

September 1, 2016

PRESENT: George A. Coyner, II, Chairman
Thomas H. Byerly, Vice Chairman
Daisy A. Brown
Justine D. Tilghman
James R. Benkahla, County Attorney
Sandra K. Bunch, Zoning Administrator and Secretary
John R. Wilkinson, Community Development Director

ABSENT: Steven F. Shreckhise

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, September 1, 2016, at 9:00 A.M., in the County Government Center, Verona, Virginia.

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.

VIEWINGS

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

- **CAROLYN G., WESLEY L., OR LOGAN W. BEAN - SPECIAL USE PERMIT**
- **EDWARD L. OR TRACY M. ARMENTROUT - SPECIAL USE PERMIT**
- **STEPHEN OR ROBIN STOVER - SPECIAL USE PERMIT**
- **JAMES W. AND TERESA C. HOWDYSELL - 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

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PRESENT: George A. Coyner, II, Chairman
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James R. Benkahla, County Attorney
John R. Wilkinson, Community Development Director
Sandra K. Bunch, Zoning Administrator and Secretary
Beatrice B. Cardelicchio-Weber, Executive Secretary

ABSENT: Steven F. Shreckhise

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VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, September 1, 2016, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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MINUTES

Vice Chairman Byerly moved that the minutes from the August 4, 2016, meeting be approved.

Ms. Brown seconded the motion, which carried unanimously.

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CAROLYN G., WESLEY L., OR LOGAN W. BEAN - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Carolyn G., Wesley L., or Logan W. Bean, for a Special Use Permit to reconstruct and expand a non-conforming building on property they own, located on the west side of Lee Highway (Route 11) at the intersection of Lee Highway (Route 11) and Mid Valley Lane in the North River District.

Mr. Wesley Bean stated he would like to rebuild and expand the existing barn. He would like to make the structure a little wider than what the building currently is.

Chairman Coyner stated this is a nice piece of property.

Ms. Brown asked if he would use the same type of material?

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Mr. Bean stated the exterior would be metal.

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

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

Chairman Coyner stated this is a well maintained piece of property. He stated this will be an improvement to the site.

Vice Chairman Byerly stated this is a reasonable request. He moved that the request be approved with the following operating condition:

Pre-Condition:

None

Operating Condition:

- 1. Obtain permit to construct a 36' x 40' addition.

Ms. Tilghman seconded the motion, which carried unanimously.

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EDWARD L. OR TRACY M. ARMENTROUT - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Edward L. or Tracy M. Armentrout, for a Special Use Permit to have a trash hauling operation on property they own, located at 151 Jackson Ridge Lane, Greenville in the Riverheads District.

Mr. Edward Armentrout stated he would like to start his business at this location in order for him to obtain a business license. He plans on moving the operation when his business grows. He will not bother his neighbors. He said he could also hide the vehicle in the woods. He stated the trash truck will be unloaded when it comes back to this site. He stated he only uses the trash truck once a week.

Chairman Coyner asked if the white truck is the vehicle used for the business?

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Mr. Armentrout stated yes. He will park the vehicle in the woods if necessary.

Chairman Coyner asked what if the one truck breaks down?

Mr. Armentrout stated he will be somewhere else by then. He stated he will serve Rockbridge and Augusta Counties and he plans to relocate to a business location.

Chairman Coyner asked how far are they located off of Route 11?

Mr. Armentrout stated about 1,000 yards.

Chairman Coyner asked if there was anyone wishing to speak in favor, or in opposition?

Ms. Kimberly Pack, 41 Jackson Ridge Lane, Greenville, stated that she has some concerns with the request. She stated she owns property all the way down to Route 11. She said that her property is for sale. She stated the Armentrouths are wonderful neighbors and she does believe what he says. She asked that this only be a temporary operation. She asked that it be limited to 90-120 days. She said the road is not designed for this type of use. She stated there is a road maintenance agreement that they all share to protect the value of the land.

Ms. Brown asked if there is trash truck service on that road already?

Ms. Pack stated no.

Ms. Tilghman asked once you are off of Route 11, where is the private lane?

Ms. Pack stated the private lane actually starts off of Route 11 and there is a road maintenance agreement.

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

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

Mr. Armentrout stated his intention is to only operate at this site for 30-90 days. He will not operate any longer than that at this location.

Chairman Coyner asked if Mr. Armentrout would be fine with a stipulation of operating for six (6) months?

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Mr. Armentrout stated six (6) months would be great.

Chairman Coyner declared the public hearing closed. He stated the applicant would like to start his business and get it going until he moves to a business location.

Ms. Tilghman stated this is a reasonable request. She does understand the opposition's concerns and this will be a temporary business. She moved that the request be approved with the following conditions:

Pre-Condition:

None

Operating Conditions:

1. Be limited to two (2) empty trash trucks at the site.
2. No debris, materials, or trash can be brought to this site.
3. No junk vehicles or parts of vehicles be kept on the property.
4. Site be kept neat and orderly.
5. No more than one (1) employee.
6. No repairs done at the site.
7. Permit be issued for six (6) months.

Ms. Brown agreed with Ms. Tilghman. She stated the Board will give the applicant an opportunity to get the business operating and then he will move to another location. She seconded the motion, which carried unanimously.

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SCOTT OR DANA MARES - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Scott or Dana Mares, for a Special Use Permit to have a bed and breakfast on property owned by Jane M. Swan Jenkins, located at 650 Dry Branch Road, Churchville in the Pastures District.

Ms. Gail Hite, 22 Chicory Drive, Fishersville, stated she is a realtor with Kline & Co. Real Estate. She is here today to represent Scott and Dana Mares.

Ms. Brown asked how many bedrooms are there in the home?

Ms. Hite stated there are four (4) bedrooms and two and a half (2 ½) baths on 12.65 acres. She stated the home was built in 1750.

Ms. Brown asked if the applicants would advertise on the internet?

Ms. Hite stated most do.

Chairman Coyner asked if the applicants will live at the site and operate the bed and breakfast?

Ms. Hite stated yes. She stated they currently live in Maryland.

Ms. Tilghman asked if the home needs any type of renovation?

Ms. Hite stated she is not sure. She is part of the real estate team representing the Mares. She stated the photos on the internet show the exterior of the structure looking good.

Chairman Coyner asked if the applicants have had experience with this type of venture?

Ms. Hite said that she did not know.

Ms. Bunch stated she did receive a letter of support from a neighbor which stated they looked forward to having new neighbors and they hoped to have someone there taking care of the grounds. Ms. Bunch stated when she met with the applicant they stated they did not have to do any renovations to the structure.

Ms. Hite stated the Mares were going back and forth with the contract with the current owners and they could not rearrange their work schedule to be here today.

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

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

Chairman Coyner stated that it is unusual not to have the applicant present.

Ms. Tilghman stated this is a very reasonable request but being that they do not have the applicant present, she would prefer to continue the public hearing at the next meeting. She moved to continue the public hearing to the October 6, 2016 meeting.

Chairman Coyner stated the Board prefers to meet and speak with the applicants on requests but the question is will the current owner wait until October to close on the property.

Ms. Hite stated they may lose the property if they will need to wait until the October meeting. She hoped they would try to make an effort to attend. She said they live in Maryland currently. She stated the Mares actually thought they lost the contract on this property already.

Vice Chairman Byerly preferred to go forward with the request.

Ms. Tilghman withdrew her motion.

Vice Chairman Byerly moved that the request be approved with the following conditions:

Pre-Conditions:

1. Obtain VDOT Land Use Permit and provide a copy to Community Development.
2. Obtain Health Department approval 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. Site be kept neat and orderly.

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4. Applicant must reside on premises.

Ms. Brown stated this request will improve the property. She seconded the motion, which carried unanimously.

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STEPHEN OR ROBIN STOVER - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Stephen or Robin Stover, for a Special Use Permit to have retail sales with outdoor storage and to construct an addition to an existing building on property owned by Huey W. or Mary L. Mullins, located at 4779 Lee Jackson Highway, Greenville in the Riverheads District.

Ms. Robin Stover stated she lives on the premise and she would like to open a second hand store/thrift shop. She stated she has two (2) volunteers that help her.

Chairman Coyner stated the Board visited the site this morning. He asked Ms. Stover if she understood VDOT's comments regarding the construction of a fence along the entrance.

Ms. Stover stated she can install a temporary fence before she opens.

Mr. Wilkinson stated a portion of the entrance will need to be fenced so that there is limited access for vehicles.

Ms. Brown stated the applicant has been working hard. She stated the site looked good this morning.

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

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

Ms. Brown stated the building has been used for different types of businesses over the years. She stated the applicant has spoken with the Virginia Department of Transportation and she knows what needs to be done. She moved that the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. All items for sale will be kept in the designated areas shown on the BZA site plan.
2. The display areas on the porch and the 20' x 35' display area on the side will be screened after hours.
3. All display areas will be kept forty (40') feet from Route 11 as shown on the BZA site plan.
4. No more than two (2) employees in addition to the applicant be on the site at any one time.
5. Hours of operation be Monday – Saturday 8:00 a.m. – 8:00 p.m.
6. No Sunday work.
7. Site be kept neat and orderly.
8. No junk or inoperable vehicles, or parts of vehicles or equipment be stored onsite.

Ms. Tilghman seconded the motion, which carried unanimously.

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JAMES W. AND TERESA C. HOWDYSELL - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by James W. and Teresa C. Howdyshell, for a Special Use Permit to have a mining operation for the extraction of shale and rock on property they own, located on the west side of Old Mountain Road (Route 764) approximately 0.075 miles west of the intersection of Old Mountain Road (Route 764) and Emmanuel Church Road (Route 731) in the North River District.

Vice Chairman Byerly stated he will be abstaining from the vote on this application due to a conflict of interest. He will not participate in the discussion or the vote.

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Mr. James Howdyshell stated he is turning a piece of forest land into a farm. He stated they would like to haul some of the shale off of the property. He stated the area that he plans on disturbing is small. He is currently working on getting extra space for hay storage at the bottom. He stated most of his customers are farmers. He stated in the application it notes ten (10) acres of property that he plans on mining but in reality currently he is only working off a fraction of an acre of land. He generally hauls hundreds of loads of shale a year. He stated twenty-five (25) loads is a big day for them. He would seldom have a day like that. He stated they will haul more shale in the winter months but sometimes they do not haul anything.

Chairman Coyner asked if he hauls and sells to the excavating projects you work on?

Mr. Howdyshell stated he mostly delivers for his jobs but there may be people that want to use their own pickup truck.

Chairman Coyner asked if he would operate during business hours?

Mr. Howdyshell stated yes. He stated he works moving the hay pile any time of day but the shale is only hauled during normal business hours.

Chairman Coyner asked if hauling the shale only Monday – Friday would work?

Mr. Howdyshell stated yes.

Chairman Coyner stated this request has nothing to do with Mr. Howdyshell's farming operation. He stated this used to be a shale pit operation at one time.

Mr. Howdyshell stated yes but he was not sure who operated it.

Chairman Coyner asked if the dirt is separated from the shale?

Mr. Howdyshell stated he targets the shale and saves the dirt.

Chairman Coyner asked if there is dynamite used in this operation?

Mr. Howdyshell stated no.

Chairman Coyner asked if he loads the shale off of the bank?

Mr. Howdyshell stated they take loads off of the bank.

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Chairman Coyner asked if the gravel goes on through the right-of-way?

Mr. Howdysshell stated yes.

Ms. Brown asked if he provides shale for the Virginia Department of Transportation (VDOT)?

Mr. Howdysshell stated no.

Ms. Brown asked how many employees do you have?

Mr. Howdysshell stated ten (10) employees.

Ms. Brown asked how many loads are you proposing?

Mr. Howdysshell stated five (5) to ten (10) loads usually on an as needed basis.

Chairman Coyner asked what has been the biggest job?

Mr. Howdysshell stated one hundred (100) loads. We would haul most of that with one (1) truck.

Ms. Tilghman asked how many trucks does the applicant have?

Mr. Howdysshell stated three (3) trucks.

Ms. Tilghman asked if he has another business location?

Mr. Howdysshell stated they have a location at his home.

Ms. Tilghman asked if he dug out the spot where the hay bales are?

Mr. Howdysshell stated he did that the other week.

Ms. Tilghman said at some point in time someone else started quarrying the land. She asked if the other portion of the property is quarried?

Mr. Howdysshell stated no.

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Ms. Tilghman asked if the area near the ridge will also be used for the extraction of shale?

Mr. Howdyshell stated yes. He stated that area is less accessible and could tentatively be used in the future. He is also planning on leveling out the area in order to improve the contours of the land.

Ms. Tilghman asked if there are any changes to the runoff?

Mr. Howdyshell stated he does not think it will affect the drainage.

Ms. Tilghman asked how long has it been since the land has been quarried?

Mr. Howdyshell stated he does not know if the previous owner quarried the land.

Ms. Tilghman asked how far back do you have to go?

Mr. Howdyshell stated about 75' to 100' but it depends on how hard it is. He stated the shale gets harder the further down you go. He plans on building a hay shelter in the future.

Ms. Brown asked if all of the property is covered with shale or is it only in certain parts?

Mr. Howdyshell stated the property is shale mostly. He stated there are places where there is rock on top and harder material in other areas.

Ms. Tilghman asked what have you done with the dirt that was separated from the shale?

Mr. Howdyshell stated he has used the dirt in the front of the hay stack. He stated that he has not had huge mounds of dirt.

Chairman Coyner asked if the applicant would extract towards the bank?

Mr. Howdyshell stated the bank gets taller and taller as you go back into that section of the property. He will need to carve the road around it. He said there is enough at the bottom to last a long time.

Ms. Brown asked if he will build a pole barn at the site?

Mr. Howdyshell stated he would like a hay shed down at the bottom of the property for the cattle.

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

There being no one to speak in favor. The following citizens spoke in opposition to the request:

Mr. Douglas Early, 333 Old Mountain Road, Mount Solon, stated he is in opposition to the request. He stated the digging into the shale pit is getting deeper and deeper. He stated poultry companies have regulations. He stated this will be tough on the roads. He stated the applicant wants the shale only for his business. He stated in the staff report there are things being omitted from the report that he wanted to make the Board members aware of.

Mr. Early read the Department of Mine, Minerals, and Energy (DMME) comments from the staff report. He noted that there was a complaint filed on June 13, 2016, with DMME and the inspector Matt Kretsch issued them a closure order. He stated this has been going on illegally for nine (9) months. He stated on July 18, 2016, the office of Community Development received a complaint about the applicant mining without a permit. He stated the complaint was recorded but they could not do anything unless they can see the violation on the property. He stated DMME has already been onsite and issued a close order and provided Ms. Bunch with the inspector's phone number and information. He stated Matt Kretsch with DMME informed him that Ms. Bunch never contacted him. He stated Dale Driver with the Virginia Department of Transportation informed him that there was no highway entrance permit applied for. He stated there are logging trucks going in and out of the site and Mr. Howdysshell did not get the proper permits for this type of use. He stated there is not a temporary entrance. He stated the entrance permit was obtained on August 9, 2016, for an entrance that was put in about a year ago. He stated on August 12, 2016, Mr. Wilkinson addressed the concerns about the Land Disturbing Permit on the thirty (30') foot private easement that was excavated and constructed. He stated a Land Disturbing Permit was not issued. He was informed that he needed to disturb 10,000 square feet in order to need a Land Disturbing Permit. He gave Mr. Wilkinson his telephone number and email address but did not hear from him for about a week. He stated the applicant was allowed to log and remove stumps but at what point does it become grading and re-contouring the shape of the land. He stated the stumps are upside down and have been pounded into the ground and this is done at night from 7:00 p.m. until after dark. He stated the loggers start at 6:00 a.m. He stated he took the contact information from staff but he never heard back from anyone. He got a forestry report from staff stating the operation ended. He mentioned that the DMME states that no person shall engage in mining without first obtaining a mine permit within the department. He mentioned that the County has been unable or unwilling to enforce the regulations. He

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asked how anyone is supposed to enforce this. He stated the neighbors are the ones who will need to babysit.

Chairman Coyner asked if Mr. Howdyshell obtained the proper permits and entrance permit would you still be opposed to it?

Mr. Early stated yes. He stated there is a lot of noise with the excavator digging the shale and rock. He stated that is one of his major concerns. He mentioned another concern is the dust from the trucks coming in and out of the road. He stated the right-of-way is close to the homes. He stated the first lower shale pit is in the Lukashuk's backyard. He stated when he moved to this agricultural property he never thought that there would be a mining operation permitted there.

Mrs. Lynn Early, 333 Old Mountain Road, Mount Solon, stated she is extremely opposed to this operation. She submitted a written letter outlining all of her concerns. She stated this request will adversely impact their property values, quality of life, and the agricultural and forestal and recreational intent of the area in Mount Solon. She stated they previously lived on five (5) acres of land in Rockingham County. She stated they wanted more acreage and searched for years for this property. She rides horses and mountain bikes through the woods. She stated the property is very serene there. She enjoys the peace and quiet of the land and likes to keep her windows open and have fresh air. She stated the site has crops, woodlands, pasture, a pond, outstanding panoramic views, and wonderful neighbors that lookout for each other. She stated they have been happy with the privacy and was very secure until the right-of-way was put in. She stated they have no control of who goes into the property. She stated they also even bought an additional three (3) acres to prevent any future development. She stated this type of use would not be in keeping with the Comprehensive Plan for agricultural uses. She stated November of last year the right-of-way construction project started. She spoke with the Howdyshells asking what their plans were for the property. She stated they said they would graze cattle and maybe hunt on the land. She does not know how Mr. Howdyshell will keep people out of the land. She said their fence was taken down and a gate cannot be used. She stated with this request she has lost her security and privacy. She stated there was never a permitted shale pit at the site. She said it was not a commercial operation but maybe for personal use but it was not a big operation at all. She is concerned about the noise, dust, lack of privacy, and she questioned his volume. She said one day she counted fourteen (14) trips with two (2) dump trucks. She stated there were many more on a previous job. She stated the topsoil taken from the right-of-way was sold to the Todd Lake Project. She stated DMME was contacted in June and the County was contacted in January and February. She said Matt with DMME issued a close order which stated they should not haul or dig anything out or until they obtain a Special Use Permit. She stated on August 1, 2016, it looked like he was

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reclaiming the property and that he was not pursuing hauling the shale. She said a week later they saw the zoning sign go up. She stated this area is not ment for commercial purposes. She is not able to sleep or eat properly and have some type of normalcy. She said the last couple of weeks he has been quiet so they have been able to open the windows again and sit on the back porch. She bought her land for agricultural uses, not industrial. She has to keep her blinds shut because her windows face the shale pit. She would love to see cattle up there. She hears the constant banging of excavation equipment. She stated this use does not give him the right to abuse the right-of-way. She has a letter from an appraisal company that states mining will have a negative effect on property values. She stated this use will have an emotional, financial, and physical toll on the neighbors. She stated the road is narrow and rustic and not conducive to heavy truck traffic. She stated the roads have horse and buggy, bikes, and tractor traffic on them and this is a tourist area. She stated this request will have environmental effects. She stated this use will affect groundwater, disrupt wildlife, wells, and runoff flow of streams. She stated she is not going to enjoy the life that they hoped for in which they planned to live there forever. She cannot live with that noise coming from the lower shale pit and the upper one will be even worse. She said he will reclaim the land and put up a hay shed when he is done extracting shale. She said this is not a temporary project but a lifelong adverse effect on all of us with no end in sight. She stated it can take a long time at this rate with hauling shale. She does not see an end to it. She stated the Board allowing this permit is not a benefit. She stated the applicant does not need that shale in order to be profitable. She asked that the Board deny his permit. She stated this will not affect Mr. Howdysshell but it will affect the neighbors. She presented pictures to the Board.

Ms. Tilghman asked how many trips have there been with the shale? She stated the logging operation should not be included in that number.

Mrs. Early stated one day she counted fourteen (14) trips in less than four (4) hours. She stated there were days that he did not have any trips. She stated the bad weather may have stopped him. She stated it was all done illegally. She stated some days he was hauling all day long and she lost count. She showed the Board pictures of her view of the land before the operation and what it looks like now. She has to constantly look at the mining activity and hear it.

Chairman Coyner asked if the operation is visible from the lane?

Mrs. Early stated it is highly audible.

Ms. Kelly Paduch, 205 N. Main Street, Harrisonburg, stated she is an avid cyclist in that area. She stated her only concern is the industrial traffic coming from the mine and quarry.

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She stated there will be dust and pollution coming from the trucks. She stated dust and pollution cause asthma and is also very loud. She is opposed to this operation. She supports the Earlyls on all of their comments on their environmental issues.

Mr. Vladimir Lukashuk, 243 Old Mountain Road, Mount Solon, stated he has lived at this site for twenty-five (25) years. He stated the shale pit is eighty (80') feet from the property right-of-way. He stated Mr. Howdysshell uses heavy equipment eighty (80') feet from his bedroom and fourteen (14') feet from his property line. He stated when the excavation started there was a lot of dust and noise until he was shut down by the State in June 2016. He stated there was work being done early in the morning until late at night. He stated there is a lot of noise and dust coming from both sides of the property. He could not hear people when he was outside. He could not sleep or relax in his home. He stated there has been some health concerns with his wife and himself. He hoped to find peace in this area. He stated that he cannot live here because of the shale pit and he asked that the Board act in goodwill and do what is right for the area.

Ms. Tilghman asked if they live by the right-of-way?

Mr. Lukashuk stated his property is on both sides of the right-of-way. He stated the operation is very close to his bedroom.

Mr. Andrey Lukashuk, 4701 Spring Hill Road, Mount Solon, stated he owns four (4) acres of property adjacent to the quarry. He stated the Board has heard from his father. He stated he used to live with his parents until April 2016. He stated his kids are homeschooled. He stated his kids were awoken by the noise in the morning from the mining operation and the trucks coming in and out. He lives in a different location right now. He plans to build a house on this property because he likes this area but now there is a lot of noise and dust from the trucks. He stated there is also smells from the exhaust fumes. He noted that it is not good for his kids to smell those fumes and breathe in the dust. He stated the dust gets all over his parents' house when the windows are open. He stated the operation runs from 6:30 a.m. until dark. He noted there is a constant flow of trucks. He stated the home is eighty (80') feet from the front of the house to the right-of-way and the back of the house is 500' from the shale area. He stated the noise carries very loudly in that area. He enjoys being outside with the kids but it is hard to hear each other outside because of the noise. He mentioned that the shale pit began illegally and the Howdysshells feel that the rules do not apply to them.

Mrs. Larissa Lukashuk, 4701 Spring Hill Road, Mount Solon, stated there has been many health impacts due to the operation. She stated the Howdysshells have operated for six (6) months without permits. She stated since November 2015 they did not feel safe in their

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home. She stated they were worried about the health and wellbeing of their children and the elderly. She stated the shale pit operation and right-of-way is too close to the homes. She stated there are no places for the residents to hide from the constant noise, dust, and fumes. She stated the noise and constant traffic flow creates chronic stress as well as a wide range of illnesses. She stated her in-laws are no longer young people and they have insomnia, high blood pressure, and joint pain. She stated they live in a constant state of emotional distress. She stated her husband, kids, and her all were in distress until they moved out of the house in April. She stated her children were regularly awoken from the noise and it was difficult for them to concentrate on their schoolwork. She stated they enjoy spending time outside but it was unhealthy to be outside exposing their children to the dust and fumes. She stated her in-laws cannot sell their house because who would want to buy a house next to this shale operation and heavy truck traffic. She stated they will have to sacrifice if the request is approved. She hoped the Board would act in goodwill and do what is right for the residents of the area.

Ms. Colette Semerad, 229 Old Mountain Road, Mount Solon, stated she owns the property near the Howdysshells. She mailed in a letter too. She stated the quarry is an intrusion into their lives that is daily, constant, and life altering. She stated this ruling may act as a precedent to operate other quarries. She stated if the Board grants the permit, the rest of us will suffer permanently. She stated he operated from November 2015 – June 2016 until the DMME shut him down. She said that VDOT found out that the Howdysshells did not have any logging permits. She stated the residents on this road have been stunned that an experienced excavator would operate without all of the permits. She stated that Mr. Howdysshell told the Earlys that he will clear cut the land, grass it over, and put cattle on it, and build a right-of-way. She said he hauled shale off of the property even before he closed on the land in December of 2015. She stated Mr. Howdysshell ignored the residents and the government. She stated there is dust and noise associated with a quarry. She presented pictures to the Board. She stated they see all of the trucks. She stated they are very visual and audible. She stated her house is historical and her property values are in jeopardy. She does not want to live next to a quarry. She stated the rules and regulations exist. She moved in 2004 to escape a rezoning issue in Rockingham County. She stated this area is close to the forest and Natural Chimneys. She stated this land has many uses but the quarry will rape the land. She stated this quarry is an industrial use and should be away from agricultural areas. She stated Old Mountain Road is a rustic road by VDOT and it is not fit for commercial traffic. She stated traffic had been low until the dump trucks showed up last fall. She stated the staff report would allow two (2) trucks coming to the site with thirty (30) trips a day, six (6) days a week. She stated this is unacceptable for all of us. She stated the Howdysshells have no regard for following regulations. She said he will abuse the limit. She also had concerns for the wells and runoff. She stated the stream will be affected. She stated they have made havoc since last November. She has had her fill

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of loud quarry trucks and clearing and construction of the roads. She stated the setbacks and zoning are not sufficient to save any of them from the racket of the quarry or downfall in property values. She has the right to have a good quality of life. He has no regard of property values, health issues, or rules and regulations. Many citizens in the room raised their hands in opposition to the request. Ms. Semerad emailed a letter in opposition from LeAnn and Michael Clark who was not able to attend the meeting today.

Ms. Tammy Belinsky, 9544 Pine Forest Road, Copper Hill, stated she is an attorney representing the Earlys and the Lukashuks. She stated there is no redundancy in these comments and each one is unique and need to be heard. She sent in a letter to the Board asking to visit the land.

Chairman Coyner stated the Board could not honor your request for a sound demonstration due to the short notice but the Board did visit the property.

Ms. Belinsky stated the request violates the law because of how close the request is from the Lukashuk's property based on their photos. She discussed laws about land use regulations and the plans compatible uses. She said the Board's authority and job is to make compatible uses and keep the peace, it is not economic development. She stated there is nothing compatible with shale mining in the area proposed. She stated it is a nuisance. She said this has already been proven to be a nuisance. She stated the letters from the neighbors and relatives describe the impacts. She stated there are health concerns with the noise and dust. She stated the Lukashuks endure the noise within their own house. She stated the Earlys and Lukashuks have had a relatively unique experience. She stated they have already experienced the impacts of the Howdyshell operation. She stated they are not telling you what it might be like but what it has been. She stated no soil on the hill is just the beginning of problems. She read Section 25-74B, Article 7 of the Zoning Ordinance, Subsection A1 which makes the Comprehensive Plan enforceable under the law and A2. She said with a Special Use Permit it states that there shall not have an undo, adverse impact on the surrounding neighborhood. She said that is all the Board heard here today and that this is not compatible. She stated if the Board approves the permit it would violate that section alone. She stated in the staff report it lists Section 25-74D, where the bold statements are taken from the code and then staff puts in their comments. She stated in every single comment it is missing the word "and" from the code. She said all of the conditions need to be met because they all have the word "and".

Ms. Belinsky addressed the staff report comments individually:

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1. **The neighboring area is not characterized by residential, commercial, or industrial development which would be adversely impacted by the proposed use.** There are residential houses within close proximity.

Ms. Belinsky stated this will have an adverse impact to the residential character of the community.

2. **Traffic generated by the proposed project will be compatible with the roads serving the site and other traffic utilizing said roads.** The applicant is proposing to haul approximately thirty (30) loads at a time as needed for jobs.

Ms. Belinsky stated this is not compatible. She stated staff did not address the road issue with VDOT because they only granted a private entrance. She stated the road is narrow and has gravel. She showed the Board the copy of the Rural Rustic Program Manual. She stated this road is used by horse and buggy. She stated it is not compatible for regular dump truck use.

3. **On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways.** The property has an existing approved private entrance and the 91.099 acres will accommodate all traffic adequately.

Ms. Belinsky stated she does not think staff was aware that there is another landowner who is entitled to use the right-of-way. She stated they are afraid of retribution from Mr. Howdysshell which is why they are not here today.

4. **The business shall have direct access to a state maintained road.** The applicant has a deeded easement for access to Old Mountain Road (Rt. 764).

Ms. Belinsky stated there is case law in Virginia that easements are not direct access. She noted in the Comprehensive Plan adopted in 2014 it addresses this on Page 74 about abutting a public road. She said the Comprehensive Plan has an interpretation of direct access and that it abuts the subject mentioned property. She stated Howdysshell's operation does not have direct access to a public road. She stated this property has a right-of-way granted for private use.

5. **The business and anticipated enlargements thereof will be appropriate for agriculture areas and is not more properly placed in an available industrial zone.** Mining operations are appropriate in agriculture areas.

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Ms. Belinsky stated shale and rock mining is not a by right use in agricultural zoned areas. She stated a Special Use Permit needs to be obtained in order to be sure that it is compatible. She stated there is a question whether this will lead to land that is still desirable for agricultural use. She stated there is not enough information on this request especially with him turning the stumps over into the ground. She is not sure what is going on, but this is not an ordinary agriculture practice.

6. **All buildings, structures, and operations will be set back at least two hundred feet (200') from all property lines and at least one thousand feet (1000') from any residentially zoned property unless the board of zoning appeals determines that greater setbacks are necessary to adequately protect neighboring properties.** A portion of the original shale mining operation is within the two hundred foot (200') setback. All other proposed areas are well over the two hundred foot (200').

Ms. Belinsky stated they are eighty (80') feet from the Lukashuk's property boundary. She stated this does not comply with the Zoning Ordinance and is not compatible. She stated the Lukashuks would not agree to reducing or eliminating the 200' setback.

Ms. Belinsky wanted to remind the Board what she stated in the beginning that all conditions will need to be met because at the end of each standard it has the wording and. She stated it is not good enough if some or most of the standards are satisfied, all of them need to be satisfied. She stated that Ms. Tilghman had a question about runoff. She stated the Lukashuks have already noticed that runoff has increased when taking timber off of the land. She also read Section 25-585 where it states a BZA review plan needs to be provided showing eight items as per the ordinance. She did not see those in the application and the applicant did not submit them. She noted it is incomplete and we should not even be here today. She said Mr. Howdyshell even built the road before even buying the property. She stated the Howdyshells started construction without a VDOT permit, a log permit was not obtained, a professional licensed contractor did not obtain a Land Disturbance Permit to construct the right-of-way or any other activity on the land, they excavated shale and rock before first obtaining a Special Use Permit and a DMME permit, and they use dump trucks with farm tags for commercial purposes. She stated these are all illegal activities. She stated they have dirt in the easement and they park their equipment in the easements. She stated the Howdyshells have damaged fencing and have buried and moved survey stakes. She noted they have turned a private access easement into a commercial use. She stated the Howdyshells stole topsoil from the Earlys. She stated they will have to face civil liabilities for these actions. She noted they have not complied with the Zoning Ordinance. She stated there are law abiding people and there are people who behave like there are no rules. She noted the Howdyshells are

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the second type. She stated there are adverse impacts to the entire neighborhood including dust, noise, problems on the road, and lawsuits. She stated the easement rights will have to be resolved. She stated the Howdyshells will increase the cost for the zoning enforcement. She stated the neighbors issues are not based on projections, they have already experienced it. She stated the Howdyshells live in another location and they go to their peaceful home at the end of the day. She stated property values will be impacted. She urged the Board to deny this request. She stated there will be constant conflict between the Howdyshells and the neighbors. She stated Mr. Lukashuk was on his property taking pictures and Mr. Howdyshell drove onto the easement, stopped his truck, and asked him if he had a permit to take the pictures. She stated it does not entitle Mr. Howdyshell to stop on the easement and harass the neighbors. She stated this is not an action of a good neighbor. She stated this violates the Zoning Ordinance. She stated they did not move to a gorgeous agricultural community to live the rest of their days in this type of an environment. She asked the Board of Zoning Appeals to deny the permit.

Ms. Karissa Hunt, 105 Broad Street, Bridgewater, stated the Howdyshell property is about 700' from their property. She stated the Board of Zoning Appeals approved her to operate a wedding venue at this site, however, a mining operation would not work near a wedding venue. She stated that would be unfair to her potential clients on their special day. She noted that he is yet to submit an application to the Department of Mines, Mineral, and Energy. She asked if there would be blasting, what type of equipment is being used, reclamation plan, and the hours and days of operation could be 24/7, six (6) days a week. She asked that the hours of operation be limited.

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

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

Mr. Howdyshell stated he has never met Mr. Lukashuk but he has spoken to him on the phone because he was interested in shale. He stated the logger did have a permit for what they were doing. He stated they did not have a permit to do the entrance but he got the previous owner's approval. He stated there is a misunderstanding to how big his operation will be. He noted the Lukashuks are close. He noted that DMME thought this was a wonderful site. He stated there will not be any extraordinary noise. He hears the lawn mowers and tractors too. He stated they will not work late at the site with the shale. He starts at 8:00 a.m. and he is done before dark. He stated the banging around has nothing to do with his shale operation. He stated when he purchased the property he inquired what he needed to do and he was told to keep it small. He will only be operating on a 0.10 of an acre right now. He stated the dust is not even noticeable and he will limit the speed of the

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trucks on the roadway. He stated he has a record of everything that he hauls. He feels remiss that he has caused such a problem with the community. He noted that it is speculation that he will have 25 loads a day which will be a big day for them.

Chairman Coyner stated these are all issues within the neighborhood. He said that it is unfortunate that Mr. Shreckhise is not present today.

Ms. Tilghman stated this is a very important issue. She stated the Board many want to wait to act on the request until the next meeting when Mr. Shreckhise will be here especially with Vice Chairman Byerly abstaining from the vote. She stated this request will have an effect on the neighborhood. She moved that the Board continue the public hearing at the October 6, 2016 meeting.

Ms. Brown agreed with Ms. Tilghman. She seconded the motion, which carried with a 3-0 vote with Vice Chairman Byerly abstaining from the vote and Mr. Shreckhise not being present.

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MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR

IRA BIGGS, AGENT FOR COUNTRY LANDMARKS, LLC - EXTENSION OF TIME REQUEST

A request for Ira Biggs, agent for Country Landmarks, LLC, for a Special Use Permit to have outdoor storage of semi-trailers, office trailer, and materials on property it owns, located on the north side of Skyview Circle adjacent to the railroad tracks and just east of intersection of Lee Highway (Route 11) and Skyview Circle in the Beverley Manor District.

Ms. Bunch stated the applicant is working on submitting their site plan.

Vice Chairman Byerly moved that the one (1) year Extension of Time request be approved.

Ms. Brown seconded the motion, which carried unanimously.

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RUSTY K. AND KARI G. DAVIS - EXTENSION OF TIME REQUEST

A request by Rusty K. and Kari G. Davis, for a Special Use Permit to use an existing barn for weddings and special events on property they own, located at 106 Zion Church Road, Waynesboro, in the Wayne District.

Ms. Bunch stated the applicant is working on submitting their site plan.

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

Ms. Brown seconded the motion, which carried unanimously.

STAFF REPORT

- 15-36 Bland W. and Rema D. Farrar
- 15-37 George Anen, Sr. and Denise D. Campbell
- 15-38 Marco C. Taylor
- 15-39 Brandon R. and Sarah F. Burkholder
- 15-40 Rusty K. or Kari G. Davis

Ms. Bunch stated that SUP#15-36 and SUP#15-37 are both in compliance. She stated construction has started for SUP#15-38. She stated SUP#15-39 is in compliance. She stated the Board just approved a one (1) year Extension of Time for SUP#15-40.

Ms. Bunch discussed the court cases with the Board.

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CURTIS E. REED - SUP#16-18

Mr. Wilkinson stated in April the Board approved SUP#16-18 for Curtis E. Reed to have a cleaning business within a portion of a garage to be constructed. He wanted to construct a 30' x 30' garage and use half of the building to store chemicals for his cleaning business. He said that Mr. Reed has decided that it is too expensive to build the garage and he wanted to build an 8' x 20' building in the backyard.

Chairman Coyner stated this does make sense but the neighbors should be notified since the building will now be in the backyard.

Mr. Wilkinson stated he will let Mr. Reed know to reapply and the Board will act on his request during an official public meeting.

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

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Chairman

Secretary