

PRESENT: S. F. Shreckhise, Chairman
 G. A. Coyner, II, Vice Chairman
 D. A. Brown
 T. H. Byerly
 J. W. Callison, Jr.
 J. R. Wilkinson, Zoning Administrator & Secretary
 Timothy K. Fitzgerald, Director of Community Development

ABSENT: Pat Morgan, County Attorney

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, June 2, 2011, at 9:15 A.M., in the County Government Center, Verona, Virginia.

The staff briefing was held at **9:15 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.

VIEWINGS

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

- **Lynn Koerner, agent for Global Tower, LLC - Special Use Permit**
- **William E. Halterman, Jr. - Special Use Permit**
- **Derek W. and Barbara J. Woods - 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.

Chairman

Secretary

PRESENT: S. F. Shreckhise, Chairman
G. A. Coyner, II, Vice Chairman
J. W. Callison, Jr.
D. A. Brown
T. H. Byerly
Pat Morgan, County Attorney
J. R. Wilkinson, Zoning Administrator & Secretary
Timothy K. Fitzgerald, Director of Community Development
B. Cardellicchio-Weber, Administrative Assistant

ABSENT: None

* * * * *

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, June 2, 2011, at 1:30 P.M., in the County Government Center, Verona, Virginia....

* * * * *

RESOLUTION- RECOGNITION OF SERVICE – CHARLES EDGAR SWORTZEL

Vice Chairman Coyner read the resolution as stated below:

WHEREAS, the County of Augusta in consideration of the long and dedicated service of Charles Edgar Swortzel; and

WHEREAS, Mr. Swortzel diligently and faithfully served the citizens of Augusta County for twenty-four years in the capacity of a public servant; and

WHEREAS, Mr. Swortzel was appointed to the Augusta County Board of Zoning Appeals in January 1986 and completed his service in December 2010; and

WHEREAS, the Augusta County Board of Zoning Appeals is desirous of expressing their appreciation and thanks to Mr. Swortzel for his dedicated service.

NOW, THEREFORE BE IT RESOLVED that the Augusta County Board of Zoning Appeals does hereby publicly thank Mr. Swortzel for his service which he 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 Mr. Swortzel.

Vice Chairman Coyner moved that the resolution be adopted.

Mr. Byerly seconded the motion, which carried unanimously.

* * * * *

MINUTES

Mr. Callison moved that the minutes from the May 5, 2011 meeting be approved.

Mr. Byerly seconded the motion, which carried unanimously.

* * * * *

LYNN KOERNER, AGENT FOR GLOBAL TOWER, LLC - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Lynn Koerner, agent for Global Tower, LLC, for a Special Use Permit to construct a wireless telecommunications facility on property owned by James and Magdalene Brenneman, located on the north side of Lyndhurst Road (Route 624), approximately .25 of a mile west of the intersection of Lyndhurst Road and Tic Tree Lane in the South River District.

Mr. Lynn Koerner stated that they are applying for a Special Use Permit for a 195' monopole structure with related equipment within the fenced compound area. He stated they submitted the propagation maps and drawings to staff. He mentioned AT&T will be the initial tenant. He stated there are no other telecommunication structures or co-locations that exist in the Lyndhurst area. He stated with the use of iphones and ipads and increase usage in data there is a need for this site. He stated the lack of services addresses the communication need for the tower. He mentioned the tower will not be lighted. He stated this site will be available to additional carriers. He stated Ntelos has determined they have an interest in the site but at this point it is not in their budget at this point in time. He stated he attempted to contact property owners and tried to address all of their concerns with an information packet regarding the request. He stated some were not able to attend the meeting. He stated some neighbors stated they were not excited about the tower but their questions were answered. He received a petition with sixty (60) signatures from friends, neighbors, and travelers on the roads in the Lyndhurst area. He feels that the site is consistent with the planned growth of the proposed structure with the least impact on any residential areas. He asks that the Board approve this application.

Ms. Brown asked how high are the trees from the location of the pole?

Mr. Koerner stated 60' to 65' in height.

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

Mr. William Spence, 3299 Lyndhurst Road, Stuarts Draft, stated he is southwest about 300 yards across the railroad tracks. He stated he has lived there for about ten (10) years. He mentioned he does not have any interest or association with Global. He stated that he is in support of what Mr. Brenneman would like to do on his own property as long as it is nothing overly objectionable in the community. He stated Mr. Brenneman is a good neighbor. He does not see why anyone would object to the tower. He stated the County will have a right to use the tower for 911 services. He stated the Sherando area is not the best for service. He appreciated Mr. Brenneman doing this on his property. He mentioned this is a necessary and important thing.

Mr. James Brenneman stated that he and his wife own a 140 acre farm which includes eight (8) tracts of land. He stated that in order to place the cell tower at another site they would incur a lot of problems. He picked a spot in the woods with minimal construction and disturbance as well as better access. He stated this was the better site that they proposed. He submitted letters of people that have expressed interest in the cell tower. Mr. Brenneman read the letter of support from the Wilson Fire Department. He stated he has received signatures from six (6) people who can see the cell phone tower and eight (8) more signatures of people who do not live in the area but who are in support of the tower.

Vice Chairman Coyner stated the Board visited the site this morning.

Ms. Paula Figgatt, 52 Kolb Circle, Waynesboro, stated that she supports the tower request at this location. She stated there are many trees around the site. She has been in the tower business in the past and this could not be a better location to place a tower. She does not have adequate coverage at her home. She complained numerous times to her carrier and tried other carriers in the area. She stated she is regularly without power. She has five (5) cell phones in the house. She would like to have improved coverage in the area. She has gotten a petition signed with sixty (60) signatures in one night. She stated that they want to have the tower in their backyard.

Mr. Wes Grove, 4416 Scenic Highway, Mt. Solon, stated that he is one of the owners of the property nearby listed as the Irvin Grove family. He supports this request. He stated he has known the Brenneman family for years and they are an asset to the community. He stated that they have made an effort to help people. He stated they are quiet people and they have done a lot of good for the area. He stated it would be a shame to deny them this opportunity for any selfish reasons. He stated that Verizon built a tower in the Mt. Solon area a couple of years ago within site of several homes. He stated they may be able to

see the tower but they will have good cell coverage and in emergencies it is good to have the service. He stated that when the interstate was coming through the area they did not want it close to them but could you imagine if we did not have the interstate. He stated there will be co-locators on the tower.

Mr. Wilkinson stated that he has letters in support from David Karalevicz of 1572 Mt. Torrey Road, Lyndhurst which state that the reception is poor in the area and this will provide a service to the County. He stated Brenda Holliday from 18 Heston Farm Lane stated that it is in view of her property and she supports the request.

Mr. Brad Tipler, 104 Hall School Road, Waynesboro, stated that his property is just south of the site. He does agree with what the neighbors have said. He does want better cell phone coverage. He stated that the Board should not accept the cheapest and ugliest tower available. He stated that Global is putting in the least expensive solution for coverage. He stated AT&T and Global will not spend any extra money and they do not care what Augusta County looks like. He stated there are not big towers all across the nation. He stated they can be hidden but it may cost more money up front. He stated that the Board can approve one that cannot be seen. He stated it is not required in this community. He stated the tower should have less of a visual impact. He stated the County is taking the towers away from a developed area and putting them in a really scenic area. He stated that a tower is over Afton Mountain near Chinguapin and it is never seen. He stated the residents in that area demanded a less obtrusive tower. He asked why we would put up a tower that you can see over the Blue Ridge. He printed out pictures of towers that look like trees and a silo. He asked the Board to hold this permit for three months to look at the options that provide equal service and that does not destroy the skyline. He stated this is not a critical tower. He stated there has not been a report of a failed call in the Lyndhurst area to 911. He stated there have been 200 calls and only eight (8) incomplete calls including hang ups, dropped calls, etc. He mentioned that he does not want to destroy the skyline for better service. He stated the Board should make Global put in the extra money and give adequate service without destroying the skyline. He stated they may have to put up two (2) smaller towers.

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

There being none, Chairman Shreckhise asked George Condyles, the County's consultant to speak.

Mr. George Condyles stated that he is the President of Atlantic Technology Consultants. He has reviewed the application and requirements as well as had several field visits to the site. He does concur with the application. He stated this tower is similar to the Deerfield tower. He stated currently wireless carriers are starting to go into the communities that

typically do not have good coverage or any coverage at all. He stated with this tower they are trying to serve the community of Lyndhurst. He mentioned the first carrier would be AT&T. He stated there are four (4) additional carrier slots on the tower that provide opportunity for co-location for Ntelos, Verizon, etc. and that is the driving factor of the height of the tower. He stated that the County has done an excellent job of evaluating towers and they have a good footprint of the tower. He stated the County wanted fewer towers and wanted to stay below 200' above ground level with potential towers. He stated you do not see a small cluster of towers. He stated that this tower will provide wireless and broadband coverage to the community of Lyndhurst. He stated that in the future property owners may cancel their landline phone because they will be able to get cell phone service in the area. He stated the pictures show towers being camouflaged. He stated that the silo tower was for the National Park Service and it was only 80' to 90' in height. He stated that silo works well next to an existing silo on a farm. He stated the tree pole would only work with a 70' to 80' tree. He stated if you put a 195' tower next to an 80' tree it will be seen. He stated a 195' tower would not fit in there. He stated that one 195' tower works for the applicant and the community. He stated that it would take three (3) or four (4) 80' towers in order to give the same coverage as this 195' tower. He stated the tower will be seen. He stated that the existing ordinance is a good ordinance which he has used as an example with other counties.

Chairman Shreckhise asked if he was familiar with the tower on the mountain?

Mr. Condyles stated yes. He stated they all need to be above the tree line. He stated you would have to get up and out in order to get the same coverage. He stated that the left tower down the mountain has the elevation working for them.

Chairman Shreckhise stated the monopole is not camouflaged real well. He stated the tower to the left is a galvanized tower. He stated the Whiskey Rapids tower is only 80' tall and it does fit with the area and the topography.

Ms. Brown stated it blends better with the skyline. She stated the trees would have to be 195' which would not blend with the surrounding area.

Mr. Condyles stated that the silo tower does fit well with that property because it is only 80' tall. He stated at this site there are only woods.

Ms. Brown asked if the farm silo only comes in that particular color?

Mr. Condyles stated it is made in Pennsylvania and it is a concrete slab. He stated the top of the silo is a fiberglass structure. He stated the radio waves come in and out. He stated that it does blend in with the farm.

Mr. Callison asked what would be the radius of coverage for the 195' tower?

Mr. Condyles stated in building coverage is approximately two (2) miles. He stated out of a building coverage is three (3) to four (4) miles. He stated that the key is to have coverage in the building.

Mr. Tipler stated that the tower does not have to be 195'. He asked that the Board look at other options. He felt that there were other options that the County could pursue that would provide equal service.

Mr. Condyles stated that the goal and objectives depend on where the tower will be placed. He stated if this tower was built in the national parks, it would have different requirements.

Ms. Brown asked if the tower could be cut in half using two (2) towers?

Mr. Condyles stated that it would take three (3) or four (4) towers 80' to 90' tall in order to have the same coverage as this 195' tower. He stated that AT&T has a real big hole of coverage.

Chairman Shreckhise declared the public hearing closed.

Vice Chairman Coyner stated coverage is needed in that area.

Ms. Brown stated there will be better 911 services and there is a need for it at the Wilson Fire Department. She stated that many of the residents may even cancel their home phone if they have good cell phone coverage.

Vice Chairman Coyner moved that the request be approved 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.
2. The applicant will submit information necessary to comply with Section 25-68.7 "Bonding" of the Augusta County Zoning Ordinance.

Operating Conditions:

1. Be permitted to construct a 195' mono-pole style telecommunications tower.

2. No additional landscaping or buffering is required.
3. Tower design will allow a minimum of five (5) co-locators.
4. The applicant will notify the Augusta County Community Development Department within thirty (30) days of the date the tower is no longer used for telecommunications purposes. The tower shall be disassembled and completely removed from the site within 180 days of such notification.
5. The applicant will not unreasonably deny the telecommunications providers the opportunity to co-locate on this tower.
6. Augusta County shall be allowed, at its request, to use a mutually agreed upon location on the monopole for County emergency communications, subject to the following conditions:
 - Rent-free if solely for use by the County police, fire, rescue, and/or other emergency communication services.
 - Application submitted with equipment specifications.
 - Written no-rent license agreement between the County and Global Tower, LLC.
 - Subject to space availability and structural capacity without the need for extensions or structural modifications (unless approved by and installed by Applicant at the County's sole cost and expense); provided, however, that when only one space for collocation remains on the monopole, the County shall have the right of first refusal before any additional carrier is allowed to collocate, including ground space, not to exceed 10' x 10', for its communication needs, without any charge. This otherwise perpetual reservation may be waived at the discretion of the County Administrator, and this right of first refusal shall expire upon the earlier to occur of the tower (a) being removed; or (b) reaching full capacity.

Mr. Byerly seconded the motion, which carried unanimously.

* * * * *

WILLIAM E. HALTERMAN, JR. - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by William E. Halterman, Jr., for a Special Use Permit to construct an accessory building in the front yard on property he owns, located at 87 Pottery Shop Lane, Mount Sidney, in the North River District.

Mr. William Halterman stated that the reason he wants to keep the building is to have farm equipment in it and cattle. He stated that some of the property stays wet in the spring and that is the reason he wants the building in the front. He stated that he would like to have it in the front of the property to get the equipment out easier.

Ms. Brown stated that water stays onto the land.

Mr. Halterman stated that the rest of the property stays wet in the spring. He stated the front is the best place for him to put the building.

Ms. Brown stated this site appears to be the best area for the building.

Vice Chairman Coyner stated that the Board visited the site this morning.

Mr. Byerly asked if the building is adequate for the applicant? He stated that if the Board limits the applicant on a particular size then the applicant would need to come back before the Board. He stated a 38' x 40' building would not hold a lot of equipment.

Mr. Halterman stated that if the Board would approve a larger building that would be great.

Mr. Wilkinson stated that the Board of Supervisors zoned this property in the 1940s to Single Family Residential. He stated that the reason the Special Use Permit is needed is because the applicant would like to construct the accessory building in the front yard. He stated they did not advertise a specific size building.

Ms. Brown asked what is the biggest size building that the applicant could place on the lot?

Mr. Wilkinson stated there are no size limitations on property over five (5) acres. He mentioned the applicant has always had cattle on the property.

Mr. Byerly asked if the Board had to stipulate a size in the operating condition?

Mr. Wilkinson stated the Board does not have to stipulate a size.

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.

Vice Chairman Coyner stated the only reason the applicant needed the permit is due to the fact that the property is zoned Single Family Residential. He stated that he will use the building for his farm operation. He moved that the request be approved with the following condition:

Operating Condition:

1. Be permitted to construct one structure in the front yard as shown on the BZA sketch plan.

Mr. Byerly seconded the motion, which carried unanimously.

* * * * *

WILLIAM F. AND JUDIE S. CROFT - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by William F. and Judie S. Croft, for a Special Use Permit to construct an addition onto an existing dwelling in order to have a bed and breakfast and special events on property they own, located at 331 Glebe School Road (Route 708), Swoope, in the Pastures District.

Mr. and Mrs. Croft stated that this will be an agri-tourism business by reservation only with specialized dining. Mrs. Croft stated that there is a 241 acre farm adjacent to the residence. She stated this will include a five (5) rooms structure and it will be two-story with a commercial kitchen, dining room, and restroom on the first floor which will be renovated. She stated there is an existing bedroom in the second floor. She stated the entrance and exit will be on the second floor. She stated they would like to add two (2) guest suites and three (3) private rooms. She stated the farm has been in the Croft family for five (5) generations. She stated that they would like to show the lifestyle of a working farm. She will have twenty-five (25) or less guests no more than sixty (60) times a year. They are considered an asset to the community. She stated they have their approval with the Health Department for the sewer engineered plans. She stated the well is existing and is adequate for them if they only serve twenty-five (25) people. She stated that the highway right-of-way has been approved for parking and the entrance.

Ms. Brown asked if they live on the property?

Mrs. Croft stated they live on the adjacent property across the road.

Ms. Brown asked how many employees would they have?

Mrs. Croft stated they are not sure on the demand but wanted to start off with three (3) employees. She stated some employees are already employed on the farm.

Ms. Brown asked if the log cabin was covered up at one time?

Mrs. Croft stated yes. She presented photos for the Board to review.

Mr. Byerly asked if the Health Department put the limitation to twenty-five (25) guests?

Mrs. Croft stated yes. She stated if they wanted more they would need to install another well. She will monitor and test the well. She wanted to keep the bed and breakfast in the same time period. She stated that Nancy Sorrells is doing some historical research for them.

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.

Chairman Shreckhise stated this is a good project.

Mr. Byerly stated he admires someone taking on a project such as this.

Ms. Brown stated the property is a working farm. She moved that the request be approved with the following conditions:

Pre-Condition:

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

Operating Conditions:

1. Be permitted to have a five (5) bedroom bed and breakfast.
2. Be permitted to have special events for up to twenty-five (25) people up to sixty (60) times per year.
3. No outdoor music after 8:00 p.m.
4. Site be kept neat and orderly.

5. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.

Vice Chairman Coyner seconded the motion, which carried unanimously.

* * * * *

RODNEY S. AND CAROLYN S. KNIGHT - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Rodney S. and Carolyn S. Knight, for a Special Use Permit to have a bed and breakfast within an existing dwelling on property they own, located at 125 Berry Farm Road (Route 626), Staunton, in the Beverley Manor District.

Ms. Carolyn Knight stated she would like to use three (3) of the bedrooms for a bed and breakfast. She does not plan to have employees other than family members.

Mr. Rodney Knight stated they have not spoken with the Virginia Department of Transportation (VDOT) regarding the entrance but they have met the other requirements.

Mr. Wilkinson stated the applicant will need to contact VDOT regarding the entrance permit. He stated the pre-conditions would need to be completed before the permit is issued.

Ms. Knight stated that they will have to get permission to use the entrance from the property owner. She stated the driveway does not belong to them.

Vice Chairman Coyner asked if they would belong to a bed and breakfast club?

Ms. Knight stated yes, they will join the association. She stated her and her daughter-in-law will be taking a preparation course this summer to learn how they go about starting the bed and breakfast.

Ms. Brown asked if the driveway is shared?

Mr. Wilkinson stated there is an easement on the plat. He stated it is shared with the parcel to the left.

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

Ms. Margaret Davison, Barry Farm Road, Staunton, stated she is the owner of 143 acres surrounding them. She stated that she gave them an easement to the driveway. She stated that she saw the letter from VDOT requesting the commercial entrance.

Mr. Wilkinson stated VDOT usually requires a wider flare out and pavement back 12' to 15' with a commercial entrance.

Ms. Davison stated in the future she may look at developing the 143 acres into a subdivision. She did not know if this would impact their decision on getting an entrance approved.

Mr. Wilkinson stated that VDOT will look at the entrance for widening for safe passage and it depends on how many homes/vehicles per day. He mentioned the bed and breakfast will be a low volume commercial entrance.

Mr. Fitzgerald stated yes, it will be a low volume commercial entrance. He stated that there will be no curb and gutter for this entrance. He stated that with a subdivision there will be turn lanes as well as a wider entrance.

Ms. Davison asked who is responsible for getting the entrance permit?

Mr. Fitzgerald stated the permit will be in the property owner's name but it is up to the applicant to get the entrance permit before the Special Use Permit is issued. He mentioned the applicant will need to get permission from you.

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

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

Vice Chairman Coyner stated that this is a nice place for a bed and breakfast. He stated that the entrance would need to be in place before they start operating the business. He moved that the request be approved with the following conditions:

Pre-Condition:

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

Operating Conditions:

1. Be permitted to use three (3) bedrooms for the bed and breakfast.

2. No employees other than family members.
3. No outdoor music after 8:00 p.m.
4. Site be kept neat and orderly.
5. Applicant must reside on premises.
6. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.

Ms. Brown seconded the motion, which carried unanimously.

* * * * *

DEREK W. AND BARBARA J. WOODS - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Derek W. and Barbara J. Woods, for a Special Use Permit to have ATV trail rides and outdoor storage on property they own, located on the north side of Forest Service Road "Pine Run", approximately 1.2 miles west of the intersection of Forest Service Road "Pine Run" and Jerusalem Chapel Road (Route 720) in the Pastures District.

Vice Chairman Coyner asked if the applicant has a public right-of-way on the property?

Mr. Derek Woods stated yes.

Vice Chairman Coyner asked why is the gate locked?

Mr. Woods stated that it is private property until you get up past their property to the National Forest. He stated it is a public road so people can get to the National Forest.

Mr. Wilkinson stated it is gated other than during hunting season.

Mr. Woods stated that it is closed during the summer. He stated that it is open September through April for the public. He stated that you can get through by walking or on horseback using the trails but not by driving when it is closed.

Vice Chairman Coyner asked who maintains the area?

Mr. Woods stated the National Forest Service. He stated he owns the last parcel in the back.

Vice Chairman Coyner stated they turned around at the creek.

Mr. Byerly asked if Fire and Rescue has the key to the gate?

Mr. Woods stated yes. He stated he has three (3) gates to his property and they have keys to those as well.

Ms. Brown asked if the keys are hanging at the fire house?

Mr. Woods stated that he gave the keys to the National Forest because they took care of all that. He stated that he would like to start an ATV trail ride. He feels that it is a necessity for the area. He stated the closest one is two (2) hours away in Buena Vista and west of Harrisonburg. He will have rentals for his customers. He stated the business would be a low volume type business and operate by appointment only. He would like to start out with two (2) ATVs and possibly have up to six (6) in the future. He hopes to take the trail along the property line which is fifty (50') feet from Lilly's property line. He stated this business would enhance tourism for the County. He stated that this would be a new way to experience nature with the trails. He stated that this would be a family oriented business. He stated that he would be the lead rider. He stated some of the neighbors are afraid of the ATVs running off onto their property. He stated that if someone would do that he would call the police to remove them from the premises. He stated that he will always be there when there are customers.

Mrs. Barbara Woods stated the business would be low volume and low speed. She stated they enjoy riding four wheelers. She enjoys just riding five (5) to ten (10) mph. She stated they would not go any faster than fifteen (15) mph. She stated that would eliminate young people rushing around the trail. She stated the lead rider would set the pace and the ATVs would go as fast as the lead rider. She stated that the surrounding properties have hunters with shotguns going off in the distance which is acceptable to all. She does not know what the noise level would be of four (4) ATVs at a low speed but they are a mile and a half off the main road. She does not feel that would project much noise. She stated that everyone else that she talked to felt that it was a great idea and there was nothing like this in the surrounding area. She stated that this would be great family fun. She stated the ATVs will operate at a slow pace that they will control. She stated that the business would be supervised at all times.

Vice Chairman Coyner asked if they would operate during the daylight hours only?

Mr. Woods stated yes.

Vice Chairman Coyner asked if they would go around in laps around the woods?

Mr. Woods stated yes. He stated the ATVs can be rented by the day or by the hour. He stated this is the first time he is doing this. He will be visiting other sites in order to see how they operate.

Vice Chairman Coyner asked if they would have a route that customers follow?

Mr. Woods stated that the customers would follow the trail and it would be a nice joyful two (2) mile ride. He stated they may want to stop at the creek to rest before finishing the trail ride.

Vice Chairman Coyner asked about liability insurance?

Mr. Woods stated that he has already spoken with Augusta Insurance and they said they can provide that.

Ms. Brown stated when the Board visited the site this morning the trail was all grown up. She asked if it would be cleared?

Mr. Woods stated that he would use a dozer to clear the parking area and to extend the trails. He stated that Mr. Lilly may build a house there someday. He stated that he already has the cabin next to the creek. He stated they come and visit every now and then. He mentioned other trails have access to the National Forest. He mentioned if he were to be three hundred (300') feet from all property lines the trail would be shortened quite a bit. He asked if he could be one hundred (100') feet from all property lines.

Mr. Byerly asked if the property is fenced?

Mr. Woods stated no, it is all open. He stated that the gates are only on the forest roads to keep people out. He stated that the hunters think they can go right through.

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

Mr. Daniel Knopp, 2125 McRae Road, Richmond, stated that he owns the parcel adjoining Mr. Woods' property (parcel 1D). He stated that he is at the site on the weekends as often as possible. He mentioned the Forest Service Road adjoins the property and goes through his parcel. He stated he has problems with people going on his property now. He stated that ATVs can cut around the locked gates and he is concerned that younger trees could easily be damaged. He stated that ATVs will be on the forest service road once they get passed the locked gates. He asked that the Board

not approve this request. He mentioned a guided service is not typically what happens and there will be unintended consequences.

Ms. Brown asked if the road goes through his property?

Mr. Knopp stated yes.

Ms. Evelyn Hemp, 73 Venus Drive, Waynesboro, stated she is also speaking on behalf of her sister. She mentioned the land has been in the family for generations. She stated they are at this particular piece of land quite a bit. She stated that she grew up at the property. She mentioned they bring their campers on the weekends. She stated the area is peaceful and quiet. She stated this particular piece of property is not a place for ATVs which would ruin the peace and beauty of the area. She mentioned that she deals with ATVs on property where they live. She stated they know what the noise level is. She stated being fifty (50') foot back they are still going to hear a lot of that noise. She gave the Board some attachments that give some information. She stated that they can hear each of the generators running. She stated one (1) to six (6) ATVs on top of the noise level with the generators would be very noisy. She stated over the years there has been some altercations and disruptions on the property. She stated in the 1980s there was a request in the National Park Service for ATV trail rides and all the landowners opposed it and it was denied. She mentioned her camper has been broken in to. She stated all the noise levels will cause all wildlife to disappear and it will not come back. She stated that there is a native trout stream and if the four-wheelers go across the stream it will be destroyed. She stated they have been fighting hard to keep all the trouble out. She stated that someone has dumped rubber tires in the culvert and they have been fighting to get the tires cleaned up. She stated that there is a lot of trash along with beer cans on the property. She stated there is no way to protect the area if the gate is open. She stated she has battled the forestry service with people coming to the sites. She stated that a couple trailers were stolen and set on fire and they were able to put the fire out before all of the land burned. She stated if someone flicks a cigarette while they are outside and it is still lit it could cause a lot of land to be lost. She asked if the property owner could be liable if they were to ruin the neighbors land. She stated there is no way to monitor the use of the ATVs with the people. She stated the forestry roads are in need of repairs. She took pictures of the roads on Monday. She stated the trail will be along the road and the trailers hauling in the ATVs will tear the road up even more. She stated that it is hard enough for two (2) vehicles but a trailer would need much more width. She feels the applicant's request would be spot zoning and she was told it was not prohibited but not good business sense. She stated the Comprehensive Plan does not warrant this request which she quoted. She stated monitoring gates will be hard and it will put the burden on the adjoining neighbors. She stated the decision is in the Board's hands. She stated they do not want to see the land destroyed.

Mr. Tracy Pyles, PO Box 774, Churchville, stated he is the Pastures District Board of Supervisor. He stated this request does not fit and it goes against what is planned for the area for the good of the County. He stated they have been fighting development after development in the area. He stated there has to be places reserved that are special and going up the road you can see that this is a pristine area. He stated that Russell Schmidt in 2002 from Churchville wanted a Special Use Permit. He stated that at Expo there was congestion and a noise study was done but the motocross did not go at Expo. He stated that Mr. Lilly was not able to attend today. He stated Mr. Lilly's concern was where the boundary line is because there is not a fence in place. He stated folks will not know where the property lines are. He stated that Mr. Lilly feels that with six (6) ATVs and one (1) lead driver noise is going to be a problem. He felt that the Board should go with staffs' recommendation, Pastures District Planning Commissioners' recommendation, and his recommendation to turn down the request.

Mr. William Hanger, 84 Deer Park Lane, Churchville, stated he owns TM#33-3 and TM#33-3B. He has lived there for forty-eight (48) years and is the closest resident other than Mr. Knopp. He hopes the Board will deny the Special Use Permit due to all reasons stated.

Mr. Jack Griffin, 973 Jerusalem Chapel Road, Churchville, stated that he agrees with what all the other property owners had to say. He mentioned he has lived here for fifty-eight (58) years. He stated that he has issues with trails crossing the forest access road and the creek. He felt many people have abused the property. He mentioned if the trail rides are approved people may think it is ok to abuse the property even more.

Mr. Derek Hanger, 765 Jerusalem Chapel Road, Churchville, stated that he owns TM#33-4B on the map. He enjoys riding ATVs but the results of riding them in one place would be detrimental to the land.

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

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

Mr. Woods stated there has been a lot of concern about him destroying the area. He mentioned that is the last thing that he wants to do. He would only have six (6) ATVs at maximum. He stated there are a lot of hunters who run out to the road. He finds garbage all along the road. He stated he will be at the site more and maybe that will not happen. He stated that if he sees anyone damaging the area he will stop them. He stated there is a lot of traffic along the road but he does not see six (6) to twelve (12) more cars going up there would cause much more of a traffic issue. He stated that his

customers may even come in three (3) vehicles. He stated this business would be by appointment only. He will go to the gate in order to escort the customers in. He stated he has an eighteen (18') foot trailer with logs and ATVs and he has not had any problems passing anyone along the road. He stated they will lock the gate back so no one comes through. He will also spread the appointments out so that a number of customers will not be coming and going at one time. He stated they will be with the customers and will not allow them to go on other pieces of property. He does not feel that ATVs will stop deer from coming to the property. He stated the ATVs will be running at low speeds and low volume. He hopes that the Board passes this request.

Chairman Shreckhise declared the public hearing closed.

Mr. Byerly stated that they will be pleasantly surprised about the work done on the road. He is an ATV enthusiast. He stated the property is not fenced and he does not see how the applicant can confine the riders in. He feels that this is not a good place for this type of activity due to the property only containing forty-eight (48) acres. He stated two (2) miles of riding is not much enjoyment. He typically rides on tracts of land that are 400 acres.

Ms. Brown stated that none of the property owners came to speak in favor of the request. She stated many of the neighbors are in opposition to the request. She stated the road goes right through many of the property owners. She does not feel this is a good place to have this type of business.

Vice Chairman Coyner stated the area is a quiet, nice area and it would be a shame for it to not remain that way. He stated none of the neighbors support this request.

Chairman Shreckhise stated the Board also received letters and phone calls regarding the request. He stated that many folks spoke about the request.

Vice Chairman Coyner stated the Board visited the site this morning and he was impressed with the road improvements. He moved that the request be denied.

Ms. Brown seconded the motion, which carried unanimously.

* * * * *

WILLIAM LITTLE, AGENT FOR JABELLE, LLC - SPECIAL USE PERMIT AND VARIANCE

A request by William Little, agent for Jabelle, LLC, for a Special Use Permit to expand a non-conforming building and a Variance from the front setback requirement for a previous addition to the building that does not meet setback requirements on property it owns,

located on the west side of Lee Jackson Highway (Route 11), just north of the intersection of Lee Jackson Highway (Route 11) and Peyton Hill Road (Route 659) in the Riverheads District. – **TABLED FROM THE APRIL 7, 2011 MEETING**

Vice Chairman Coyner moved that the requests be brought forward.

Mr. Callison seconded the motion, which carried unanimously.

Mr. William Little stated the property has been an eyesore for a long time. He stated he purchased the property in good faith from what he thought was reputable people in the community. He also recognized that the site was a former service station. He thought he covered all of his basis. He asked if there was a problem with the EPA and VDOT. He stated that there were modifications to the building taken to the County to put an addition on the property in order to renovate what was destroyed by fire. He stated Mr. Wilkinson told him the property was in violation. He did receive staff recommendations. He stated this was not done for any convenience. He stated that he did not know if Mr. Sharp was trying to pull something over on him. He stated the building has been there for over eight (8) years. He stated there was never any complaints about the building. He stated that all permits and Certificates of Occupancy had been obtained by a Class A contractor. He stated the structure was constructed in line with the present structure which is what the permit called for. He stated that the building had been there since 1969. He stated apparently when the footers were dug, they thought they were in line. He stated this was an honest mistake. He stated the company that constructed the property is responsible for it. He suggested to the Board that it was not done maliciously. He stated it was not the intent to defraud. He is asking for a Variance from the setback for several reasons. He stated that there has not been a complaint for eight (8) years. He stated there has been visits by staff for other related issues. He asked Mr. Wilkinson if he has been to the site in the past?

Mr. Wilkinson stated yes, he has been to the site on several occasions.

Mr. Little stated that this is a \$100,000 building that he cannot push back twenty (20') feet. He stated this has not been a problem to anyone at any point in time. He had wanted to come up with a proffer, which he read to the Board that was rejected by the County Attorney. He stated that he will not tear the building down. He does not have that kind of money. He stated it will cost approximately \$30,000 plus the mortgage. He stated that there are criteria for granting the Variance. He stated the financial hardship is indeed a significant hardship to destroy the building. He stated this hardship is not shared by others. He stated the building was constructed after VDOT claimed additional right-of-way between 1996 and 2003. He did meet with VDOT and they would be happy to meet with them and draw a lease. He would agree to pay fees to satisfy the terms of the lease. He was unable to find any notification or documentation to Mr. Sharp regarding that. He stated the

magnitude of this catastrophe is huge and he hopes that the Board will grant the Variance so that he can continue to develop the property because he does have good plans.

Mr. Byerly asked if Mr. Little had a survey done with all setbacks when he purchased the property?

Mr. Little stated he had the survey that Mr. Sharp gave him. He stated he did not get a survey done.

Mr. Byerly stated that it is the buyer's responsibility to get that done.

Mr. Little stated the property had been surveyed twice before and he accepted that due to the reputation of Mr. Harris.

Mr. Byerly stated that the survey from Mr. Harris was no more than a boundary line survey and lending agencies require surveys with the placement of all buildings with setbacks especially on commercial property.

Mr. Little stated he did not have the money to do that.

Vice Chairman Coyner asked if an economic hardship would qualify for a Variance?

Mr. Morgan stated normally Variances are granted based on something to do with the topography or geographical area. He stated the courts determined an economic hardship is not permissible for the Board to grant a Variance.

Vice Chairman Coyner stated having the property surveyed would have been Mr. Little's responsibility. He stated it is the purchaser's responsibility to do a survey when buying the land.

Mr. Byerly stated that Mr. Little bought the property subject to this risk.

Mr. Wilkinson stated that the site plan for the 40' x 40' addition that was approved on June 6, 2003 shows it being built in line with the building.

Chairman Shreckhise stated the site plan that was approved would not require a Variance.

Mr. Wilkinson stated that there is a provision in the Zoning Ordinance that a non-conforming building can be built in line with the existing building as long as the side and rear setbacks are met. He stated the County did not require a foundation survey at the time. He stated it is the responsibility of the property owner that they follow the approved site plan. He stated in this case, the building was not constructed as per the approved site plan.

Vice Chairman Coyner asked today would an inspection be done to see if the building was meeting the site plan requirements?

Mr. Fitzgerald stated that typically Building Inspection goes out for a formal inspection at the end and the thought process was that they may catch that at that time if they see that it did not look like it did on the site plan.

Mr. Wilkinson stated at that time the Zoning office did not do Certificate of Occupancies on additions to commercial buildings. He stated because it does not meet the fifty (50') foot setback today the County would require a survey prior to anyone applying for a building permit as well as a foundation survey. He stated that went into effect in March 1, 2010.

Vice Chairman Coyner stated that there are numerous examples of sites in the County that did not meet the setbacks including portions of buildings, residential houses, and businesses that had to be removed.

Chairman Shreckhise stated the previous property owner built something illegal and did not get caught and now the only hardship is the financial hardship due to the cost to bring the property into compliance. He stated the Board cannot allow this Variance because there is no hardship other than financial difficulties.

Mr. Morgan stated that a financial hardship would not qualify as a hardship for granting the Variance. He stated there needs to be something with the topography or geographic area when a Variance is allowed.

Mr. Wilkinson stated if there was no use established there would be a hardship. He stated the building should have been built inline with the garage. He stated that when looking at the aerials on the GIS he noticed the building was built out past the existing building. He stated they had a reduced setback for canopies over gas pumps. He showed the site plans that were filed with Community Development over the years.

Vice Chairman Coyner stated during the transfer of ownership there was the opportunity to survey the property but Mr. Little chose not to do it.

Mr. Fitzgerald stated that Route 11 is not a prescriptive right-of-way and they could not give that property back. He feels, in his opinion, that option to purchase the right-of-way would be slim due to the possibility of VDOT widening Route 11 in the future.

Chairman Shreckhise stated legally the Board cannot support this request.

Mr. Morgan stated because the County did not enforce the violation does not mean that the property owner does not have to correct the violation.

Vice Chairman Coyner stated that legally the Board cannot grant the Variance. He asked if the applicant wanted to table the request again in order to have more time to speak with his attorney.

Mr. Little stated the violation has not harmed anyone. He will take this request to litigation. He stated that they did have the proper check and balance over the years and now there is a violation.

Vice Chairman Coyner stated due diligence was not done as far as a survey on Mr. Little's part. He stated it is illegal for the Board to grant this Variance. He moved that the Variance request be denied.

Mr. Byerly seconded the motion, which carried unanimously.

Mr. Little stated that the request for a Special Use Permit has been withdrawn from the agenda.

* * * * *

PAULA LINK, AGENT FOR FALLING WATERS, INC. T/A SHENANDOAH VALLEY KOA- TWO YEAR EXTENSION OF TIME REQUEST

A request by Paula Link, agent for Falling Waters, Inc. T/A Shenandoah Valley KOA, for a Special Use Permit to add additional camping cabins and a picnic shelter and to have three (3) years to complete the addition on property they own, located on the west side of Bald Rock Road (Route 781), just north of the intersection of Bald Rock Road (Route 781) and Shackelford Lane (Route 1950) in the Beverley Manor District.

Ms. Paula Link stated that due to the economy there was a delay in adding the additional cabins. She stated they put up the picnic shelter. She would like a two (2) year Extension of Time in order to complete the cabins.

Vice Chairman Coyner moved that the two (2) year Extension of Time be approved.

Ms. Brown seconded the motion, which carried unanimously.

* * * * *

RICHARD L. OR SHERRI H. HEFFNER - ONE YEAR EXTENSION OF TIME REQUEST

A request by Richard L. or Sherri H. Heffner, for a Special Use Permit to have an excavating, landscaping, and mowing business on property they own, located on the west

side of Mount Solon Road (Route 607), approximately .2 of a mile north of the intersection of Mount Solon Road (Route 607) and Old Quarry Road (Route 741) in the North River District.

Mr. Wilkinson stated that Mr. Heffner has not started his business due to the economy. He applied for an administrative permit in order to get started with the business with a limitation of one (1) company vehicle. Mr. Wilkinson mentioned that Mr. Heffner would like to keep the Special Use Permit active for a year.

Ms. Brown moved that the one (1) year Extension of Time be approved.

Mr. Byerly seconded the motion, which carried unanimously.

* * * * *

STAFF REPORT

- 10-44 Robert A. or Louise A. Harris – **Withdrawn**
- 10-45 William G., Jr. or Rhonda S. Dudley
- 10-46 Bernard, LC c/o Lindsay Funeral Homes
- 10-47 Clemmer-McGuffin Post Number 13
- 10-48 Barbara E. Davis ½ and Gregory S. Wilson
- 10-49 Alford L., Jr. or Melanie J. Allhiser

Mr. Wilkinson stated that SUP#10-45, SUP#10-46, and SUP#10-47 are all in compliance. He stated that staff sent the applicant a letter for SUP#10-48 that the permit will expire on August 5, 2011 if the pre-conditions are not completed. He stated that SUP#10-49 is in compliance.

* * * * *

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