

October 6, 2016

PRESENT: George A. Coyner, II, Chairman  
Daisy A. Brown  
Steven F. Shreckhise  
Justine D. Tilghman  
James R. Benkahla, County Attorney  
Sandra K. Bunch, Zoning Administrator and Secretary

ABSENT: Thomas H. Byerly, Vice Chairman  
John R. Wilkinson, Community Development Director

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, October 6, 2016, at 8:30 A.M., in the County Government Center, Verona, Virginia.

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The staff briefing was held at **8:30 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:

- **CRAIG M. NARGI, AGENT FOR MOSSY CREEK CATERING, LLC - SPECIAL USE PERMIT**
- **DAVID RAMSEY - SPECIAL USE PERMIT**
- **DAVID AND CHRISTINA FITZGERALD - SPECIAL USE PERMIT**
- **MICHAEL D. CLANCEY - SPECIAL USE PERMIT**
- **RICHARD A. OR LESLIE STURGES - SPECIAL USE PERMIT**
- **JACQUELINE M. RALSTON - SPECIAL USE PERMIT**

At each location, the Board observed the site and the premises to be utilized. The Board also viewed the development and the character of the surrounding area.

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Chairman

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Secretary

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

ABSENT: Thomas H. Byerly, Vice Chairman

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VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, October 6, 2016, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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**MINUTES**

Ms. Tilghman moved that the minutes from the September 1, 2016, meeting be approved.

Ms. Brown seconded the motion, which carried unanimously.

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**CRAIG M. NARGI, AGENT FOR MOSSY CREEK CATERING, LLC - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Craig M. Nargi, agent for Mossy Creek Catering, LLC, for a Special Use Permit to have food trucks onsite and serve food inside the tasting room on property he owns, located at 375 Madrid Road, Waynesboro in the Middle River District.

Mr. Humes Franklin, III stated he is here on behalf of Mr. Nargi. He noted this Special Use Permit is simply to decide whether or not Mr. Nargi can operate a food truck at his site. A number of people stood in support of Mr. Nargi's request. He noted the brewery is an existing agri-tourism business and is permitted under the Virginia State Code. He noted under Section 25-74H this request meets all of the requirements and it is clear that the permit should be approved. He mentioned there are concerns raised about the traffic but

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this permit request for food trucks will be inconsequential to traffic. He stated the brewery will be at the site regardless. He said the question is whether we want Mr. Nargi to offer food to his customers. He noted the wise thing to do would be to allow customers to have food while they are drinking alcohol. He stated the operation is done in a community family manner. He said Mr. Nargi does not want people there drinking and not being able to eat any food. He stated if the Board denies this request it will endanger people. He mentioned that Mr. Nargi has added 18 jobs since he has opened the brewery and has contributed \$55,000 worth of taxes. He stated the amount of traffic at Stable Craft Brewery is nothing compared to Chiles Orchard. He said this operation is a much more neighbor friendly operation. He noted they want people to have food when sampling the alcohol. He said that staff is recommending approval. Mr. Nargi has engaged Brasil Hamrick's office for the submittal of drainage calculations (letter submitted). He noted the other conditions that staff has recommended is appropriate. He said this is a rural County and this is the type of business we want here. He said this type of business allows people to maintain their farm and the rural aspect of the area. He said this request is clear under the Augusta County Code that there is no reason why the Board should not approve this request.

Chairman Coyner asked if the food trucks would increase the traffic?

Mr. Franklin did not believe that it will increase traffic. He said people are going there for the farm to table beer and not for any particular food. He stated Mr. Nargi will not have a deep fryer or a commercial kitchen. He would like to have the food trucks in order to compliment the beer and for safety reasons. He stated it was brought to Mr. Nargi's attention that he needed a permit for the food trucks.

Ms. Tilghman asked if the applicant still has their permit for weddings?

Mr. Franklin stated yes at Hermitage Hill Farm and Stables and he uses outside caterers for the weddings. He noted that Mr. Nargi requires all caterers, florist, etc. to be licensed, insured, and bonded. He likes to do things the right way.

Ms. Tilghman asked how long has food been served out of the food truck?

Mr. Franklin stated less than a year. He noted the brewery opened on April 27<sup>th</sup>.

Ms. Tilghman asked when did the applicant start selling food out of the food truck?

Mr. Franklin stated he did not sell food to the general public until the brewery opened.

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

Mr. Dwight Mongold, 364 Madrid Road, Waynesboro, stated his house is across from the stable and brewery. He read the petition submitted to the Board (a copy is in the permit file). He stated the applicant does not have an application to serve 25 or more people, 60 days a year. He stated the applicant's entrance is not a PE1 entrance according to the Virginia Department of Transportation standards. He stated the applicant is not permitted to park offsite. He stated as the business grows, parking will be tight.

Mr. Kevin Phillips, 879 Madrid Road, Waynesboro, stated he is here to invoke the right for him to continue to farm. He stated his family has farmed for 133 years. He noted yesterday people were leaving and coming between 4:00 p.m. and 6:15 p.m. and it created a traffic jam while he was hauling. He played "dodgeball" from 4:00 p.m. until 6:15 p.m. and was close to playing "bumper cars" at 6:30 p.m. with all of the vehicles driving up and down the lane. He does not want to play "demolition derby". He is also concerned about the traffic. He has been in an Agricultural Forestal District in order to protect their right to farm. He has never sold or given away one piece of property. He may decide to expand North Point Farm and build an intensive agricultural building 25' from the property lines. He stated his insurance premium has increased because of the traffic situation. He noted this is the third time Mr. Nargi has asked for a Special Use Permit. He stated he is on a rustic road and he would like the right to exist. He said if he builds a building, he is required to get engineering plans approved, fees paid, and bond posted. He asked what happened here with Mr. Nargi?

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

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

Mr. Franklin stated the only issue that the Board has here today is if you would like Mr. Nargi to have a food truck at the site. He stated Mr. Nargi is allowed to have a farm brewery under State law. He stated the brewery will be there and it is considered agri-tourism. He stated the State and County's laws allow him to have a brewery. He stated the petition does not have anything to do with him having the food truck. He said it is better to have the food trucks at the site. He noted it is the proper and safe thing to do. He noted they do not want the Phillips family stopping their agricultural operation after 133 years.

Chairman Coyner asked how does the applicant control the traffic?

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Mr. Franklin stated Mr. Nargi has people directing traffic in the parking lots. He stated Mr. Nargi tries to be a good neighbor and the activities are limited to the evenings and weekends. He said he did have a sampling of beer last night but he does try to limit this to evenings. He said friction could exist whether the food trucks are there or not.

Mr. Craig Nargi stated he does not know when the Phillips' trucks are running.

Mr. Franklin stated the neighbors should speak with one another. He would not want people playing "bumper cars" on Madrid Road. He said Mr. Nargi wants to be a good neighbor.

Ms. Brown asked what is the number of parking spaces?

Mr. Franklin stated the vehicles enter from one entrance and exit out of another entrance.

Ms. Tilghman stated there is one commercial entrance only.

Mr. Franklin stated one is for residential use.

Ms. Tilghman noted it may be easier to use both entrances.

Mr. Shreckhise stated Mr. Nargi should redo the entrance to accommodate his customers. He should get the traffic in and out quicker. He noted the entrance should be looked at.

Ms. Brown asked if there are cars along the highway?

Mr. Franklin stated the cars are parked on Madrid Road. He stated Mr. Nargi does make an effort in order to get along with the neighbors. He will make efforts so that no one parks along Madrid Road. He noted when Mr. Nargi finds out about an issue he acts promptly and remedies the situation.

Chairman Coyner stated it takes a neighbor to be a neighbor. He said that Mr. Nargi is doing a lot out there on his property. He declared the public hearing closed.

Mr. Shreckhise stated the problem is not arising because of the food trucks. He stated the business is expanding but this Board cannot regulate the brewery. He stated Mr. Nargi should self-regulate in order to help with the parking and the entrance.

Ms. Brown stated the Board should review this permit within a year to be sure all of the stipulations are met.

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Mr. Shreckhise moved that the request be approved with the following conditions:

**Pre-Condition:**

- 1. Submit drainage calculations to Community Development.

**Operating Conditions:**

- 1. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.
- 2. No further expansion.
- 3. Stipulations of SUP#05-69 and SUP#10-67 remain in effect.
- 4. All parking be on site and not parking on the public road.
- 5. Permit be reviewed in a year and renewed if all of the conditions are met.

Ms. Brown seconded the motion, which carried with a 3-1 vote, with Chairman Coyner being in opposition to the motion and Vice Chairman Byerly being absent.

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**JAMES MILHAM, AGENT FOR THE STONEWALL JACKSON AREA COUNCIL OF BOY SCOUTS OF AMERICA, INC. - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by James Milham, agent for the Stonewall Jackson Area Council of Boy Scouts of America, Inc., for a Special Use Permit to continue the operation and to add a new shower house, two Adirondack campsite shelters, two staff cabins, a shotgun range shelter and a storage/program building on property they own, located at 222 Boy Scout Lane, Swoope in the Riverheads District.

Mr. Jeff Holsinger, 1285 Cumberland Drive, Harrisonburg, stated he is here to represent the Boy Scouts. He stated they have made improvements to the camp. He stated this is their 66<sup>th</sup> year at this location. He stated the Boy Scout program is very successful at this location and this application will allow them to continue. He hoped the Board would allow him the opportunity to continue this service at this site.

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Chairman Coyner stated Augusta County is lucky to have the Boy Scouts at this site.

Ms. Brown stated this is a beautiful setting for the camp.

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. He stated the Board visited this site on numerous occasions.

Ms. Tilghman moved that the request be approved with the following conditions:

**Pre-Condition:**

None

**Operating Conditions:**

1. Applicant to have five (5) years to complete the new requests and five (5) years to complete construction of projects on existing permits.
2. Obtain Health Department approval and provide a copy to Community Development.

Mr. Shreckhise seconded the motion, which carried unanimously.

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**DAVID RAMSEY - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by David Ramsey, for a Special Use Permit to have a lawn care and landscape business on property owned by William H. and Lindsay T. Ferguson, located at 3094 Middlebrook Road, Staunton in the Riverheads District.

Mr. David Ramsey stated he has downsized his business to six (6) employees. He does not want to retire but would like to cut back and only operate lawn care mainly. He stated his employees come to the site in the morning to drop off their vehicle and then back to clock-out and go home. He will have a full-time secretary at the site.

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Chairman Coyner asked if the employee vehicles are parked at the site?

Mr. Ramsey stated his employees leave their personal vehicles at the site and then take the company vehicle to the job. He will not have any equipment or outside storage at the site.

Mr. Shreckhise asked if the hours of operation are adequate?

Mr. Ramsey stated in the summer he may start at 7:00 a.m. He would like to work a little later because sometimes they do not get back until 6:00 p.m. He noted on rainy days he works in the shop.

Chairman Coyner asked if 7:00 a.m. until 6:00 p.m. would be appropriate?

Mr. Ramsey stated yes.

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. He stated numerous businesses operated at this location before.

Ms. Brown stated the Board visited the site today. She moved that the request be approved with the following conditions:

**Pre-Conditions:**

None

**Operating Conditions:**

1. Be limited to a maximum of three (3) employees at the office unless approved by the Health Department.
2. Site be kept neat and orderly.
3. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
4. All equipment, machinery, and materials for the business be kept inside the garage.

- 5. No refuse from the business to be brought to this site.
- 6. Hours of operation be 7:00 a.m. to 6:00 p.m.
- 7. Close the existing entrance onto Middlebrook Road (Route 252) and re-seed the shoulders.

Ms. Tilghman seconded the motion, which carried unanimously.

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**DAVID AND CHRISTINA FITZGERALD - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by David and Christina Fitzgerald, for a Special Use Permit to have motor vehicle and farm machinery repair on property owned by John W. Allen, Jr., located at 88 Virginia Institute Way, Swoope in the Riverheads District.

Mr. David Fitzgerald stated he would like to apply for a Special Use Permit in order to repair motor vehicles and farm equipment. He said 80% of the time he goes to the jobsite. He would like to bring some of the work home if needed.

Chairman Coyner asked if he will build a shop?

Mr. Fitzgerald stated yes possibly in the spring. He stated most of the larger stuff is repaired at the construction sites or at the farm.

Chairman Coyner stated there was a number of vehicles at the site today.

Mr. Fitzgerald stated five (5) of the vehicles belong to them. He said he is working on four (4) vehicles right now.

Chairman Coyner asked if the applicant has any employees?

Mr. Fitzgerald stated his family helps. He noted if he were to get bigger he would move to a commercial site.

Chairman Coyner asked if the applicant plans on working at night?

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Mr. Fitzgerald stated no. He said the hours of operation from 8:00 a.m. to 6:00 p.m. are adequate for his business.

Chairman Coyner asked how big of an area does he serve?

Mr. Fitzgerald stated he works all over. He stated the community does not have anyone working on farm equipment in the area. He provided the Board with 16 signatures in support of this permit.

Chairman Coyner asked how long has the applicant lived at the site?

Mr. Fitzgerald stated three (3) years.

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

Ms. Carol Allen stated Mr. Fitzgerald rents from them. She stated he works on their vehicles and is a good mechanic. She hopes the Board approves this permit. She stated he will follow the rules.

Mr. John Allen stated the road is wide and there will not be much traffic. He stated this type of small business needs to be considered.

Ms. Tilghman asked if the business grew in size and the metal shed be replaced, would you have any objections?

Ms. Allen stated no, they will help in any way they can to get stuff done.

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

Ms. Bunch stated they received a letter from Gail Stokes (a copy is in the permit file) opposing this request.

There being no one else to speak, Chairman Coyner declared the public hearing closed.

Mr. Shreckhise asked if the Board will look into the applicant building a larger building?

Ms. Bunch stated any expansion to the permit, would need to come back before the Board for their approval.

Mr. Benkahla stated anytime an applicant is increasing the footprint or expanding the operation, they will need to come back before the Board.

Mr. Shreckhise stated the applicant's permit should be reviewed in a year. He stated it is important to keep the vehicles licensed at the site.

Chairman Coyner stated the applicant should go the extra mile to ensure that the neighbors are not irritated.

Ms. Tilghman moved that the request be approved with the following conditions:

**Pre-Conditions:**

1. Obtain VDOT entrance permit and provide a copy to Community Development within sixty (60) days.
2. Obtain letter of approval from Building Inspection within sixty (60) days.

**Operating Conditions:**

1. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
2. All vehicles and equipment for the business must be kept within the fenced area and the privacy fence be maintained.
3. Site be kept neat and orderly.
4. Hours of operation be Monday – Saturday 8:00 a.m. to 6:00 p.m.
5. No Sunday work.
6. No employees other than family members.
7. Permit be reviewed in a year and renewed if all of the conditions are met.

Ms. Brown seconded the motion, which carried unanimously.

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**MICHAEL D. CLANCEY - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Michael D. Clancey, for a Special Use Permit to enclose a carport on a non-conforming dwelling on property he owns, located at 36 Summerfield Drive, Fishersville in the Wayne District.

Mr. Michael Clancey stated he would like to enclose the carport in order to have a garage and laundry area in the back section of the property. He will be using the same footprint, framing, and slab.

Chairman Coyner asked if the applicant would like to complete the project this fall?

Mr. Clancey stated yes.

Chairman Coyner asked how long has the applicant lived at the site?

Mr. Clancey stated since fall of 2002.

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 the Board visited the site this morning. He stated this project would fit in with the neighborhood.

Ms. Brown stated some of the surrounding homes have done the same type of project. She stated this would be in keeping with the character of the neighborhood, therefore, she moved that the request be approved.

Mr. Shreckhise seconded the motion, which carried unanimously.

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**RICHARD A. OR LESLIE STURGES - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Richard A. or Leslie Sturges, for a Special Use Permit to have a bat rescue on property they own, located at 877 Bunker Hill Road, Mt. Solon in the North River District.

Ms. Leslie Sturges would like a permit in order to have a rehabilitation and rescue for bats. She stated they would like to use a 20' x 30' structure for the rehab and rescue operation. She stated bats have been on the endangered species list. She stated this impact on Augusta County would be very positive. She stated the bats need help and agriculture needs bats. She stated they are working with the Health Department on getting their approval for the septic. She stated staff has recommended the bats be confined to the 20' x 30' building or in the home but they do use exterior temporary flight facilities because the bats need to get outside to fly.

Chairman Coyner asked if the tent outside was the temporary flight structure?

Ms. Sturges stated she could have more than one flight cage. She submitted two letters in support of her request. She said the Wildlife Center of Virginia and the US Forest Service sent letters in support.

Ms. Brown asked how the applicant gets the bats?

Ms. Sturges stated usually the public finds them.

Ms. Brown asked how bats help farming?

Ms. Sturges stated they are a major predator of night flying insects. She said half of the bat species is at risk from a non-native fungus that arrived in 2010 and we have lost over 6 million bats to this fungus.

Chairman Coyner stated this is a fine facility. He asked if the bats are vaccinated?

Ms. Sturges stated they do take precautions.

Chairman Coyner asked how would people find out about your operation?

Ms. Sturges stated online and public education.

Chairman Coyner asked if the applicant would have employees?

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Ms. Sturges stated they are all volunteers.

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

Ms. Tammy Belinsky, 9544 Pine Forest Road, Copper Hill, thanked Ms. Sturges for all of her work.

Ms. Bunch stated she did receive a letter from Dr. Wright in support of this request.

There being no one else wishing to speak, Chairman Coyner declared the public hearing closed.

Ms. Brown thanked the applicant for all that they do.

Chairman Coyner stated this is an ideal location of this use.

Ms. Tilghman stated this is a good location for this type of permit. She moved that the request be approved with the following conditions:

**Pre-Condition:**

1. Obtain Health Department approval and provide a copy to Community Development.

**Operating Conditions:**

1. Obtain Building Permit for the 20' x 30' building.
2. Site be kept neat and orderly.
3. All bats be confined within the 20' x 30' building on the site plan, the basement of the home, or the temporary flight facility.

Ms. Brown seconded the motion, which carried unanimously.

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**JACQUELINE M. RALSTON - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Jacqueline M. Ralston, for a Special Use Permit to have a kennel on property she owns, located at 302 Hermitage Road, Staunton in the Beverley Manor District.

Ms. Jaqueline Ralston stated she will not increase the number of dogs on her site but she just wants to continue what she has been doing. She stated the dogs do not go outside until 7:00 a.m. She stated during the day the dogs go in and out of the doggy doors. She is a single woman and the dogs alert her if someone is outside. She travels to Florida throughout the year and she would have been there already if this situation had not come up. She noted all of her dogs are spayed and neutered. She said they live in her home with her.

Chairman Coyner asked if she was a breeder?

Ms. Ralston stated she used to be but now she just rescues older dogs. She likes to have one medium size dog because it makes her feel safe when she drives at night.

Ms. Tilghman asked if she takes the dogs to Florida?

Ms. Ralston stated yes.

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

Ms. Laura Meek, 356 Hermitage Road, Staunton, stated she needed some clarification from the applicant's request about her planning on building additional kennels and if the dogs stayed inside or outside. She also had concerns about additional noise.

Chairman Coyner asked if she heard the dogs now?

Ms. Meek stated no.

Ms. Norma Collier, 346 Hermitage Road, Staunton, stated the dogs live inside the home now. She asked what is the purpose of the kennel permit?

Ms. Bunch stated a kennel is defined as five (5) or more dogs over the age of six (6) months and is not necessarily a structure.

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Mr. Shreckhise stated if someone has more than four (4) dogs they need a kennel permit. He stated they are not specifically asking for a structure.

Ms. Collier stated she was concerned that the applicant was planning on building a big building and have nonstop dogs outside at night and during the day.

Chairman Coyner stated the dogs are kept inside.

There being no one else wishing to speak, Chairman Coyner declared the public hearing closed. He stated the site is fenced well with an electrical wire. He stated the dogs offer her protection. He stated the Board visited the site today.

Ms. Brown stated the applicant is only at this site a few months a year.

Mr. Shreckhise stated the applicant is planning on continuing what she has been doing and she does not plan to construct a building. He moved that the request be approved with the following conditions:

**Pre-Conditions:**

None

**Operating Conditions:**

1. Maximum of seven (7) adult dogs kept at this site at any time.
2. Dogs be kept inside from 10:00 p.m. until 6:00 a.m.
3. All dogs be confined within the fenced area or inside the home.
4. Site be kept neat and orderly.

Ms. Tilghman seconded the motion, which carried unanimously.

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## **OLD BUSINESS**

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

This being the date and time advertised to continue the public hearing regarding a request by James W. and Teresa C. Howdysshell, 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.

Chairman Coyner stated the Board will continue the public hearing on the Howdysshell Special Use Permit request. Mr. Shreckhise is here today and he has read the minutes from the previous meeting and reviewed all of the letters submitted. He stated the Board is happy to hear any new information.

Mr. James Howdysshell stated he feels that most of the complaints were because of him clearing the land. He has been involved in the clearing of the land from January – April. He stated clearing the 30 acres has taken a considerable amount of time. He stated he plans to seed this into permanent pasture and have crops. He stated that he engaged logger services in May. He plans on reclaiming the farm on the overgrown wooded lot. He noted that his goal is to be ready to have cows on the property. He noted the soil is very stable and he does not have erosion problems. He did haul about 260 loads in a seven (7) month period from the shale pit. He noted the Department of Mines, Mineral, and Energy (DMME) classified it as a mine but it is routine excavation. He stated he is hauling the material to sell which is why it is considered a mine by DMME. He felt that it would be foolish to take the shale on the hill and stockpile it when plenty of people like to use it typically in the winter months. He said he probably would only haul a few loads a day. He noted the dust has not been a real issue. He said the area of extraction is 1/10 or 1/4 of an acre, and he reclaimed it immediately because it is used for cattle. He noted that it takes about five (5) minutes to load a load of shale. He puts in about ten (10) hours a month into the shale pit. He stated this land is zoned General Agriculture. He stated all of his equipment is muffled and the noise is audible.

Mr. Shreckhise asked how many more acres do you still need to clear?

Mr. Howdysshell stated about 80% of the land. He stated he has taken care of about forty-five (45) acres now, but he is not sure when he will continue. He stated the timber went for pulp and firewood. He said at one point it burned and it was not good. He is mainly interested in the shale. He said a neighbor came and got some shale the other day. He

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plans on selling the shale to farmers in order to get the poultry house pads done. He is planning on carving his way back to that part of the property. He noted generally in the winter they usually haul the shale. He stated he is not in a big rush to get this done.

Mr. Shreckhise asked if he will continue to excavate at the site in order to build his barn?

Mr. Howdyshell stated yes.

Chairman Coyner stated Mr. Shreckhise and he visited the site earlier this week. He was amazed at the lack of erosion at the site.

Mr. Howdyshell stated the soil is impressive.

Chairman Coyner asked if he could haul out shale only one (1) day a week?

Mr. Howdyshell stated that is very restrictive.

Chairman Coyner asked if two (2) days would be sufficient?

Mr. Howdyshell stated he typically hauls to farmers when it is muddy and wet. He noted eight (8) of the 260 loads went to a non-farm interest.

Mr. Shreckhise asked how many loads are needed at the site for the building pad?

Mr. Howdyshell stated 800 loads for the building pad at the site. He feels he is routinely excavating the site. He stated he is only partly mining at the site.

Chairman Coyner stated 800 loads will take a long time.

Ms. Tilghman asked if the applicant was finished cutting down the trees at the site?

Mr. Howdyshell stated he could be, but it depends on someone wanting the logs. He stated there is really good land to the north. He has completed 15 acres so far but it could be another 30-40 acres.

Ms. Tilghman stated the applicant is doing a combination of things. She stated he is using the same vehicles for the logging operation and the mining. She stated he has a perfect right to log. She stated some of the neighbors are upset with the logging.

Mr. Howdyshell said that he also hauls lime and fertilizer.

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Ms. Tilghman stated once the land is established it would not be the same number of trips.

Mr. Howdyshell stated it will be quiet when the logging is over. He will be at the site once or twice a day to tend to the cows. He pulled a lot of the stumps out himself. He pulled them out piece by piece and closed the holes. He did not pound them at all. He stated the logger intended to cut them really low. He stated Augusta County does not have any permitted sites to get shale.

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

Ms. Tammy Belinsky, 9544 Pine Forest Road, Copper Hill, stated the new information in the Board packet shows some new figures and distances but she cannot read them in order to talk about it.

Mr. Wilkinson explained the new site sketch and the distance from the property lines.

Chairman Coyner asked for a show of hands of all citizens that were in opposition to the request. Many citizens at the meeting raised their hand in opposition to this permit.

Mr. Vladimir Lukashuk, 243 Old Mountain Road, Mount Solon, stated he owns the property next door to the shale pit. He noted that Mr. Howdyshell operated from November 2015 until he stopped in June 2016. He stated the shale is 80' from the property line and 500' from the house. He has suffered with the noise, dust, fumes, and lack of privacy and he cannot enjoy the outside of his home. He stated his grandchildren woke up early in the morning and could not concentrate on their school work because of the shale pit so close to their lives. He stated the roads are unsafe for them in the neighborhood. He stated Mr. Howdyshell did not dispute the fact that he ran an illegal operation. He showed the Board photographs with fully loaded trucks. He stated in the September meeting, Mr. Howdyshell said it was a small operation but he admitted at one time he had 100 loads. He stated the road is not safe enough for 30-100 trips per day. He stated this is not fair because there is dirty, toxic stormwater runoff on their property. He stated the photographs from May 5<sup>th</sup> are proof. He noted that Mr. Howdyshell digs deeper to reach more and more shale, he will disturb more groundwater and leave us with contaminated wells. He stated his attorney pointed out that this application does not meet the standards. He mentioned that Mr. Howdyshell did demonstrate that he has no disregard for State and County regulations.

Mr. Andrey Lukashuk, 4701 Spring Hill Road, Mount Solon, stated he owns property adjacent to the mine pit. He stated before he buys a piece of property Mr. Howdyshell

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should have found out what the zoning regulations were. He thought he could do the mine without permission. He stated this type of noise is business and industrial noise. He stated this area is zoned agriculture. He stated the area is quiet and that is the reason his parents built at the site. He stated Mr. Howdyshell did not buy it with the plan of mining, he did it without even asking permission. He started from the get go being illegal. He even hauled the Early's topsoil away. He uses farm use tags illegally in order for them to not be registered. He noted he avoids the registration because it all costs money. He noted at the September meeting he was asked the question about how many employees he has. He answered by saying about ten (10). He felt that he should know how many employees he has working for him. He does not run his business correctly. He said Mr. Howdyshell likes to fly under the radar. He said he does whatever he wants and the operation is very shady. He noted that it will take him a long time to load the shale. He said it would not take only five (5) minutes to load the shale. He is now talking about farming the property but that was not his plan at all. He stated this is not his plan and nothing is still set in stone. He just says "I think or probably". He is opposed to the noise that will be associated with the mining operation and not the logging. He stated Augusta County does not have licensed mines or a quarry, perhaps there is a reason for this. He hoped the Board would make the right decision because the entire community is against this.

Ms. Colette Semerad, 229 Old Mountain Road, Mount Solon, stated her house dates back to 1791 and used the quarry originally. She stated the previous owner kept the property unused. She stated if anyone wants to sell their property, no one will want to live near a commercial quarry. She stated they have to deal with flooding occasionally. She stated it is worse due to deforestation. She submitted a photograph of muddy runoff between her house and the Vladimir Lukashuk's barn. She hoped that Mr. Howdyshell would grass over his property in order to help reduce erosion and lessen the runoff. She is glad to see the grass growing. She stated the expansion could take a long time. She stated if the permit goes through the neighbors would deal with this forever. She stated Mr. Howdyshell has been in business for so many years without this quarry. She stated the neighbors cannot tolerate this quarry operating at all. She said this request is unacceptable. She would like to live at this site and they want to enjoy visits from their family and spending time in the garden. She would like to keep the windows open and the stress and unhappiness the quarry has caused in their life it is intrusive and life altering. She would hope the Board stop the further development of the quarry and to please deny the Special Use Permit.

Mrs. Lynn Early, 333 Old Mountain Road, Mount Solon, stated after hearing Mr. Howdyshell, he is flip flopping and now he is using the site for agricultural purposes alone. She said hay sheds still need a permit and that will not take years to clear out all the shale. She stated at the previous meeting we discussed the adverse physical, emotional, and

now financial aspects of the request. She stated in addition, there were several legal concerns that were brought to the Board's attention. She stated several people could not attend today but they could not find anyone who was in favor. She said that she has been able to enjoy her home the last 6-8 weeks. She stated Mr. Howdyshell has done a beautiful job with the grading but she is concerned that it will not last. She stated from November 2015 – June 2016 was proof of what would be to come if the permit is approved. She has been very anxious and depressed and she had to be put on medication since the last meeting. She stated she should not have to be subject to medication and this high level of stress and feeling of hopelessness. She said how could anyone be so cruel. She noted the draft minutes summarized the meeting but some information is not included and she hoped you had time to listen to the audio. She said the recording also conveys a level of emotion that cannot be captioned in the minutes. She said Mr. Howdyshell's plans were vague because he says that he might do this or he may do that. She stated the loggers had the proper permits but they did not have VDOT permits to enter and exit the roadway. She noted that Mr. Howdyshell said at the last meeting that there is a big misunderstanding of how big this operation will be. She said on his permit he lists ten (10) acres. She stated it will take him years to excavate. She said the citizens have not gotten a clear picture on what he would like to do. She stated this will be considered a larger scale business if other people come in to pick up the shale. She said according to DMME there will need to be scales and bathrooms installed. She stated he has been digging a shale pit illegally. She noted Mr. Howdyshell said at the last meeting that the noise is not extraordinary. She stated with the dual use right-of-way, she can still hear the noise with her windows shut. She said the sound vibrates off of the mountain. She said even a half a mile away she can still hear the noise. She mentioned that the road is closer to them than the right-of-way. She stated when they haul in the rain, there will be mud and no dust. She said he checked the requirements with the County and he was told that he was not required to have permits and she was not sure who advised Mr. Howdyshell about this. She said he had commercial operational purposes all along. She stated this would be a problem with the community. She said none of the neighbors are in favor. She said all of the neighbors will be impacted in some way either directly or indirectly. She stated this is not about him building a barn or building for hay storage but about the mining. She said this is an agricultural diversion because the material will last a very long time. She said he does not need this for his business to succeed. She noted they have been informed of his unscrupulous business practices. She said he has no regard for State regulation. She said this has been a quiet community until this started in November. She said Mr. Howdyshell does not meet all of the requirements for his Special Use Permit. She said there is no direct access from his property to the state maintained road. She noted this will cause negative impacts on the residents, properties, and roadways. She would live in a constant state of torment if it is approved. She stated if he operates one (1) day a week or five (5) days a week, it would still affect their property

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values. She noted the staff report suggests that this request is not compatible with the residential character area and he could not agree more. She asked the Board to deny this request and allow them to begin healing.

Ms. Tammy Belinsky, 9544 Pine Forest Road, Copper Hill, stated she represents the Early and Lukashuk property owners. She will not reiterate the failure of the request to meet each and every condition for the Special Use Permit. She is surprised to hear his goal is now to have cattle and a poultry barn and he would like to get the shale out of the way in order to be able to do that. She said he has two proposed shale sites. She said removing shale into the lower pit will create more water problems but now he says that he will remove the shale. She said it will need to be three times larger in order to put a poultry barn in. She said most people if they want to farm they find land suitable for the type of operation they want to run already. She stated most people buy land suitable for a certain type of operation. She noted the community has lived with noise. She stated this noise is from him impacting rock to get it out of the ground. She said that is what the neighbors hear inside their homes. She noted this use is simply not compatible. She stated the use does not satisfy all of the criteria for getting a Special Use Permit under your County ordinance.

There being no one else wishing to speak, Chairman Coyner asked the applicant to speak in rebuttal.

Ms. Teresa Howdyshell stated she is the part owner of the property. She said that a lot of people have been questioning her husband's integrity and the integrity of the business. She stated they operate their business legally. She stated they pay all of their taxes. She noted they try and run an upstanding business and they farm too. She stated they use some of the vehicles with the farming operation. She was hurt by some of the comments made because she took them personally. She said the neighbors do not know anything about them.

Mr. Howdyshell stated this is not an extraordinary excavation project. He stated this will serve the farm community. He stated they serve the farming community as much as they serve businesses. He said they excavate in the winter in order for them to keep their employees working. He stated they haul a lot of things to their farm. He stated there has been some accusations made by citizens but it probably is not worthy to answer because these are just accusations. He stated people want shale in the County and this will be a good thing for this County.

Ms. Tilghman asked how long has the applicant owned the property?

Mr. Howdysshell stated since December 2015.

Ms. Tilghman asked if the property was being used at all?

Mr. Howdysshell stated they logged the property. He stated the site was used for farmland and for recreational hunting.

Ms. Tilghman asked if the land is fenced now?

Mr. Howdysshell stated not yet.

Chairman Coyner declared the public hearing closed. He stated the Board viewed the site previously. He noted some viewed it several times. He stated it is tough to vote in favor of the request when all of the citizens in the area are against it. He stated he does feel for each and every person in the area.

Mr. Shreckhise stated the citizens questioned his integrity of the business. He stated when you run a business you do not always know what is legal or not. He visited the site and saw how close this operation was to the houses. He does not think this is the place for a mining operation. He stated some of the citizens were opposed to the logging operation but that is legal and permitted without any permits from this Board. He feels that Mr. Howdysshell should not take shale off of the property. He said the benefit of the shale operation is miniscule when compared to what the rest of the community is subject to from the operation. He stated there are many residential houses in the area. He also noted this use is not compatible with the area roads and the right-of-way is not intended for a hauling mining operation. He does realize that most of the shale did go to farmers but he does not think there is enough farm interest alone to operate the mining of the site.

Ms. Tilghman agreed with Mr. Shreckhise. She stated in many ways agriculture is where mines belong but belonging in agriculture does not mean that they belong in every agricultural area. She said people move to agricultural areas for peace and quiet but they do not realize how much noise that is made by a running farming operation by using a tractor or heavy equipment for farming. She said agriculture is extremely important in this County. She does not think this type of use is where this operation belongs. She feels sympathy toward the gentleman that this site is right by his house. She said there are trucks up and down the road. She said this type of use does not belong in every agricultural area. She noted there will be things that will disturb you in agriculture because the only way to farm is to make smells and noise. She noted that Mr. Howdysshell has every right to log the property. She did not feel that Mr. Howdysshell was trying to be vague but as a business person, he may not know because it would depend on when it is economically feasible.

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Ms. Brown stated this road is not designed for traffic. She stated with a mine this close to the neighbors there will be noise, dust, and fumes from the operation. She stated this is not a good location because the neighbors will be impacted.

Mr. Shreckhise moved that the request be denied for the reasons he mentioned previously.

Ms. Tilghman seconded the motion, which carried unanimously.

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#### **MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR**

##### **CHRISTOPHER S. OR TORI C. MCWHORTER - EXTENSION OF TIME REQUEST**

A request by Christopher S. or Tori C. McWhorter, for a Special Use Permit to have a grooming and boarding kennel on property they own, located at 232 Mine Branch Road, Crimora, in the Middle River District.

Mr. Shreckhise moved that the one (1) year Extension of Time be approved.

Ms. Brown seconded the motion, which carried unanimously.

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##### **FRANCIS CHESTER-CESTARI, AGENT FOR CESTARI LAND AND SHEEP CORPORATION - EXTENSION OF TIME REQUEST**

A request by Francis Chester-Cestari, agent for Cestari Land and Sheep Corporation, for a Special Use Permit to construct a new building to have a law office, sheep and textile museum, manufacturing and dyeing of wool and textiles, a country store, and have tours on property owned by Justine Daniel Tilghman, located on the south side of Little Calf Pasture Highway (Route 42), just east of the intersection of Little Calf Pasture Highway and Montgomery Run Lane, in the Pastures District.

Mr. Wilkinson stated he met with Mr. Chester last week. He stated Mr. Chester thinks the structure would be under construction within the next couple of months.

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

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Mr. Shreckhise seconded the motion, which carried unanimously.

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**CRAIG WILLIAMS, AGENT FOR THE CHURCHVILLE VOLUNTEER FIRE DEPARTMENT - EXTENSION OF TIME REQUEST**

A request by Craig Williams, agent for the Churchville Volunteer Fire Department, for a Special Use Permit to enlarge and extend an existing nonconforming structure on property it owns, located at 3829 Churchville Avenue, Churchville, in the Pastures District.

Mr. Wilkinson stated they are in the process of submitting the site plan.

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

Ms. Tilghman seconded the motion, which carried unanimously.

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**STAFF REPORT**

- 15-41 Woodson Real Estate, LLC
- 15-42 Bruce F. or Edward E. Holden
- 15-43 Justine Daniel Tilghman
- 15-44 Long Shots, LLC
- 15-45 Mary L. Corbello

Ms. Bunch stated SUP#15-41 and SUP#15-42 are both in compliance. She stated the Board just approved an Extension of Time for SUP#15-43. She noted that SUP#15-44 and SUP#15-45 are both in compliance.

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Mr. Benkahla discussed the court cases with the Board.

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

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Chairman

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Secretary