennett stated there is 150' from the railroad right-of-way to our fence.

Mr. Coyner stated this is good level ground so you probably will not disturb much soil.

Mr. Bennett stated there will be minimal grading. At the closure of the project the ground will be restored to the pre-existing ground.

Mr. Coyner asked if they are post driven?

Mr. Bennett stated yes post driven into the ground.

Mr. Coyner asked if the project is for twenty (20) years?

Ms. Robinson stated yes with an option to extend up to forty (40) in five (5) year increments.

Chair Tilghman asked if they have looked at other projects on this property?

Ms. Robinson stated right now only one in terms of the interconnection. We only have one request before the Board.

Mr. Coyner asked what is the timeline for the project?

Ms. Robinson stated this will go to Dominion court and then it will essentially be ready to go. We will take the construction out to bid and then the project will be built.

Mr. Coyner asked what is the timeframe for construction?

Ms. Robinson stated four (4) to six (6) months for a small scale system.

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Mr. Coyner asked about maintenance of the system?

Mr. Bennett stated a few pickup trucks a month.

Mr. Coyner asked if the maintenance would be done by local people?

Ms. Robinson stated yes.

Mr. Thacker stated the applicant should go ahead and use the enhanced border so ten (10) years down the road if the greenway does come through. You will have a very nice, established border already in place.

Mr. Bennett stated they will work with staff on this. There is plenty of room to work with. They will work with the railroad on right-of-way and they are open to these options.

Chair Tilghman asked if it would be next summer before you go to Dominion?

Ms. Robinson stated the construction would start in 2023.

Chair Tilghman asked during this period of time does the farmer keep farming the land?

Ms. Robinson stated yes. The lease with them does not become effective until we begin construction.

Chair Tilghman asked if they first construct the fence?

Mr. Bennett stated as soon as they have some of the preliminary grading/stormwater done it makes sense to put up that fence. They will probably put it up on the earlier side.

Chair Tilghman asked if you would want an agreement with the power company before you move that underground line?

Ms. Robinson stated yes, we have the work order in place. That would be one of the first things we do.

Mr. Bailey stated a portion of the property is in the floodplain. He asked if they would work outside of the floodplain area?

Mr. Bennett stated yes.

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

Mr. Paul Fitzgerald, 2155 Gapland Road, Jefferson, Maryland, stated my youngest brother continues farming, including this land on Wayne Avenue. My other brother owns the adjacent parcel and he has been living here for 40 years. We are not absentee landowners. We have been involved in the community. The County has done a great job in directing growth towards the Urban Service Areas. I believe there is room for renewable energy sources. I am also a believer in property rights. As a property owner, I have a vested interest in the land. Not one person has approached us about commercial or industrial opportunities on this property because of limited access. Due to the limited access this property is not an ideal candidate for industrial or commercial use. A solar facility will allow us to preserve the land and it does not require any additional traffic.

Ms. Nancy Sorrells, 3419 Cold Springs Road, Greenville, stated this is a win-win for the County. Unlike other types of development, the land is not being permanently removed from agricultural production. Solar provides significant tax revenue for the County without the output of monies for increased services. This also helps with haphazard development that may come over time. Solar does not take land out of farming. If the land is in solar then it cannot be developed into houses, commercial businesses, or industry. It will be guaranteed to remain open space. Because of the County's robust ordinance there are buffers in place. Because these are Special Use Permits and not rezonings, this is a temporary land use. The predominate land use has always been farming in the County. This preserves farming and open space.

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

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

Mr. Coyner stated this is a good application for the property. He stated the applicant is receptive to having sheep. They should use the enhanced buffer also.

Chair Tilghman stated this is in farmland now but it is still in an industrial planned area but because of the entrance it is not practical for industry. This project will be well hidden from most of the surrounding homes. It pleases me to see one in town rather than out in the country. This has been well planned. The proposed greenway may never come to be but we cannot ignore it.

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

Pre-Conditions:

1. Submit site plan meeting the requirements of Section 25-673 "Site Plan Contents," Section 25-70.4.C "Standards applicable to small solar energy systems," and Section 25-70.5 "Applications and Procedures for Small Energy Systems" of the Augusta County Zoning Ordinance to be approved by all appropriate departments and/or agencies.
2. The Facility shall not commence commercial operations until final site plan approval is first obtained from the Zoning Administrator or his/her designee, and all pre-conditions of approval have been met.
3. In consultation with site plan review, wetlands shall be inventoried and delineated, and no construction of panels or access roads shall be permitted within 35 ft. of the delineated wetland. All operations and infrastructure of the Facility shall additionally maintain a 35 ft. riparian buffer from all streams.
4. The Facility shall not obtain final site plan approval until evidence has been given to the County that an electric utility company has signed an interconnection agreement with the permittee.
5. Landscaping Plan. The Applicant shall submit a proposed landscaping plan for each perimeter of the Facility (outside all fenced areas) to the Zoning Administrator and/or his/her designee for review and approval as part of the full site plan, which shall be in general conformance with the landscaping plan submitted with the Concept Site Plan. The following conditions shall govern the installation of landscaping in accordance with the landscaping plan:
 - a. All landscaping shown on the landscaping plan shall be installed at the heights specified on the Concept Site Plan and shall be in good condition prior to the commencement of commercial operations.
 - b. In the event that the Applicant requires a minor deviation from the approved landscaping plan or full site plan, such deviation shall be provided on a revised plan sheet for review and approval by the Zoning Administrator and/or his/her designee. Minor deviations shall not include changes to the proposed install heights.
 - c. In areas where there is an existing timber/vegetative buffer remaining on the Facility parcel that provides at least the equivalent buffer benefits as the buffer proposed on the Concept Site Plan, then the existing timber buffer shall be retained as the perimeter landscaping. Hand-clearing of trees within the existing

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timber buffer for purposes of safety or removal of dead trees is permitted, so as long as the Applicant plants appropriate replacements in accordance with ordinance standards. All existing timber buffers, which may require supplementation with planted trees or shrubs if the existing buffer consists of a relatively thin block of trees or lacks significant understory, are subject to review and approval by the Zoning Administrator and/or his/her designee. The use of existing timber and natural screening is preferable.

- d. In areas where sufficient existing timber/vegetation does not remain, the landscaping requirements shall conform to the Concept Site Plan. The trees shall be planted during the appropriate time of year, subsequent to the completion of construction.
 - e. A surety agreement for landscape maintenance in a form acceptable to the County Attorney shall be submitted and approved prior to the issuance of any building permits. The amount of the surety shall be determined by an independent landscape architect selected and reasonably compensated by the Applicant but approved by the Zoning Administrator and/or his/her designee. The amount of the surety shall be equal to a reasonable estimate of the amount needed to establish, and following establishment, to maintain the landscaping required by the approved landscaping plan for two (2) years after initial installation. Once the landscaping has been successfully established, the surety amount will be reduced to that amount required for two (2) years of maintenance thereafter. The surety will be released only after four (4) years of maintenance is completed.
 - f. All landscaping will be reviewed by the Zoning Administrator and/or his/her designee following installation, at one-year following installation, and as necessary thereafter to ensure the landscaping is being maintained.
 - g. The Applicant shall work with the County to identify the species that will provide the best aesthetic and environmental benefit, while also considering market availability.
 - h. The use of herbicides for perimeter landscaping shall be minimized to the greatest extent reasonably practicable.
6. Decommissioning Plan. Concurrent with the submittal of the final site plan, the owner of the Facility shall produce to the County a Decommissioning Plan as outlined in the Augusta County Code Section 25-70.10, as amended. Any structure or equipment associated with the Facility that is not operating for a continuous period of 12 consecutive months shall be subject to decommissioning, per Augusta County Code Section 25-70.10, as amended. Within 365 days of the date of abandonment or

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discontinuation, the owner or operator shall complete the physical removal of the solar energy project and site restoration. This period may be extended at the request of the owner or operator, upon approval of the Board of Zoning Appeals. Periods during which the Site is not operational for maintenance, repair, or due to catastrophic events beyond the control of the Applicant, during which the Applicant works diligently to return the Site to full operating status, shall not trigger the Decommissioning requirements herein. The Applicant must provide written notice and evidence of the above to the Zoning Administrator during the period in which the Solar Facility is not fully operational. Such notice shall identify the last day on which the Site was fully operational. Regardless of the efforts of the Applicant to return the Solar Facility to full operational capacity, if the Solar Facility does not operate as a solar energy facility collecting and storing energy and transferring and distributing it to the Grid after the catastrophic event, for a period of two (2) years the Special Use Permit shall be rendered void and the Applicant shall commence Decommissioning no later than the 730th day after the last day the Site was fully operational.

7. Decommissioning Estimate. Concurrent with the submittal of the final site plan, the owner of the Facility shall produce to the County an estimate of the decommissioning costs as outlined in the Augusta County Code Section 25-70.10, as amended, and/or detailed below (the more stringent shall apply), by line item and the surety guaranteeing the payment of those costs and the decommissioning work. The estimate shall be signed and sealed by a third-party engineer licensed in Virginia. The decommissioning cost estimate shall include, at least, the following delineated by line item:
 - a. Total cost related to complying with all the decommissioning work required by this Special Use Permit.
 - b. Costs related to creating, maintaining, and re-stabilizing any construction entrances identified on the Property, with a separate line item for each such construction entrance, unless written waiver to the Board of Zoning Appeals is requested by the landowner.
 - c. Costs for mobilization.
 - d. Costs for removal and disposal of all materials, line itemed by category of facility. For example, "cost to remove conduit," "cost to remove panels," "cost to remove panel support structure," cost to remove inverters," etc.
 - e. Costs to de-compact soils and reestablish topsoil.
 - f. Costs to stabilize land disturbed by the decommissioning work.
 - g. Costs of trucking, hauling and equipment use.

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- h. Costs of landfill fees associated with the disposal of commercial and industrial waste
 - i. Costs of all labor and estimated man hours to perform the decommissioning work.
 - j. Costs must assume an increase in labor and equipment costs of two percent (2%) a year every year until the completion of decommissioning and must assume commencement of decommissioning after year forty (40) of operation.
 - k. Costs must include a 25% contingency of the total estimate.
 - l. The certification of a third-party engineer licensed in Virginia affirming that the owner/operators' cost estimate is sufficient to satisfy the decommissioning required herein. The estimated amount for the salvaged materials shall not be part of the consideration in the decommissioning cost estimate.
 - m. Should the funds guaranteed for the Decommissioning Activities for any reason not be sufficient for the County to complete the Decommissioning Activities as allowed for herein and as set forth in the Decommissioning Plan, the Applicant shall be and shall remain liable to the County for the difference between the guaranteed funds and the amounts required to Decommission the Solar Facility and shall pay the difference to the County upon demand. The County shall not be liable to any party in any way for the funds drawn pursuant to the conditions set out herein and expended in relation to Decommissioning.
8. **Decommissioning Bonding.** Prior to the issuance of final site plan approval for the Facility, the applicant shall submit a bond, irrevocable letter of Credit, or other appropriate surety acceptable to the County in accordance with Augusta County Code Section 25- 70.11, as amended.
9. **Panel Specification and Composition.** At the time of site plan review the Applicant shall provide to the Zoning Administrator, a written panel specification disclosure document that includes the composition, toxicological information, and the physical and chemical properties of all of the solar panels, including coatings, being utilized for the Facility. The Applicant shall utilize crystalline solar panels for the Project. The Applicant shall not utilize any panels that of the type known as thin-film panels, including but not limited to not utilizing panels manufactured with or coated using lead, the GenX chemical, amorphous silicon (a-Si), cadmium telluride (CdTe), copper indium gallium selenide (CIS/CIGS), organic photovoltaic cells (OPC) panels, and/or any other material prohibited by state or federal law for use in solar photovoltaic panels. Moreover, to the

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extent any panel utilized has a Safety Data Sheet associated therewith under 29 CFR 1910.1200(g) and its Appendix D, the Safety Data Sheet shall be disclosed, as well.

10. The Facility, including, but not limited to, all areas covered by photovoltaic panel, any and all landscape or fencing buffer areas, any and all setback areas, any and all support equipment, and any and all access roads, shall be removed from Land Use Assessment and therefore subject to a rollback tax paid to the County for the difference between land use tax and the fair market value for each of the five most recent complete tax years. The remainder of the property not included in the Facility shall continue to meet current requirements for the County's Land Use Assessment program in order to remain included in the program, as determined by the Commissioner of the Revenue upon approval of the Special Use Permit.
11. The applicant shall disclose to the Augusta County Service Authority if corrosion control systems are part of the Facility.
12. ACSA Infrastructure.
 - a. Ground surface elevations shall not be changed, and no water shall be impounded over any existing water/sewer infrastructure without written consent of the Augusta County Service Authority.
 - b. No panels and/or appurtenances, including fences and landscaping shall be installed within 20 feet each way of the centerline of any existing water or sewer main to ensure adequate space for future operations and maintenance.
 - c. Where public water/sewer utilities are located on the same property as the Facility, the Service Authority shall have the right to utilize access roads constructed for the project or be provided with reasonable access to the utilities by truck.
13. The Applicant must obtain site plan approval within 12 months of the issuance of the Special Use Permit and shall substantially complete construction within 24 months of the issuance of final site plan approval. Notwithstanding the foregoing, the Board of Zoning Appeals may approve an extension of any deadline herein for good cause.

Operating Conditions:

1. This Special Use Permit ("Permit") is granted solely for the subject property for operation of a small solar energy system (the "Facility"). This Permit shall be binding on Wayne Ave Solar I, LLC, and any successor-in-interest, including but not limited to any current or future owner, lessee, sub-lessee, and permitted assignee ("Applicant").
2. The Permit shall not be assignable by Wayne Ave Solar I, LLC to a third party absent the written consent of the Board of Zoning Appeals of Augusta County.

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3. Any document memorializing or relating to the establishment of any successor-in-interest, e.g., lessee, sub-lessee, future owner, permitted assignee, etc., between Wayne Ave Solar I, LLC and any such individual or business entity, shall include a recital as to the existence of the Permit, and the duties and obligations of the third party and now successor-in-interest thereunder the Permit, to ensure that successors-in-interest are on written notice of the Permit and its terms and conditions. A copy of these conditions shall be recorded in the clerk's office of the Circuit Court for the County of Augusta, Virginia.
4. The Facility, including but not limited to, fence line boundary, access roads (unless otherwise required by VDOT), and setbacks (unless otherwise determined by the Board of Zoning Appeals), shall be constructed and operated in substantial conformance with the approved Concept Site Plan prepared by GreenbergFarrow, dated March 31, 2021.
5. All bonding or posting of sureties for the project shall at all times be by and in the name of the owner of the Facility, its successors or assigns.
6. All non-operational, non-electrical site features along the perimeter of the Facility, such as landscaping and fencing, shall be properly maintained throughout the life of the Permit. Fencing shall be maintained in good repair and landscaping shall be maintained to the standards at which it was installed in accordance with the approved Concept Site Plan. Maintenance of such features shall be guaranteed by the surety agreement and surety as provided below. If the Zoning Administrator and/or his/her designee determines that site features identified are not being properly maintained, as described herein, then the Applicant shall be given a notice to remedy as is the standard zoning violation policy of Augusta County.
7. Setbacks, either as shown on the Concept Site Plan, or set by the Board of Zoning Appeals during their review, shall be measured from the property line and/or VDOT Right of Way to the fence line of the Facility.
8. The Applicant shall not add additional photovoltaic panel areas outside of the permitted fenced area, change the entrance locations of access roads (unless otherwise required by VDOT in a written statement), or revise the height, placement, or design of landscaping buffer elements without prior approval by the Augusta County Board of Zoning Appeals. Notwithstanding the forgoing, minor changes to the landscaping buffer elements may be approved by the Zoning Administrator.
9. The Zoning Administrator or any other parties designated by the Zoning Administrator shall be allowed to enter the property at any reasonable time to check for compliance with the provisions of this Permit, with at least 24 hours of advance notice and subject to the security, health and safety standards and regulations that apply to the Facility.

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10. The Applicant shall preserve and maintain existing forest/vegetation where it serves to meet buffer standards or standards for alternative compliance as required by ordinance from adjacent property and public right of ways, and is not in conflict with the solar panels, as indicated on the Concept Site Plan. See 5.C and 5.D in the pre-conditions of this Special Use Permit.
11. All construction and decommissioning activities shall be limited to the hours of 8:00 a.m. to 8:00 p.m., Monday through Saturday, and will be prohibited on Sundays. These conditions shall apply to noise generated during the construction of the Facility and to any construction needed during replacement, repair, or maintenance activities during the ongoing operation of the Facility. Replacement, repair, and maintenance activities conducted at nighttime and not involving construction shall comply with all applicable noise standards.
12. The Facility shall not be lit during ongoing operations, unless as required by the Uniform Statewide Building Code. Lighting used during construction shall be downward facing and shall be located at least 500 feet from any off-site adjacent residential dwelling.
13. All solar panels shall use anti-reflective coatings.
14. All topsoil shall not be removed from the site.
15. The Applicant shall implement the following additional measures during construction:
 - a. Maintain all construction-related vehicles in good working order.
 - b. Designate a specific individual and provide that individual's name and contact information to the Zoning Administrator and/or his /her designee, to which questions, complaints, or concerns during construction may be directed.
 - c. Prior to the initiation of construction, mail a notice of construction activity to all property owners whose properties are adjacent to areas on which the Facility will be constructed. The notice shall summarize upcoming construction activities, describe the areas in which construction will occur, including the main routes of delivery, and provide the name and contact information of the Facility representative to whom any complaints, concerns, or comments may be addressed.
 - d. Provide adequate portable sanitation facilities that are located in a manner that facilitates ease of disposal but that are not within one hundred and fifty (150) feet of any property boundary of a parcel on which a home is located and whose owner is not participating in the Facility.

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- e. Prohibit any personnel associated with the construction of the Facility from overnight lodging at the site.
16. A construction phasing plan shall be submitted for review with the site plan and shall propose a protocol developed in coordination with (the County Administrator) that specifies the phased construction of designated units of land. The construction phasing plan will be designed to ensure that ground cover is expeditiously established, and appropriate site stabilization achieved throughout construction, and the approved construction phasing plan shall be implemented during construction.
 17. Any electrical wiring used in the system shall be underground except where wiring is brought together for inter-connection to system components including any additionally required utility poles, and/or at the project substation and switchyard for interconnection the local utility power grid. Electrical distribution lines between the inverters and the point of interconnection shall be underground except where crossing creeks, floodplains, wetlands, and at the point of interconnection. Nothing in this condition shall prevent the ability to utilize underground boring technology.
 18. This Permit shall be valid from the time of issuance and thereafter for a period of 40 years from the start of commercial operations of the Facility, which shall be the date on which the Facility first delivers non-test energy to the high-voltage transmission system, or until this Permit is lawfully terminated or terminated as a matter of ordinance or other law prior to the natural expiration date, whichever is sooner. At the end of the 40 year period, unless such period is otherwise extended by the Board, or unless decommissioning is required sooner pursuant to the conditions herein, the Facility shall be deemed to have reached the end of its lifespan and decommissioning shall begin pursuant to the conditions herein.
 19. Solar Panels will be constructed, maintained, and operated in accordance with national industry standards and regulations including the National Electrical Code, International Fire Code of the International Code Council and the National Fire Protection Association Fire Code, as provided in Va. Code 15.2-2286. In the event of a conflict between the national industry standards and these Conditions, the national industry standards shall control.
 20. Corporate Structure, Associations, and Information. Applicant and all successors-in-interest, including current and future owners, lessees, sub-lessees, and permitted assignees shall provide the Zoning Administrator, with a copy to the County Attorney, written notice of changes of ownership of the solar facility within thirty (30) days thereof.
 21. Any substantial upgrades or changes made to the design or operation of the Facility that are planned shall be disclosed to the Zoning Administrator and/or his/ her designee at least ninety (90) days before the intended implementation of the upgrades or changes –

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except as provided herein. Any substantial upgrades and/or changes resulting solely from a bona fide emergency and force majeure event shall be disclosed no later than (sixty) 60 days thereafter.

- 22. Upon completion of the installation of the Facility, Wayne Ave Solar I, LLC shall establish contacts with Augusta County Fire Rescue and Augusta County Sheriff's Office and provide both with an emergency management plan.
- 23. Any infraction of the above-mentioned conditions, or any Zoning Ordinance regulations, may lead to a stop work order and revocation of the Special Use Permit by the Board of Zoning Appeals.
- 24. Contribution for Public Improvements – The Applicant, and if different than the Applicant, the facility owner and/or operator, shall provide an upfront substantial cash payment for public improvements in accordance with the provisions of Virginia Code § 15.2-2288.8. The amount of such upfront substantial cash payment shall be equal to \$50,000.00. The Applicant and the County acknowledge and agree that the County may identify in future budget years qualifying public improvements that will be funded by the substantial cash payment to be provided by the facility owner and/or operator. The payment will be due on or before the date that is 90 days following the commencement of commercial operation of the solar facility. The Applicant, facility owner and/or operator shall provide written notice to the Zoning Administrator within ten (10) business days of when the solar facility commences commercial operation. The Applicant, facility owner and/or operator shall be jointly and severally responsible for the payment of the upfront substantial cash payment required by this condition.

BE IT FINALLY RESOLVED that the Augusta County Board of Zoning Appeals' decision to approve this Permit is predicated on the Augusta County Board of Zoning Appeals' understanding that the above conditions the Augusta County Board of Zoning Appeals hereby imposes upon this Permit are valid, lawful, and shall apply to the approved use for the life of the use, provided, however, that if any provision of these conditions is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of these conditions and this Permit shall nonetheless remain in full force and effect.

Mr. Glover seconded the motion, which carried unanimously.

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MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR

KENNETH RAY BRADLEY, JR. – EXTENSION OF TIME

A request by Kenneth Ray Bradley, Jr., for a Special Use Permit to have general outdoor storage of equipment and vehicles and to have a trucking and towing business on property owned by Kenneth Ray Bradley, Jr., Inc., located at 391 East Side Highway, Waynesboro in the Wayne District.

Mr. Coyner moved to approve a three (3) month Extension of Time.

Mr. Glover seconded the motion, which carried unanimously.

STAFF REPORTS

- 21-1 SHD, LLC
- 21-2 William F. or Elizabeth G. Swisher

Ms. Bunch stated SUP#21-1 has been cancelled. SUP#21-2 has been inspected and is in compliance.

Mr. Benkahla discussed the court cases with the Board.

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



 Chair



 Secretary