

PRESENT: S. F. Shreckhise, Chairman
 J. D. Tilghman, Vice Chairwoman
 D. A. Brown
 T. H. Byerly
 G. A. Coyner, II
 J. R. Wilkinson, Zoning Administrator & Secretary

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, June 5, 2014, at 9:00 A.M., in the County Government Center, Verona, Virginia.

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The staff briefing was held at **9:00 a.m.** in the Board of Supervisors Conference Room where the Zoning Administrator reviewed the staff report for each request on the Board's agenda. Copies of the staff reports can be found in the Community Development Department.

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VIEWINGS

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

- **BARRY AND KRISTINA DELANGE - SPECIAL USE PERMIT**
- **LUKE M. OR ESTHER B. CAMPBELL - SPECIAL USE PERMIT**
- **BEN HOWELL, AGENT FOR HOWELL AND SONS, INC. - SPECIAL USE PERMIT**
- **ERIC D. WHITESELL - APPEAL**
- **JOHN E. NORDER - EXTENSION OF TIME**

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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Chairman

Secretary

PRESENT: S. F. Shreckhise, Chairman
 J. D. Tilghman, Vice Chairwoman
 D. A. Brown
 T. H. Byerly
 G. A. Coyner, II
 Pat Morgan, County Attorney
 J. R. Wilkinson, Zoning Administrator & Secretary
 B. Cardellicchio-Weber, Executive Secretary

ABSENT: None

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VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, June 5, 2014, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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MINUTES

Mr. Byerly moved that the minutes from the May 1, 2014, meeting be approved.

Mr. Coyner seconded the motion, which carried unanimously.

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BARRY AND KRISTINA DELANGE - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Barry and Kristina DeLange, for a Special Use Permit to have outdoor storage on business zoned property they own, located at 106 Laurel Hill Road, Verona in the Beverley Manor District.

Ms. Kristina DeLange stated she is one of the owners of the property.

Ms. Brown asked if the applicant will only have one (1) carport?

Ms. DeLange stated yes.

Ms. Brown asked if it would be at the same location that it is currently?

Ms. DeLange stated yes.

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.

Ms. Brown stated the Board visited the site today. She stated the carport is compatible with the surrounding area and has been at the site for quite some time. She moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Outdoor storage be limited to one 20' x 20' carport and one 20' x 25' area to display outdoor furniture.
2. All outdoor storage be kept in the designated areas shown on the site plan.
3. Site be kept neat and orderly.

Vice Chairwoman Tilghman seconded the motion, which carried unanimously.

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DAVID L. OR ANN W. GARDNER - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by David L. or Ann W. Gardner, for a Special Use Permit to construct a pavilion to have seasonal sales and farmers market with outdoor storage on property they own, located at 3526 Lee Highway, Weyers Cave in the North River District.

Mr. David Gardner stated he proposes to have a seasonal sales site and farmers market to sell food and produce. He stated they will also have a food truck at the site.

Mr. Coyner asked if he has spoken with the Virginia Department of Transportation (VDOT) on their comments regarding the entrance?

Mr. Gardner stated he has met with them this morning and he hopes they can come up with a resolution.

Mr. Coyner stated the applicant is working on the pad now.

Mr. Gardner stated it will be a good size lot when it is done.

Chairman Shreckhise asked what days would the applicant operate?

Mr. Gardner stated he is not sure yet. He noted he will not operate on Sundays.

Ms. Brown asked if he would have employees?

Mr. Gardner stated they will have vendors. He noted there will not be any employees. He would also like to have seasonal items including Christmas trees and pumpkins.

Ms. Brown asked if this would be a year round operation?

Mr. Gardner stated yes. He hoped to have different vendors.

Ms. Brown asked if the food truck would be onsite occasionally?

Mr. Gardner stated yes. He wanted to be sure that he was permitted to park a food truck at the site overnight if necessary.

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. Byerly stated this is an excellent idea at this site and it is in a growing area. He moved that the request be approved with the following conditions:

Pre-Condition:

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

Operating Conditions:

1. All outdoor storage be kept in the designated areas shown on the site plan. Seasonal agriculture goods such as pumpkins or Christmas trees may be displayed in the open areas within twenty-five (25') feet of each end of the building.
2. Be limited to five (5) vendors' vehicles or enclosed trailers at the site that can be parked overnight and they be parked on the back side of the building.
3. Site be kept neat and orderly.

- 4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
- 5. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.

Mr. Coyner seconded the motion, which carried unanimously.

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BEN HOWELL, AGENT FOR HOWELL AND SONS, INC. - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Ben Howell, agent for Howell and Sons, Inc., for a Special Use Permit to continue their Special Use Permit to have auction sales and modify operating condition #10 regarding hours of operation and condition #13 regarding time limit of the permit on property owned by Elizabeth J. Howell, located on the north side of Indian Ridge Road (Route 657) just east of the intersection of Indian Ridge Road and Offliter Road (Route 646) in the Riverheads District.

Mr. Ben Howell stated he has lived on this farm his entire life. He stated he has been before the Board several times. He mentioned that his dad has had auctions at the site since the 1950s and he has intermittently had auction sales ever since. He stated he has continuously had sales since 1991 until he moved on to Route 340, at which time there were traffic issues. He stated he has also operated out of Expo which was his biggest problem because of the size and magnitude of his equipment. He noted they moved him to the back of the pulling track and it was not zoned for business so he needed to apply for a Special Use Permit for Expo in addition to purchasing insurance. He stated there was no way he could secure Expoland. He stated he had items stolen at Expo and someone living in a camper. He stated that in 2008, Mr. Beyeler suggested to him to start having the auctions again at his family farm after hearing all of the problems that were occurring at Expo. He suggested trying it without getting a zoning permit and he did have the auctions at the property for four years without any problems until a neighbor complained. He stated a neighbor that lives 1.8 miles away said the auctions turned his field into a junkyard and that the auctions have been increasing in volume. He stated he has 4,000 people on his mailing list. He mentioned that 1,000 people attend the auction sales. He stated he has followed all of the regulations set forth by this Board. He now has come before the Board to change the conditions to allow him a continuous use permit. He stated they have made a big effort to follow the conditions. He stated there has been sales at this site since the 1950s.

Mr. Matt Howell stated he attended school out of the area and then came back to work on the family farm. He enjoys having the auction sales. He stated their intent is to be able to have auction sales of equipment and have fun doing it. He stated the children help with the sales.

Mr. Howell stated it would be nice to be able to continue auctions sales without asking for additional permits. He stated the adjacent neighbors have not had a problem.

Ms. Brown asked if there are vendors at the site?

Mr. Howell stated he averages 100-125 vendors.

Ms. Brown asked if he would have churches selling food at the auction sales?

Mr. Howell stated primarily Greenville United Methodist Church sells food at the site.

Mr. Coyner asked what is the radius of people coming to the auctions?

Mr. Howell stated about a 100 mile radius.

Ms. Brown stated Route 340 will be widened in the near future. She stated the traffic was the Board's biggest worry. She stated the applicant has hired certified flaggers on auction days.

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

Mr. Charlie Beverage, 2206 Stuarts Draft Highway, Stuarts Draft, stated he is the owner of Beverage Tractor. He stated that Mr. Howell provides a service to the community. He noted a lot of folks buy new from him but need to sell their used equipment at the auctions. He stated the vendors bring in revenue to the County. He stated Mr. Howell is more than fair and does not charge a buyers fee. He stated this location is great. He stated there are three ways to go out to Route 340 and that you do not have to even go by the auction site.

Mr. Simon Kensinger, 1853 Indian Ridge Road, Stuarts Draft, presented a video for the Board to view that displayed photographs of the auctions. He stated that he has been a neighbor to the Howell property all of his life and they have always had auctions at this site. He noted that his family has served food during the auctions. He has always been fascinated by auctions and have photographed auctions there for quite some time. He stated Mr. Howell should be granted a continuous permit. He stated that he is proud to be a Stuarts Draft native. He stated country is what we are and the Howell auctions are a part of Stuarts Draft which make them special and unique.

Mr. Michael Shull, 6173 Lee Jackson Highway, Raphine, stated Mr. Howell has had ongoing auction sales since he operated at the Route 340 location. He stated he is the Board of Supervisor for this district and when Mr. Howell was having traffic problems he suggested that he complete whatever needed to be done in order to operate at this location. He suggested to Mr. Howell to do whatever in order to get the traffic off of the

road. He noted in the video presented it showed that Mr. Howell is abiding by the conditions of the permit and things are being done in compliance with his permit. He stated Mr. Howell assured him that he will abide by all of the conditions that the Board places on the permit. He has been to most of the sales and everything that the applicant has said he would do has been done. He stated Mr. Howell is a man of his word. He would recommend that the Board issue him a continuous permit if you see fit.

Mr. Harry Moore, 267 Cold Springs Road, Stuarts Draft, stated the Board allowed him to operate Country Connections for the last fourteen (14) years. He mentioned that he did not think there was any opposition other than with regard to traffic and noise. He stated he hears trains all over. He stated hearing an auctioneer three (3) to five (5) times a year is not offensive to him. He stated he goes to the auctions and he has never experienced any issues. He stated this use is probably his only option to make that land productive. He would like to see a Stuarts Draft native do what they would like to do with their property.

Mr. William Carter, 156 Cranberry Drive, Stuarts Draft, stated he lives half a mile away as the crow flies and he was not aware that he is 1.8 miles away. He stated auctions were being held in other locations which was a surprise to him. He stated he bought his property in 2004 and was not aware of the auctions being held. He stated the first year he only saw one (1) auction. He stated the auctions became more frequent on the Howell property. He stated last year the auctions were really big events and became exactly that. He noted 125 sellers and 1,000 patrons attended the auctions. He stated under current rules, the applicant is permitted to bring items ten (10) days before an auction event and all vehicles and equipment be removed within ten (10) days of an auction event. He stated weekends do not count which is really more than ten (10) days. He stated with the applicant having eight (8) auctions it consumes a month for each one. He stated zoning laws were created to protect the neighbors and community. He stated the noise and traffic was a complete surprise to them. He noted the auctions were held against the zoning. He noted that Mr. Howell stated that he has never violated any regulations but Mr. Wilkinson wrote many letters and has had numerous violations before the Board gave a twelve (12) month permit. He mentioned in the last twelve (12) months he has not seen any violations but prior to that there were numerous violations. He stated items left for more than ninety (90) days on the hill cannot even be enforced due to the fact that the equipment can be moved back and forth. He stated he can see the top of the hill from his property. He stated the most convenient way for him to leave the subdivision is to go passed the auction site. He stated the other is to go past Hershey. He stated the narrow country road has big trucks traveling along the road. He stated during the auctions he can hear the speakers. He mentioned that he thought that zoning was put in place for a reason to protect the area. He stated there are two large residential subdivisions and another one that is planned in the future. He noted that he does enjoy auctions but there are appropriate places for them. He stated they have eight (8) auctions a year now and they have definitely grown. He would agree to shortening to one (1) auction a year. He felt that this location is an inappropriate location. He stated the area is residential and rural. He has opposed this use since he has moved into the area. He stated the applicant wants to change operating condition #10 which he would agree to less hours. He stated he did not sell his farm in Vermont in order to live

near an auction site. He stated the farming community likes to buy equipment from auctions but the residents in the area do not enjoy it. He asked why the Board is not equally interested in protecting the community.

Mr. Byerly asked if Mr. Carter lived in one of the subdivisions?

Mr. Carter stated yes in Cranberry Hills.

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

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

Mr. Howell stated Mr. Carter referred back to auctions without a zoning regulation. He stated Mr. Beyeler instructed him to do the auctions at his family farm where his grandchildren could be safe in their own field and family farm. He stated if the children are tired they can go inside the house and take a nap. He stated with regard to the regulations that were violated, they have followed the regulations. He stated Mr. Carter should not refer to something that was done prior to 2010. He stated they did have some issues but they corrected the problems as soon as they were addressed.

Mr. Wilkinson stated at the March 12, 2012 auction staff did report that the equipment was not removed within the fourteen (14) day time period and there were still people parking across the street and crossing the road. He stated since the Board granted the permit for a year, staff was not aware of any violations that have occurred. He stated the applicant has hired certified flagmen. He stated there has not been reports of people walking across the street. He stated they have had no violations to report for the last twelve (12) months.

Mr. Howell stated the Board granted a 50' x 300' storage area at the top of the hill and that has been in compliance. He stated it does not make sense for them to keep equipment at the top of the hill for more than ninety (90) days. He stated they do not want equipment sitting around and getting rusty. He stated the storage at the top of the hill is in compliance. He stated they did have some minor issues in 2012. He stated they do have cones along the road at the auctions now. He finds it hard to believe that Mr. Carter can hear the auctions from his property at 156 Cranberry Drive when people who live closer cannot hear the auctions. He stated his area is planned for Medium Density Residential. He stated if the Howells cannot afford the land anymore, it will get sold for Medium Density Residential housing. He stated if he were to ever sell his property than that would translate into 500,000 square foot of asphalt driveways which will translate into many issues. He stated tractors and other pieces of equipment need to be sold somewhere. He stated someone sells the used equipment at their auction and then will turn around and buy a new piece of equipment at Beverage Tractor. He stated he would like to keep living there and pass something down to their grandchildren. He stated the hours of operation he would like to be changed from 7:00 p.m. to 9:00 p.m. He stated it would be nice to have the extended hours in the summer. He noted in the winter they will be done by 5:30 p.m.

Chairman Shreckhise declared the public hearing closed. He stated the zoning regulations are here to protect the residents of the County. He stated this Board is here to look at permissible exceptions to the zoning, see if requests would be beneficial to the County's residents, and setup regulations so the requests are safe. He stated these auctions are good to have and are desirable. He stated the applicant took a while to comply with the regulations and safety issues of the request. He noted this past year Mr. Howell has followed regulations. He stated Mr. Howell has done a good job this last year. He mentioned there were problems over the years but they have been ironed out.

Mr. Byerly stated this is a needed service to the area. He noted Augusta County is one of the largest agricultural counties. He stated public safety is most important when operating any business. He moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be permitted to have eight (8) general auction sales per year.
2. Be limited to a 50' x 300' area at the top of the hill for storage of vehicles or equipment between auctions. No individual item may be stored onsite longer than ninety (90) days.
3. The only other items permitted to be stored onsite between auctions is the two (2) concession stands and one (1) office trailer.
4. No vehicles or equipment be brought to the site prior to **ten (10) days** before an auction event and all vehicles and equipment be removed within **ten (10) days** of an auction event and the site be returned to an agricultural state.
5. Portable toilets may be brought to the site no sooner than seven (7) days prior to an auction and be removed within seven (7) days after the auction is held.
6. All equipment, machinery, materials, and vehicles for sale at the auction be kept inside the designated areas shown on the site plan.
7. No parking along the public street. All parking to be on the site.
8. Two (2) VDOT certified parking attendants will be provided during all auction events to direct parking into the property.

- 9. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
- 10. Hours be 7:00 a.m. to 9:00 p.m.
- 11. No Sunday activity.
- 12. The only signs to be permitted for this business is one (1) on premise business sign not to exceed thirty-two (32) square feet, one (1) off premise advertising sign and four (4) directional signs, and it is the applicant's responsibility to keep the sign out of the VDOT right-of-way. All offsite signs to be removed within three (3) days of an auction.
- 13. Permit be reviewed annually.

Mr. Coyner stated agriculture is very big in the area and he would hope that it continue to be that way. He stated agricultural people need to have a place to move used equipment. He seconded the motion, which carried unanimously.

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LUKE M. OR ESTHER B. CAMPBELL - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Luke M. or Esther B. Campbell, for a Special Use Permit to have a food service business with outdoor storage of trailers on property they own, located at 28 Rankin Lane, Stuarts Draft in the South River District.

Mr. Luke Campbell stated he is requesting to store two (2) trailers at the property. He stated one will be for a smoker for pork bar-b-que and the other will be a vending trailer with a commercial kitchen. He stated the sales will be conducted at an alternative location. He stated both trailers will be stored on the property off season.

Mr. Coyner asked if the trailer will be at this site every night?

Mr. Campbell stated they will be at the house majority of the time.

Mr. Coyner stated the Board visited the site this morning.

Mr. Campbell stated he has a 4 x 7 trailer and if it goes well, he would like to get a bigger one.

Mr. Coyner asked if there will be food served at the home place?

Mr. Campbell stated no. He stated all of the sales will be offsite. He stated the permit will be to only store the equipment at the house.

Mr. Coyner asked if this would be a family venture?

Mr. Campbell stated yes him and his wife.

Ms. Brown asked if he will travel to different sites?

Mr. Campbell stated they are thinking about a site in Fishersville but would go out to carnivals, fairs, or auctions too. He stated they are not sure because this is a new venture for them.

Mr. Coyner asked if this would be a side venture?

Mr. Campbell stated yes. He stated his wife has quit her job to run the vending trailer. He stated his hours would be worked around his job. He will prepare the meat for the sales.

Ms. Brown asked if the site in Fishersville would be permanent?

Mr. Campbell stated it would depend on their business.

Ms. Brown asked if they will also cater?

Mr. Campbell stated they have done a little catering. He stated he was asked to cater a wedding dinner.

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 the Board visited the site this morning. He stated the applicant is doing a good job. He moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. Be limited to one (1) food vending trailer and one (1) smoker/cooker at this site.
2. Be limited to one (1) employee who comes to the site.

3. Site be kept neat and orderly.
4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
5. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.
6. Applicant must reside on premises.

Ms. Brown seconded the motion, which carried unanimously.

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ERIC D. WHITESELL - APPEAL

This being the date and time advertised to consider an appeal by Eric D. Whitesell to the Board of Zoning Appeals of a Decision of the Zoning Administrator and Subdivision Agent regarding a request to subdivide a lot that does not meet the lot width requirements located at 493 Lee Highway, Staunton, in the Beverley Manor District.

Mr. Angela Whitesell, Vellines, Glick and Whitesell, 125 South Augusta Street, Staunton, stated they are asking this Board to overturn the decision of the Zoning Administrator and the Subdivision Agent. She noted respectfully, they feel their decision of both was incorrect due to a number of reasons. She noted the decision failed to recognize the de facto subdivision of the property in 1983 at which the Board of Supervisors at the request of the property owner split the zoning of the property. She noted they failed to treat the width of the lots in the area similarly as the situated lots are and they would ask the Board of Zoning Appeals to consider Section 15.2-2309 and look at the portion which directs the Board of Zoning Appeals to consider the intent of the ordinance laws and regulations that are in place with regard to this property.

Mr. Eric Whitesell presented the Board with documented pictures and records found on file from the clerk's office. He noted that he is a native to Augusta County and for the last thirty-five (35) years has lived in Tazewell County and has been practicing law at a law firm specializing in real estate and deeds. He stated that he did not get the mail until Monday because he was in Richmond this week. He mentioned as he read the County staff report and Mr. Morgan's letter dated April 18, 2014, somewhere or somehow the notion that the purpose of the Zoning Ordinance was to punish or press owners of lots in old subdivisions and a lot that he owns and as the County defines as a non-conforming lot but this should not be the purpose of the Zoning Ordinance and it is not the spirit and intent of the law. He noted the purpose of the Zoning Ordinance as defined by the General Assembly of Section 15.2-2283 of the statute promotes the health, safety, or general welfare of the public and of further accomplishing the objective of Section 15.2-2200 for the welfare of the citizens of Augusta County. He mentioned among the purposes set forth in the statute is to facilitate a convenient, an attractive, and harmonious community. He stated harmonious is defined as

lot uses be the same and lot uses that people enjoy around the subject property and attractive means type of structures and the way they are built in aesthetics is in keeping with those structures that are around the property in question. He stated the County's statement listed on Page two of the staff comments read: Section 15.2-2309 of the Code of Virginia Powers and Duties of the Board of Zoning Appeals states: The decision on such appeal shall be based on the Board's judgment of whether the administrative officer was correct. He felt that the second sentence should also be in bold which reads: The Board shall consider the purpose and intent of any applicable ordinances, laws, and regulations in making its decision. He noted that his Uncle Joe was dear to him and was born here in the County. He stated that he passed away on March 23, 2013, and left the property to him. He stated his uncle lived at this site. He stated the aerial map is not accurate. He stated there are houses on Lots 1, 2, and 3. He stated they are not vacant lots. He stated they listed it for sale based on the Zoning District map noting that it is half residential and half of a business lot. He stated it was priced below assessed value. He mentioned that he was offered a sale on April 15th for the front part zoned commercial and accepted the offer. He contacted the Community Development Department and was told that the property does not meet the 100' width requirement at the 50' setback line. He stated it meets all of the other requirements because there is plenty of square footage (12,000 square feet), enough for the front, side, and rear setbacks. He noted that he was told this lot does not meet the lot width requirement. He stated during this time he has also had offers on the back lot through Charity Cox in February for \$38,000 and now he cannot do anything with the property. He asked the Board to review the documentation presented on Page 1 and look at his aerial of Jolivue Subdivision showing Peck's BBQ as one of the landmarks on Lee Jackson Highway. He stated the map displays Second Street and Montgomery Road. He mentioned his map is from Google Earth and the aerial shows Lots 1, 2, and 3 with the rooftops of houses that are not shown on the County map. He stated on Lot 6 the map does show a house. He stated Lot 4 is owned by Virginia Garber. He stated Lot 5 is his lot and all of the lots are non-conforming in the area and do not meet the 100' requirement. He thanked Zoning Administrator for noting that water and sewer is available. He stated Page 1A shows a ground photograph of the houses. He stated the houses located on Lots 1, 2, and 3 were constructed in 2012 at the intersection of Second Street and Montgomery Road. He stated there is a commercial building behind these lots which is so close to the line that the trees are hanging over the commercial building which shows how non-conforming that building is. He stated on Page 2 is an excerpt of the original plat of Jolivue Subdivision dated November 16, 1931. He stated Lots 1 thru 6 are outlined in red showing Lee Highway, Montgomery Road, and Second Street. He stated all of the lots that you see are non-conforming and not 100' wide and were made that way. He stated the entire plat is recorded in Deed Book 254, Page 144 and the Board will find 75 lots in the subdivision and 67 of them were made non-conforming. He noted that is 89.3% of them being non-conforming. He stated Lot 5 is highlighted in yellow. He stated the topo of the land is the same for all six lots and they are gently sloping from Montgomery Road to Lee Jackson Highway. He stated Lots 6, 5, 4, and 3 are all identical. He stated they have the same acreage, same 70' of frontage on Lee Jackson Highway, same 86.3' frontage on Montgomery Road, and they are all 544.5' feet deep. He mentioned that Lot 2 and 1 have a slightly different configuration, instead of 70' it is 80' on Lee Jackson Highway

and the frontage on Montgomery Road is less but they are all still less than 100' and are all non-conforming lots. He noted on Page 3 is a copy of the Zoning District map. He stated he received this map from Community Development shortly after his uncle died. He stated this map does not show a house on Lot 3. He stated the house on Lot 3 was built after this map was made. He noted Lot 5 is his property. He noted the area outlined in red is a residential lot, his uncle called this the front lot, which the Zoning Administrator describes as the backyard. He stated the backyard on Lot 6 is where the house is and there is an accessory building all on the backyard. He stated ladies and gentlemen, it is not a backyard – it is a lot. He stated 280' is zoned General Business and the back lot on Montgomery Road is zoned residential. He noted on Page 4 lists an introduction that the original Lots 1-6 in Section B of Jolivue Subdivision have all been divided into front lots facing Lee Jackson Highway and back lots facing Montgomery Road. He stated they will start with Lot 1 on Second Street. He gave the Board of Zoning Appeals a copy of Section 25-664C of the Augusta County Code which provides for an exemption of non-conforming lots that are owned by people that live in old subdivisions to the 100' width requirements. He stated there are maps showing the history of Lots 1, 2, and 3. He stated Jane H. Baylor owned a single lot on the corner of Second Street and Montgomery Road and got it the same way that he got his property, she inherited it. He stated it was inherited in 1992. He stated the County Attorney, in a letter, referenced a deed from 1953. He stated the first deed was found and it was conveyed to one lot. He stated it references Deed Book 254, Page 144 Jolivue Subdivision plat and that is the only plat found concerning this property. He stated the only other plat that he found to record was dated January 27, 2012 and recorded on February 21, 2012. He stated this was done long after the look back period or ten year exemption period of December 31, 2005. He asked the Board to look at the frontage on Montgomery Road and it is from 70' front to back. He stated there is no way that it met the minimum 100' lot width requirement set forth in the current Zoning law. He asked how did the plat get developed and how did the house get built on the lot in 2012. He stated the dotted lines next to Second Street show a 20' side setback which is the exact setback called for in Section 25-664C which exempts lots in old subdivisions from the 100' width requirement if they meet the setback requirements of this statute. He stated on the left side there is a 10' setback, which is the setback in the statute that exempts the lot from the 100' width if they have the side setbacks. He stated the dotted lines are there for a purpose and it falls within the exemption of non-conforming lots as found in Section 25-664C. He noted Page 6 shows a comparison of Lot 2 being subdivided in 2012. He stated this was a good surveyor in that he has notes of Deed Book 254, Page 144 which is the original 1931 plat that he has referenced previously. He stated this lot shows a frontage of 85.98' on Montgomery Road. He stated the back lot is over 80' but is non-conforming and not 100' wide at any point. He stated the dashed lines inside show a 10' setback between Lots 1 and 2 which is the exact setback called for in Section 25-664C exempting non-conforming lots that are not 100' wide. He stated Lot 3 shows a 10' setback line which is the setback allowed by the exemption statute. He stated on Page 7 shows the last lot that Jane Baylor subdivided in 2012 (Lot 3). He stated the subdivision in 2012 facing along Montgomery Road referenced the same 1931 plat being recorded which is the last plat of record because this one was done in 2012. He stated the lot frontage shows 86.24' on Montgomery Road and 78.37' in the back. He wanted the Board to note the width which

has almost the exact dimensions of the other lots mentioned. He noted that Lots 6, 5, 4, and 3 are all the same. He stated the frontage and rear of Lot 6 has the same numbers as the survey which was dated on January 27, 2012, and recorded on February 21, 2012. He stated a house has gotten built on all of the lots because they met the requirements of Section 25-664C of the Augusta County Code so that owners of non-conforming lots in old subdivisions are treated the same as everyone else and who are not punched or penalized for a change in the law 83 years after the lots were created. He asked how did the plats get recorded in 2012. He noted 2005 was the last year to be able to put on a plat showing a lot width less than 100' wide at the setback line. He looked to see if there was another plat back in the chain of title and there is not. He stated the last plat that was found of record was what the surveyor referenced on his plat, Deed Book 254, Page 144 of the 1931 Jolivue Plat. He asked the Board what happened. He noted Page 8 shows the 1953 deed where Jane Baylor's parents acquired the property that she ended up subdividing in 2012. He stated the western portion of the Lots 1, 2, and 3 are all conveyed as one parcel and not three separate parcels. He stated in the deed it referenced the property beginning at a stake at the intersection of the eastern line of Montgomery Road and the southern line of Second Street thence with the southern line of Second Street. He stated the description of the conveyance is noted on Page 9. He stated one lot conforms to the current Zoning Ordinance and then it was created into three non-conforming lots back in 2012, Lots 1, 2, and 3. He stated the Virginia Subdivision Act was established in 1949. He stated his property was first zoned residential in 1947. He would believe there was a Subdivision Act which was established to go along with the Zoning Ordinance back in 1953 which would have required a plat to be prepared showing the subdivision of the land and submitted to the County or Planning Commission for approval before recording. He stated he could not find any plats anywhere. He stated even if Augusta County did not have the Subdivision Act in 1953 are you free to do whatever you want to do? He stated a lawyer drew up a deed and conveyed one lot, one parcel. He stated the Board has before them the deed of one lot and one parcel that is conforming being divided into three non-conforming lots and yet he cannot sell the back lot zoned residential as a residential lot. He stated Page 10 shows a copy of the Zoning District map noting the location of Lots 4 and 5 again. He noted on Page 11 is a copy of the application made of rezoning by his uncle. He stated his uncle did not apply to have the property split zoned. He stated in his application he was seeking to rezone 0.9 acres of each lot to business as listed on the original Jolivue plat from 1931. He stated 0.997 acres is the entire lot. He stated his uncle was seeking to rezone the entire lot from R-15 Residential to B-Business for both lots. He stated if the application was approved the way his uncle wanted, he would not be here today. He would tell a prospective buyer that they could put in an entrance on Lee Jackson Highway up to a parking lot or other business structure on the back lot facing Montgomery Road and an exit on Montgomery Road but that is not what happened per the notes on the bottom of the application. He stated the Planning Commission denied the application but the Board of Supervisors approved the request on April 26, 1983, to rezone a depth of 280' from Route 11 to Business. He stated Page 11A display staff comments regarding the rezoning and the Planner's comment stating they are against the rezoning. He stated Page 11B are notes made regarding the rezoning which was part of the materials in the file. He noted some of the notes state that they viewed the property and Whitesell compromised to go

only 280' deep for the rezoning of the property to Business. He mentioned that compromise means that you do not get all of what you want or you get some of what you want but not all which summarizes all of what happened. He stated Page 12 shows how Lots 4 and 5 were subdivided. He stated it shows a resolution adopted by the Board of Supervisors after advertisement of public hearings and after public hearings held where Mr. Gilbert moved to approve the rezoning and seconded and unanimously carried to rezone the front portion back 280'. He stated for Lots 1, 2, and 3 there was no County action, only a lawyer writing a deed. He stated this is an action by a governmental body. He stated his uncle and Ms. Garber has the resolution dated April 26, 1983, and he considered their property to be divided because he relied on this resolution. He stated they did not run out in 1995, 2000, or 2005 and hire a surveyor to get the property divided like it is indicated that they should have done. He stated the Board of Supervisors had the power to subdivide but the lawyer writing a deed does not. He stated with Page 13 it shows Lot 6A and Lot 6B, Lot 6B being the backyard as Mr. Wilkinson addresses. He stated this plat is the first plat of record since 1931 and he was told it was fine because it was recorded in 2005 with the grandfather provision even though it is less than 100' wide. He noted the setback lines on Lots 1, 2, and 3 but you do not see that on Lot 6B. He mentioned at the time, as long as it was recorded by December 31, 2005, they did not consider this to be a non-conforming lot even though it is less than 100'. He stated the dimensions are 86.04' on Montgomery Road which match Lot 3. He stated the back lot is 78.27' which matches Lot 3. He stated this is what his residential lot looks like. He noted that is identical to what his lot will look like. He stated the frontage is exactly what the Board sees here. He stated that Lot 6 was subdivided in 2005 and in 2007 a house was built. He pulled a copy of the building permit that was applied for in 2007. He stated he looked at the property and there is no side setback up against his uncle's line, again another non-conformity. He mentioned on Page 14 shows the Virginia Mass Appraisal Network records from the Commission of Revenue for tax assessments. He stated John Allen's (Lot 6A) land value for the backyard is \$50,000. He stated Page 15 shows a picture of what Mr. Wilkinson calls the backyard edge of Montgomery Road. He stated in the upper right hand side section is the corner of the Allen house. He stated that his uncle had a machine shop at the property and that is why he requested a zoning change. He stated his uncle's house is the white frame house. He stated the Board can see the Garber house through the trees on Lot 4 and the property to the left is Peck's BBQ. He stated Mr. Wilkinson suggested using the backyard as a lunch area for employees that work in his uncle's house. He stated that he could not expect employees to eat lunch 400' away in the backyard due to the great distance they are talking about. He stated he is required to keep the property mowed or else the County will mow and put a lien on the property. He noted he is required to pay taxes on the property. He stated the last assessment was for \$212,500. He noted the assessment was lowered to \$182,000 in this last assessment cycle. He stated he had the property for sale at \$129,000 which is \$50,000 below the assessed value. He noted that no one wants the piece of property because it is useless unless mowing or paying taxes on it. He stated the lot cannot be used for residential purposes. He stated the County will not let it be divided and sold. He stated the back portion cannot be used for business because it is not zoned that way. He stated he cannot keep a hog or a horse on it because it is not zoned that way. He stated he cannot do anything with it. He stated the suggestions from Mr.

Wilkinson are estranged on what could be done with the property. He stated there were houses built on some of the lots recently. He noted on Page 16 is a picture of what the lunch grounds would look like along Montgomery Road. He stated on Page 17 shows documentation from the City of Manassas v. Rosson 224, Va.12. He stated the Virginia Supreme Court states the Zoning Ordinance must not arbitrarily discriminate, either in terms, or application. He stated in an earlier case of the Board of Supervisors of James City County v. Rowe, 216 Va. 128 when a land use permitted to one landowner (Lot 1, 2, 3, and 6) is restricted to another similarly situated (him) the restriction is discriminatory, and, if not substantially related to the public health, safety, or welfare, constitutes a denial of equal protection of the laws. He stated a restriction on the right to use which thus denies equal protection also constitutes a "taking" of one of the most valuable components of the package of private property rights, and, absent just compensation, such taking is a denial of due process of law. He stated that is why he is here today to appeal the decision to the Board of Zoning Appeals. He stated the Appendix displays a copy of the entire Section 25-664 statute. He stated there is no question that his lot is a non-conforming lot and has been described as such by the Zoning Administrator. He stated Lots 1, 2, and 3 are an exception to the 100' and if you agree to the side setback of 10' or 20' adjacent to a public street then this statute would apply. He stated that Mr. Wilkinson referenced a Special Use Permit that would permit a day care center at the property. He stated that he is 62 years old and has practiced law for thirty-five (35) years and he could not go into a day care business. He stated a Special Use Permit is personal to the person they are granted to and do not remain with the property if it changes hands. He stated he has no choice but to sell the property. He stated the Special Use Permit does not solve the problem or give the property any more value. He stated the Summary page lists the purpose of the Zoning Ordinance. He noted Jolivue Subdivision is an 83 year old subdivision and you have to view the lots in light of the current circumstances existing in that 83 year old subdivision. He stated houses were built on non-conforming Lots 1, 2, 3 and 6 within the last seven (7) years. He stated if a single conforming lot created in 1953 (prepared by a lawyer) can be divided into three non-conforming lots in 2012, there should be no objection to dividing the Whitesell property into one commercial lot and one residential lot which can be sold for the purpose for which they were zoned. He noted if the original Lots 1, 2, and 3 platted in Jolivue Subdivision were subdivided by a lawyer alone writing a deed and made into one lot than the Augusta County Board of Supervisors has the power to create one commercial lot and one residential lot by subdividing Lot 5 and they did by resolution of the Board of Supervisors that was done on April 26, 1983. He stated a lawyer wrote a deed which was not a governmental act. He stated the Board of Supervisors adopted a resolution which is a government act and valid governmental act and they have the power to do so. He stated Section 25-664C has a purpose to permit the development of lots in 83 year old subdivisions like Jolivue that were not 100' wide when they were created but that statute follows the spirit of the Zoning Ordinance and yes you can divide the lot even though it is not 100' wide as long as you can abide by these setback requirements. He noted what would be really non-conforming is (as it was suggested to him) to buy Ms. Garber's residential back lot and put the two together and then sell it as a residential lot. He stated then there would be one lot that is 176' wide surrounded by lots that are 85' or less which would be a non-conformity. He stated that is something that is not harmonious and not in

keeping with the rest of the community. He stated it would be two times as large as the lots on both sides. He stated if the Board will not permit him to sell the two lots for the purposes for which they were zoned, then the County can buy the residential part of Lot 5 for \$50,000 and use it as a park or picnic tables or whatever the County wants to do with it. He noted that he has been left with the burden of mowing the property and paying taxes and it should not be a burden that one individual, him, should endure, but by the public at large.

Chairman Shreckhise stated that he does not understand Page 12 and the Board of Supervisors dividing the lots. He noted it does not say anything about splitting the two lots. He stated part of the lot is business zoned and part is residentially zoned.

Mr. Whitesell stated the Board of Supervisors had a resolution dividing those lots which is as good as a plat that divides the property 280' back off of Lee Jackson Highway. He noted it was divided at that time.

Chairman Shreckhise asked if that was ever recorded as two separate lots?

Mr. Whitesell stated no, it was not required to be recorded unless the Board of Supervisors directs that they be spread. He stated it was not spread in the deed books but it is still a force of a governmental act by a body that has the power to subdivide land and that is exactly what they did on April 26, 1983. He stated his uncle thought that he had two (2) lots and that is what Ms. Garber thought too.

Vice Chairwoman Tilghman asked how many property tax bills does the applicant get?

Mr. Whitesell stated on the bill it lists one lot (Lot 5). He stated the reason is because this resolution was not spread in the clerk's office. He stated all plats and deeds that get recorded are used by the Commissioner of Revenue to tax property that was subdivided. He stated this resolution was not spread but it does not take away its power. He stated the Commissioner of Revenue or the Treasurer does not have the power to subdivide land. He stated in most cases you will not find that the Board of Supervisors order a resolution to be spread at the clerk's office. He stated the Board of Supervisors has the power to subdivide property. He stated this Board subdivided the property back in 1983.

Chairman Shreckhise stated the Board of Supervisors rezoned 280' along Route 11 of the property to be business and the rest was residential but does that constitute them dividing it into two lots?

Mr. Morgan stated the County's position is that the Board of Supervisors is free to rezone property and that is what they did. He stated this is a Zoning action and not a Subdivision action. He noted they did not divide this lot.

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

Mr. Finley McClure stated he is aware of the property and he is a licensed appraiser and broker. He has listed the property for sale. He stated this has an impact on the market value on this property and early on they assumed it could be divided which is the way it was listed for sale. He stated they did have someone that was interested in the half acre but did not want the back lot. He stated that Mr. Lotts drew a survey and they found out that the County would not let Mr. Whitesell subdivide the property. He stated they relisted it as one tract for \$129,000. He stated many people cannot afford the entire property and do not even need the entire property. He stated not being able to subdivide does have a negative effect on marketing the property.

Ms. Angela Whitesell stated the wording in action from the Board of Supervisors in 1983, if it did not constitute an actual subdivision, was a de facto subdivision which is in essence they subdivided the property at that time splitting the zoning. She stated today the back property can be used as residential and the front for business. She stated Mr. Whitesell is precluded from using it in that manner. She stated it is not permissible to build a house on the back and continue to use the front lot for business or residential purposes. She hoped this Board would recognize the Board of Supervisors action of this de facto subdivision.

Mr. John Allen, 178 Montgomery Road, Staunton, stated that he owns the back lot. He noted that he was surprised that the lots were divided on the corner in small lots because of the 100' lot width. He does not see any reason why you would not split the lots and someone build a house. He mentioned that he would hope that young children could play in the back. He stated this would be tax revenue for the County if Mr. Whitesell could sell the land.

Mr. Whitesell stated the Board's decision should be guided by purpose and intent of the Zoning Ordinance. He stated the purpose and intent of the ordinance is to provide for a harmonious community. He stated Mr. Allen told yes it will be a harmonious development if we have a neighbor and house next door. He stated he has a house on Lot 6. He stated the purpose and intent of the Zoning Ordinance should not be to punish or press owners of lots in old subdivisions because they have rights, and their rights are equal to rights of everybody else. He stated that he served on the Planning Commission in Tazewell County for a number of years. He stated they do not even have a Zoning Ordinance in Tazewell County and for a years he advocated for adopting a Zoning Ordinance because of the good things that come out of it. He noted harmonious development is development of property that of like kind and shape, like his property, and how the other property across the street is developed. He stated so business uses is not next to residential, mobile homes not next to \$300,000 homes. He stated those are the good things that Zoning Ordinance are created for. He stated all he is talking about here is selling a residential lot for a residential lot to people who are ready to buy and build in the County which would be a good thing for the County. He stated a farmer told him that if you let the government regulate what you can do to a property then they will take it away from you. He noted that he never thought he would see that happen to his uncle's residential back lot. He stated it is being taken away from him because he cannot do anything with it. He noted it is good

for nothing and has been taken. He stated property rights are very dear to him. He stated owning a piece of property is one of the most important things you could accomplish and do in your life and it was worth working hard for, scrimping for, and if necessary fighting for to own a piece of property. He stated that it now seems to him that you are better off not owning a piece of property at all but he does not believe that. He noted that the people of this County still hold dear the right to own property and those rights include the right to sell it when it becomes time. He stated he cannot keep this property forever because he cannot manage it from 200 miles away. He stated he needs to sell it and he should have the right to sell the property. He stated he is not asking for anything other than what the County zoned it for, which is the back for residential and the front for business. He stated if the Board feels the resolution of the Board of Supervisors has no force and effect, you still have to look at Section 25-664C which still provides an exemption and exception of the 100' width requirement for non-conforming lots in a subdivision older like his that does not have conforming lots and if you can meet the setback requirements, that will satisfy the Zoning Ordinance if he follows this statute. He stated he was told he cannot subdivide and sell the front and back lots because he does not meet the requirements of the Zoning Ordinance. He stated the plat shows a 10' setback next to Mr. Allen and Mr. Garber which shows he meets the requirements of the Zoning Ordinance and Subdivision Ordinance. He stated he can meet the requirements, therefore, he can subdivide the lot. He has just showed the Board of Zoning Appeals two ways it can be done. He stated the purpose of the Zoning Ordinance and what it should be either by this statute or by resolution of the Board of Supervisors that this lot can be sold for the purpose of which is was zoned. He stated if this Board finds he can meet the requirements of the Zoning Ordinance for this section, then he can divide his lots.

Vice Chairwoman Tilghman asked why didn't the applicant just ask for a Variance?

Mr. Whitesell stated he does not need a Variance, it is in the statute.

Vice Chairwoman Tilghman stated she sat on the Planning Commission for sixteen (16) years. She stated every law has a downside but she would hope that it helps 99% of the people.

Mr. Wilkinson appreciated the presentation to the Board. He noted there are several items that the applicant has told the Board that he disagrees with that he would like to describe and make it clearer to the Board. He stated Section 25-664C is not for a reduction in lot width in order to subdivide the property. He stated that section of the Zoning Ordinance is if you have an existing lot and it is non-conforming it gives you a reduced setback for a building structure that you want to place on the property. He stated where the nonconforming lot does not have the minimum lot width at the setback line, minimum side yards adjacent to a street shall not be less than twenty feet (20') and all other side yards shall not be less than ten feet (10') referred to as the setback for placement of buildings. He stated if the structure cannot meet the fifteen feet (15') setback in residential zoning it could go to a ten foot (10') setback. He stated it is a flexibility put in by the Board of Supervisors for existing subdivisions that has been around for a long period of time or on

existing lots in agriculture that we still see the 50' lots but today they need to be 150'. He noted this is a way to allow flexibility to develop those lots for the folks who own them merely with a reduction of the setback requirement. He stated creating a lot based on the Zoning line is prohibited. He stated by Section 21-3 and 21-6 of the Subdivision Ordinance of Augusta County, it clearly states they prohibit any creation of a lot that does not meet the Subdivision Ordinance requirements and Chapter 25 of the Zoning Ordinance where we have the 100' minimum setback line so that you clearly cannot create it and the Board of Supervisors cannot create a lot without changing the ordinance. He stated that he would not dispute the survey shown for Lots 1, 2, and 3 but it is not a Subdivision plat as Mr. Whitesell has described them to you. He stated those lots were not subdivided in 2012. He stated the Tax Map in 1983 clearly showed those lots already in existence. He stated a deed referenced a portion of three lots in a 1953 deed. He stated in 1953 there was a Subdivision Ordinance. He stated the dotted lines shown on Page 5, 6, and 7 are setback lines for a building envelope. He stated in 2010 the Board of Supervisors changed the ordinance because houses were being built too close to the property line. He stated as part of a Zoning Ordinance revision of 2010, they enacted a Setback Ordinance requiring a sketch plan be drawn of the property showing a buffer area when building. He stated that at any time where the structure is within 5' of the minimum side or rear setback or within 20' of the street setback than a survey is required at the time a building permit is applied for. He noted that is what these documents are. He stated no where in the document describes it as a Subdivision plat and nowhere does it show a signature panel for County approval which is a requirement. He stated the surveys show the property within the building envelope. He stated some do record those plats. He does not know why. He stated sometimes old records and archives are sometimes not easy to find. He stated before the original Subdivision Ordinance of Augusta County was adopted, the Board of Supervisors could approve lots. He stated many lots have no actual record but these are not Subdivision plats. He stated those three lots were in existence clearly on the Tax Map of 1983 already. He stated the last survey on Page 13 is a Subdivision plat with a County signature panel dividing this into two lots but not the other three exhibits. He would agree that Page 13 it is a Subdivision plat approved by the Subdivision Agent. He wanted to respond to the applicant's statement that there are no uses available to the property. He stated those items that were listed in the staff report were just a few options available. He stated this decision should be one whether the administrative officers made the correct decision based on the ordinance.

Chairman Shreckhise asked if Mr. Morgan had any other comments?

Mr. Morgan stated that Mr. Wilkinson summarized the request very well.

Mr. Whitesell stated included a copy of the 1953 deed and materials is the deed that the County Attorney referenced the subdivision of property. He noted there are no mysterious plats of record. He noted the surveyor, Mr. Lotts, lists Lots 1, 2, and 3 and notes on the survey itself the plat that he looked at to make those surveys which is the 1931 Jolivue plat. He stated it does not make a difference how the lots were cut in 2012 because they were made non-conforming. He asked the County to show him how the other lots were divided

before 2012 and he cannot and they were subdivided based on this statute. Mr. Whitesell read Section 25-664C. He stated this is an exception for non-conforming lots not meeting the 100'. He stated the Subdivision Act states you can subdivide your property as long as you are conforming to the Zoning act and here is the conformity. He noted the purpose should not be to punish or press property owners of lots in old subdivisions and that is why this exception is in the ordinance. He stated this is what it is and it reads like it reads. He stated he would challenge the County to come forward with a plat for Lots 1, 2, and 3 before 1995. He stated the 1953 deed created one lot. He stated if he wanted to create a subdivision he would describe each lot which was not done in this deed. He stated the deed conveyed a single lot and it stayed single from 1953 until 2012. He stated in 2012 the lots were divided into three non-conforming lots. He does not know how it got divided and how the houses got built on those lots in 2012. He stated the fact that it did happen entitles him to do the same thing. He noted he is being discriminated against if he cannot do the same thing. He noted according to the Virginia Supreme Court, if he cannot subdivide then he is being denied equal protection of the law and that is not the purpose of the Zoning Ordinance. He stated this is not what the Zoning Ordinance is about. He stated that is an incorrect decision on his part. He stated the Board of Zoning Appeals should allow him to do the same thing that was done in 2012. He stated if the decision stands he is clearly being discriminated against. He stated Ms. Baylor was allowed to do this in 2012.

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.

Mr. Byerly stated that he appreciated all of the comments but not being an attorney, he does not understand the spirit of the ordinance which he feels is vague or of an individual opinion. He noted that he did not understand what was meant by a de facto subdivision.

Vice Chairwoman Tilghman stated she does have sympathy for this because all over the County there are pieces of property that do not conform to the rules and regulations that are set forth now that we need to have exceptions for and we have done that on many occasions. She noted she is not a lawyer but she was not sure why the owner did not attempt to ask for a Variance instead of the appeal. She noted this Board is sympathetic because there are many things that worked 50-75 years ago that just does not work now. She stated that she cannot answer to what has happened with Lots 1, 2, and 3 which would not affect the decision of the Board on this appeal here today. She stated this is only one lot and this Board is not here to make a ruling on whether the lot could be divided or not. She stated the Board is reviewing whether or not Mr. Wilkinson made the correct call. She noted the Board of Supervisors made the decision to split zone the property to business and residential a long time ago. She stated the applicant has always had one tax bill for the property and if that is true she would make the assumption that it was being taxed residential because on the business portion, the applicant would be paying more.

Mr. Wilkinson stated half of the property is business and the other half residential. He noted they would have different assessments. He stated tax assessments is a different department but by what Mr. Whitesell said they are assessed separately.

Chairman Shreckhise stated he does not see any definitive documentation that this is two lots. He stated they are here to decide whether the Zoning Administrator made the proper decision. He stated he did not see anything noting that the property was in two lots. He noted that he does not believe that Section 25-664C was meant to give the Board of Zoning Appeals such discriminatory powers as to which lots could be divided and which lots could not. He stated it does not give them the power to change all of the lots that we want to. He stated this may be assessed wrong. He stated there are uses for the property. He stated looking at what the Zoning Administrator is looking at and what the law states, the lot needs to be 100' wide not 70' wide.

Mr. Coyner stated Mr. Wilkinson interprets what he sees as law and checked with Mr. Morgan regarding the law too. He stated the Board is here to decide whether or not Mr. Wilkinson was interpreting the ordinance in the correct manner and it does appear that he did. He stated this Board has heard from both sides on this issue, and while we understand the applicant's desire to divide the property in order to have two lots to sell, the issue before us is not a Variance, but an appeal of staff's decision. He stated it is clear that the Zoning Ordinance requires a new lot to be 100' wide at the setback line, and the applicant's property is only 86'. He stated this is not anything unusual in a County this large and is shared by several properties in the neighboring area. Section 15.2-2309 of the State Code limits our power on an appeal to only determine if the staff's decision was correct. He noted that the lot clearly does not meet the minimum requirements to be subdivided, therefore, he would make a motion that we uphold the decision of the Zoning Administrator and deny the request.

Ms. Brown seconded the motion, which carried unanimously.

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JOHN E. NORDER - EXTENSION OF TIME

A request by John E. Norder, for a Special Use Permit to replace several nonconforming buildings not meeting the current yard and setback requirements on property he owns, located at 11 Jefferson Street, Verona, in the Beverley Manor District.

Mr. Wilkinson stated the Board of Zoning Appeals approved the Special Use Permit and the applicant was given nine (9) months to move the building. He stated two (2) of the carports are still in violation. He stated the applicant is requesting a three (3) month Extension of Time.

Mr. Morgan excused himself from the meeting.

Mr. John Norder stated that he is requesting a three (3) month Extension of Time. He stated the permit was approved on September 5, 2013, and the Board gave him nine (9) months to move the building. He stated that his hand had to be reattached and he is handicapped and cannot do a lot by himself and the middle of March he lost his mom. He stated it has been a long winter for him and he started calling contractors and they are all about two (2) to three (3) months behind. He stated that he is meeting with contractors on the concrete work. He noted that he sold one of the metal buildings, tore down one, and removed the concrete slab. He stated he will be able to complete the work within three (3) months.

Chairman Shreckhise asked if the applicant has hired a contractor yet?

Mr. Norder stated contractors have looked at this but he has not hired anyone yet but he is pursuing it.

Mr. Byerly asked about the Virginia Department of Transportation (VDOT) property?

Mr. Norder stated that he tried to contact VDOT and they said they were not in the business of selling land back and it would be a long process to him so he decided to move the buildings. He stated that he did not even know how much VDOT wanted for the property.

Mr. Byerly stated he would assume that everything will be completed within ninety (90) days.

Mr. Norder stated yes. He presented a survey of the relocations of the building to the Board which shows six (6') feet on the sides and five (5') feet in the back.

Mr. Wilkinson stated the surveyor will go back out to the site to be sure the buildings are in compliance with the setbacks as per his permit.

Mr. Coyner stated were the Board to approve the extension, the applicant will really need to get this done this time.

Mr. Norder stated that he guarantees that the work will be done per the plat.

Mr. Coyner moved that the three (3) month Extension of Time be approved and the project will need to be completed by September 1, 2014.

Mr. Byerly seconded the motion, which carried unanimously.

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**LINDSEY HUFFMAN, AGENT FOR THE REGIONAL ANIMAL SHELTER LAND TRUST-
EXTENSION OF TIME**

A request by Lindsey Huffman, agent for the Regional Animal Shelter Land Trust, for a Special Use Permit to construct an addition to the existing shelter and add an accessory building on property it owns, located at 1001 Mt. Torrey Road, Lyndhurst, in the South River District.

Mr. Wilkinson stated the applicant has requested a six (6) month Extension of Time in order to expand the animal shelter. He stated that the County Engineer is working on a site plan for the property. He noted that the City of Staunton is working on the building plans for the structure. He stated there has been about four (4) revisions to the plans. He stated they now have the final version. He stated this will be a nice addition once it is completed and will include visitation rooms for citizens to use when planning on adopting a pet. He noted they will also have a new fenced in area. He stated they are planning on getting started as soon as they receive bids for the project.

Mr. Coyner felt that six (6) months was not realistic to complete the addition. He moved that a one (1) year Extension of Time be granted.

Vice Chairwoman Tilghman seconded the motion, which carried unanimously.

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STAFF REPORT

- 13-33 Staunton Izaac Walton League
- 13-34 Senger, Jonathan P. and Barbara G.
- 13-35 Byler, Bennie W. and Anna Mary
- 13-36 Shinaberry, Harlan L., Jr. and Daniel F.

Mr. Wilkinson stated all of the Special Use Permits have been inspected and are all in compliance.

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

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

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Chairman

Secretary