

December 4, 2008

PRESENT: S. F. Shreckhise, Chairman
 J. W. Callison, Jr., Vice Chairman
 G. A. Coyner, II
 C. E. Swortzel
 D. A. Brown
 J. R. Wilkinson, Zoning Administrator & Secretary
 S. K. Shiflett, Zoning Technician I

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, December 4, 2008, at 10:15 A.M., in the County Government Center, Verona, Virginia.

* * * * *

VIEWINGS

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

- **Benjamin R. Gee - Special Use Permit**
- **Tom Musselman, agent for Emerald Springs, LLC - Variance**

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.

* * * * *

Chairman

Secretary

December 4, 2008

PRESENT: S. F. Shreckhise, Chairman
 J. W. Callison, Jr., Vice Chairman
 C. E. Swortzel
 G. A. Coyner, II
 D. A. Brown
 J. R. Wilkinson, Zoning Administrator & Secretary
 S. K. Shiflett, Zoning Technician I
 Pat Morgan, County Attorney
 B.B. Cardellicchio-Weber, Administrative Secretary

Absent: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, December 4, 2008, at 1:30 P.M., in the County Government Center, Verona, Virginia....

MINUTES

Mr. Swortzel moved that the minutes from the November 6, 2008 meeting be approved.

Mr. Coyner seconded the motion, which carried unanimously.

BEVERLY H. FARRAR - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Beverly H. Farrar, for a Special Use Permit to use a portion of an existing garage for a real estate office on property owned by Gary E. and Beverly H. Farrar, located on the south side of Augusta Springs Road (Route 811), approximately .3 of a mile east of the intersection of Augusta Springs Road (Route 811) and Parkersburg Turnpike (Route 42) in the Pastures District.

December 4, 2008

Ms. Beverly Farrar stated that she will use the office area in her garage for a real estate office. She stated that according to Virginia law you must have an office not within your home in order to have a place to hang your license up. She stated that she will be the principle broker and have agents under her. She stated that she has been in the real estate business for nine (9) years.

Mr. Coyner asked her if she was a broker before?

Ms. Farrar stated no, she just passed her test on Election Day and then she applied for this permit.

Mr. Coyner asked if this would be a small operation?

Ms. Farrar stated yes.

Ms. Brown asked what does a broker do?

Ms. Farrar stated that she would manage the affairs of the real estate agents that are working under her, list the sales, and take care of the escrow accounts. She stated that the realtors are all independent contractors. She stated that she does not want to have any employees.

Mr. Coyner stated legally you cannot do this business out of the home.

Ms. Farrar stated legally she cannot have an office where she enters her home.

Mr. Swortzel asked how many people will be coming and going to the site?

Ms. Farrar stated it will vary depending on the economy and how sales are going in this area. She stated that they will not have heavy traffic.

Mr. Coyner asked if the customers normally come to the real estate office?

Ms. Farrar stated that normally the agent meets the customer at the property that is being showed. She stated that if they decide to make an offer occasionally they will come to the real estate office but sometimes they go to the customer's home to write the contract up.

Chairman Shreckhise asked if there was anyone wishing to speak in favor or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

December 4, 2008

Mr. Swortzel stated that this use will be in keeping with the character of the area. He stated that the site is very neat. He moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Site be kept neat and orderly.
2. Employees are permitted as long as they do not have a permanent office on site.
3. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.
4. Applicant must reside on the premises.

Vice Chairman Callison seconded the motion, which carried unanimously.

* * * * *

RUSSELL D. AND DEBORAH L. BOYERS - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Russell D. and Deborah L. Boyers, for a Special Use Permit to have a firewood sales business with outdoor storage on property they own, located on the north side of Little Calf Pasture Highway (Route 42), approximately .6 of a mile southwest of the intersection of Little Calf Pasture Highway (Route 42) and Sunset Hill Lane in the Pastures District.

Mr. Russell Boyers stated that he is applying for a Special Use Permit to sell firewood. He stated that this will be a small business. He stated that he will sell about two (2) loads per week. He stated that he will not have any employees. He stated that his brother and wife will be helping him with the business. He stated that he will operate from 8:00 a.m. to 5:00 p.m. He stated that the site will be kept neat and clean. He stated that the customers will come to pickup the firewood or he will deliver it. He stated that he has one sign (3 x 4) hanging on the front fence.

Mr. Coyner asked if he brings the logs in?

Mr. Boyer stated that he cuts the firewood in the National Forest.

December 4, 2008

Mr. Coyner stated that when the firewood comes in it is already split up.

Mr. Boyer stated that he brings it in a block of wood and then he splits it and cuts it up.

Mr. Coyner asked if there will be large trucks coming to the property?

Mr. Boyers stated no. He stated that he just has a log splitter.

Chairman Shreckhise asked if there was anyone wishing to speak in favor or in opposition to the request?

There being none, Chairman Shreckhise declared the public hearing closed.

Mr. Coyner stated that this business is keeping with the character of the area. He stated that there is a demand for this type of business. He moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Site be kept neat and orderly.
2. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
3. All outdoor storage of wood to be kept in the designated 48' x 102' area shown on the site plan.
4. Hours of operation be 8:00 a.m. to 5:00 p.m. Monday – Saturday. No Sunday work.
5. No employees other than family members.
6. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.
7. No off premise advertising signs associated with the business.

Ms. Brown seconded the motion, which carried unanimously.

December 4, 2008

* * * * *

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 display carports for sale, to construct an addition to the garden center, to increase the size of the greenhouse, and to construct a building for a shop and equipment storage on property he owns, located in the northwest quadrant of the intersection of Churchville Avenue (Route 250) and Eagle Rock Lane (Route 721) in the Pastures District.

Mr. Benjamin Gee stated that he will use the carports for outdoor storage which will also be displayed for sale. He stated that he uses the carports for straw and fertilizer. He stated that he will eventually build on to the garden center. He stated that the addition has been taking longer than what he has planned because of the economy. He stated that he would like to have a shop in order to work on their equipment. He stated that they will not work on anyone else's equipment. He stated that he would like to have a bigger greenhouse at the site.

Mr. Coyner asked what are the items near the river?

Mr. Gee stated that the items near the river are stuff for his nursery and agricultural part of his business. He stated that there are some tools and equipment near the river.

Mr. Coyner asked if there was a better place to store those items?

Mr. Gee stated that it will be when he gets the money to build a building.

Mr. Coyner stated that the applicant can move the materials and equipment to a different spot without having to put it in a building. He stated that those items could be moved away from the river.

Mr. Gee stated that he could but he does not have a lot of area. He stated that he is limited on space.

Mr. Coyner stated that those items are in the floodplain. He stated that if we have high water there will be items floating down the river.

Chairman Shreckhise stated that the office has received complaints from the neighbors. He stated that the site is not neat and tidy. He stated that there is a mulch pile in the floodplain. He stated that the neighbors in the area have to look at the equipment each

December 4, 2008

time they turn in their driveway. He stated that storing those items in the floodplain is not within the specifications that were placed on his first Special Use Permit.

Mr. Gee stated that is equipment that he uses in his farming and tree growing operation. He stated that he does not have another place to put those items.

Chairman Shreckhise stated that this type of industry requires a Special Use Permit and sometimes the applicant needs to do a little bit more to keep it tidy so that the neighbors will allow the applicant to continue to grow and expand the business.

Mr. Swortzel stated that there are many items stored in several locations that were not approved in the original permit.

Mr. Gee stated that there is a difference between what he has as far as a Special Use Permit. He stated that the area that the Board is talking about is his nursery operation and his farming operation and he is not sure that this Board regulates that.

Mr. Wilkinson stated that the applicant can certainly farm the property and plant new trees and bushes but this operation has expanded in the last year or so. He stated that a deck is also located at the site.

Mr. Gee stated the deck came off of the house and he needed to get rid of it. He stated that it will be used for firewood.

Mr. Wilkinson stated that there are several issues going on. He stated that there is a business under Special Use Permit but the lower part of the property is in the floodplain. He stated that the County has a Floodplain Ordinance that says that you cannot store or build anything in the floodplain except for agriculture. He stated that even an agricultural building needs to be anchored.

Mr. Gee stated that everything stored there is movable.

Vice Chairman Callison stated that if the water comes out to Route 250 all of the items will be gone and scattered around someone else's property. He stated that the items need to be taken out of the floodplain.

Mr. Wilkinson stated that the applicant will need to cleanup the materials on the lower part of the property. He stated that staff can work with Mr. Gee on that situation.

Mr. Gee stated that they are stored there because he does not have a better place to put those items. He stated that he was trying to keep the property that he has under Special

December 4, 2008

Use Permit as clean as possible. He stated that he has some unsightly equipment for people to look at but that is how he makes his living.

Vice Chairman Callison stated that the Board knows that the applicant has equipment but there are also some old pallets on the property that need to be removed.

Mr. Wilkinson stated that the items stored in the floodplain become a larger issue than a regular farm field.

Mr. Coyner asked how long will the applicant take to straighten up the property?

Mr. Gee stated it will not take long. He stated that he can get rid of the deck and the lawn mower that is stored on the property.

Chairman Shreckhise asked if there was anyone wishing to speak in favor or in opposition to the request?

Mr. Frank Williams, 3057 Churchville Avenue, Staunton, stated that he lives across the street. He stated that he is opposed to what is being requested. He stated that he has lived at this site for nineteen (19) years. He stated that they see the site everyday and it is quite unsightly. He stated that he is opposed to any further expansion on the site. He stated that there were two (2) Special Use Permits that was granted by the Board. He stated that this site has two (2) different locations. He stated that one is a nursery and the other is a farming endeavor. He stated that it was not presented that way but this is a contiguous operation. He stated that the applicant is growing trees in one area and selling them in another area. He stated that to consider this as two (2) separate entities is inappropriate. He stated that there is trash on the property. He stated that on the far end of the property there is a large rubble pile along the river bank which consists of tree stumps, logs, and concrete. He stated that to have all of that in the floodplain and along the river is highly inappropriate. He stated that the applicant has built a berm about 100 to 150 yards that is six (6') feet high. He stated that he is potentially interfering with the river flow. He stated that if the area floods, all of the material has a potential to wash down the river and create hazards at the Middle River bridge and also further down into Verona. He stated that equipment is scattered throughout the area. He stated that there are pickup trucks, backhoe, flatbeds, and a dump truck which make it look more like a construction site than a farming operation. He stated that there is also a camping trailer for sale along the side of Route 250. He stated that no Special Use Permit has been authorized for the sale of the camper on that particular site. He stated that the site appears to be industrial rather than an agricultural site except where the trees are growing. He stated that he does not know how legal it is for the applicant to put fill around the river. He stated that the applicant wants to sell two (2) carports. He stated that the applicant already has two (2) carports not in compliance with the current Special Use Permits. He stated that selling

December 4, 2008

carports have no relationship with farming. He stated that the site is being called a garden center but it is a hardware store. He stated that there is no relationship between the selling of carports and an agricultural endeavor. He stated that this is an extension of a commercial enterprise rather than a farming enterprise. He stated that there is a white trailer building along the river. He stated that he thinks this building is being used as a maintenance building. He stated that staff referred to the building as relocation. He stated the building adds nothing to the site appearance at all. He stated that if there is a construction of a new building they do not know where it will be located because there is no site plan. He stated that there is no original authorization for the maintenance building. He stated that he has environmental concerns about spillage and leakage of the maintenance operation right in the floodplain. He stated that they do not know how big that maintenance operation is. He stated that he does not know if there will be storage of fuel oil or petroleum in the building or pesticides kept in the building. He stated that this request is incomplete and not well understood especially because there is no site plan. He stated that the comment sheets state that the building is not in excess of 4,000 square feet but the buildings combined are. He stated that the hardware store is 4,800 square feet, the maintenance building is going to be 800 square feet, and the greenhouses are going to be another 1,200 square feet. He stated that they far exceed the 4,000 square feet that is on the comment sheets as well as the 50% addition. He stated that in general, the overall plan is not compatible with the agricultural and residential nature of this area. He stated that the applicant has a poor history of adhering to the Board of Zoning Appeals' guidelines. He stated that he was at the hearing two (2) years ago when the Board gave specific instructions to the applicant. He stated that there is no consideration to pollution of the river. He stated that aquifer supplies water to the homes in the area and it could be polluted if a flood comes which would create serious problems for the entire area. He stated that the Board should deny the use of the site for the sale of the carports or any non-agricultural materials. He stated that the Board should require the owner to remove unauthorized berms and fill material along the river. He stated that the Board should require the owner to store/display landscaping materials only in areas authorized by this Board. He stated that the Board should deny all requests until an acceptable site plan is provided. He stated that the Board should require that an environmental impact study be conducted by competent authorities to ensure non-pollution of the river, underlying aquifer, and floodplain.

Mr. Wilkinson stated that the site plan is shown on the Power Point screen. He stated that the original building was approved in 2003. He stated that in 2005 the addition was approved but never constructed. He stated that the 20' x 40' accessory building was approved with the first application and never constructed. He stated that the greenhouses were previously approved as a smaller version which is 20' x 40' and the applicant would like them to be 30' x 40'. He stated that while the total site is over 4,000 square feet it is not more than a 50% increase than what has been approved. He stated that Mr. Gee is asking to be able to construct what was approved in 2005 with the addition of the carports.

December 4, 2008

He stated that the applicant did not know that he needed a Special Use Permit for the sale of carports. He stated that after he found out that he needed a permit he came into the office and applied for the permit to update the site. He stated that the current site plan is shown on the screen.

Mr. Coyner stated that there is a sign on the carports for \$600. He stated that the applicant is using them for his own use but they are for sale.

Mr. Wilkinson stated that the customer will contact the supplier directly if they would like to purchase a carport. He stated that staff will be flexible for a short period of time about selling the personal camper. He stated that if the applicant would like to have a sales lot that would require a separate Special Use Permit. He stated that they have asked the Engineering Department to look at the issues with the berm. He stated that it may require special permits, but the Engineering Department will be looking into that for us.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

Ken Huggins, 3055 Churchville Avenue, Staunton, stated that he lives further up the hill back toward Eastwood development.

Mr. Coyner asked if his property has access on Route 250?

Mr. Huggins stated yes. He stated that he agrees with what Mr. Williams presented to the Board. He stated that the site has a bright light at night which seems to be excessive for a rural area. He asked if the applicant can use a lower wattage on the lights. He stated that he had concerns about the dike that was built. He stated that he is not opposed to the landscaping and nursery request but the site can be maintained in a neater way. He stated that the storage materials should not be in the floodplain. He stated that the site is very unsightly.

Chairman Shreckhise asked if there was anyone else wishing to speak in opposition to the request?

There being none, Chairman Shreckhise asked if the applicant would like to speak in rebuttal.

Mr. Gee stated that he does have the site plan. He stated that there is nothing stored down there that will contaminate the water. He stated that the camper is personal and he is trying to sell it. He stated that it is tough to run a business and a home and try to keep the site tip top shape to everyone's standards. He stated that he tries to do the best that he can to keep the site neat and orderly.

December 4, 2008

Chairman Shreckhise declared the public hearing closed.

Ms. Brown asked what does the applicant have outside of his site plan that needs to be brought back up?

Chairman Shreckhise stated that the items stored outside on the property must be kept in the approved areas within the site plan and the applicant knows that there is not supposed to be anything stored in the floodplain.

Mr. Wilkinson stated that the piles of mulch and stone are around the front of the building. He stated that the applicant does have a couple of mulch piles in the lower lot that the applicant can bring up behind the building. He stated that at the far end of the property is the big wood chip pile that should be brought up.

Mr. Gee stated that he plans to burn it.

Mr. Swortzel asked about the mulch which looks like something off of a chip truck?

Mr. Gee stated that is something that he grounded up at a jobsite. He stated that it is for sale but he can burn it along with everything else.

Mr. Coyner stated that it takes a neighbor to be a neighbor. He stated that the applicant needs to do some housekeeping in order to move forward with the core business. He stated that the Board should give the applicant the opportunity to clean the site up and it will give the neighbors an opportunity to be more receptive with going forward with the permit.

Chairman Shreckhise stated that the Board of Zoning Appeals does not regulate the issues with the berm.

Vice Chairman Callison stated that he agrees with Mr. Coyner. He stated that this is a slow time for the applicant and he should be able to move the items fairly quickly away from the river. He stated that the applicant may want to put all the trucks in a line so that they are not scattered all over. He moved that the request be tabled for sixty (60) days in order for the applicant to cleanup the site and bring it into compliance with the site plan.

Chairman Shreckhise stated that the applicant should contact Mr. Wilkinson and discuss the items that have to be done and some things that should be done.

Mr. Coyner stated that all of those items need to be done before the February 2009 meeting. He seconded the motion, which carried unanimously.

December 4, 2008

* * * * *

OLD BUSINESS**TOM MUSSELMAN, AGENT FOR EMERALD SPRINGS, LLC - VARIANCE**

A request by Tom Musselman, agent for Emerald Springs, LLC, for a Variance from the front setback requirement due to an accessory building having been constructed too close to the street on property it owns, located on the south side of Hessian Lane, approximately .9 of a mile west of the intersection of Hessian Lane and Middle River Road (Route 732) in the North River District. - **TABLED AT THE SEPTEMBER 4, 2008 MEETING**

Mr. Swortzel moved that the request be brought forward.

Mr. Coyner seconded the motion, which carried unanimously.

Ms. Jennifer White stated that she is here on behalf of Mr. Musselman for Emerald Springs. She stated they have talked with the neighbors about getting some more property and they were unable to resolve the issue about removing the garage. She stated that they will like to sell some of the materials or relocate the building on another piece of property. She stated that there are renters living on the site and their lease expires within three (3) months. She stated that they would like to have six (6) months in order for the garage to be removed from the property.

Mr. Wilkinson asked if they could move the building back?

Ms. White stated that would not be cost effective for them at this point.

Mr. Coyner stated that the plan is to move the building.

Chairman Shreckhise stated that six (6) months would be appropriate for the applicant to remove the building.

Mr. Swortzel stated that the accessory building is in violation but it is not a safety hazard.

Ms. White stated that the neighbors are all fine with the building. She stated that she would like to have as much time to get the building sold.

Mr. Swortzel moved that the request be tabled until July 2, 2009 in order to give the applicant time to remove the building from the property.

December 4, 2008

Mr. Wilkinson stated that the applicant does not have to remove the concrete slab.

Mr. Coyner seconded the motion, which carried unanimously.

Mr. Wilkinson stated that if something else were to happen in the meantime to give his office a call.

* * * * *

MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR

JOHN C. LEAVELL - SPECIAL USE PERMIT

A request by John C. Leavell, for a Special Use Permit to construct a building for a machine shop on property he owns, located on the south side of Sanger's Lane (Route 794), just east of the intersection of Sanger's Lane (Route 794) and Balsley Road (Route 792) in the Beverley Manor District. - **ONE YEAR EXTENSION OF TIME REQUEST**

Mr. Wilkinson stated that Mr. Leavell has had some issues with the entrance. He stated that VDOT said that he could not have a commercial entrance but then they decided that the applicant can build a new entrance on the west side of the property. He stated that Mr. Leavell has removed the trees and bushes in order to get the entrance cut in. He stated that he is in the process of getting his site plan completed. He stated that the applicant is asking for a one (1) year Extension of Time.

Mr. Coyner stated that the applicant seems to be serious about getting these items completed in a timely fashion. He moved that the one (1) year Extension of Time be approved.

Mr. Swortzel seconded the motion, which carried unanimously.

* * * * *

STAFF REPORT

08-3	Harry Moore, Inc.
08-4	Harry, Zeb M., Jr.
08-5	Harner, Donna Humbert

December 4, 2008

Mr. Wilkinson stated that SUP#08-3, SUP#08-4, and SUP#08-5 are all in compliance with their stipulations.

* * * * *

Mr. Wilkinson passed out the court cases for the Board to review.

* * * * *

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

* * * * *

Chairman

Secretary