

July 6, 2017

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

ABSENT: None

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, July 6, 2017, at 9:00 A.M., in the County Government Center, Verona, Virginia.

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

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VIEWINGS

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

- **GEORGE D. AND JANET B. JONES - SPECIAL USE PERMIT**
- **RANDALL LEE AND ALLISON M. FINK - SPECIAL USE PERMIT**
- **DONALD L., SR. AND KAREN R. QUICK - SPECIAL USE PERMIT**
- **R. CREIGH DEEDS, P.C., AS AGENT FOR PLECKER BROTHERS, INC. – APPEAL TO THE BOARD OF ZONING APPEALS OF A DECISION OF THE ZONING ADMINISTRATOR**

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

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Chairman

Secretary

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PRESENT: Thomas H. Byerly, Chairman
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 George A. Coyner, II,
 Justine D. Tilghman
 Sandra K. Bunch, Zoning Administrator and Secretary
 James R. Benkahla, County Attorney
 John R. Wilkinson, Director of Community Development
 Beatrice B. Cardellicchio-Weber, Executive Secretary

ABSENT: None

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VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, July 6, 2017, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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MINUTES

Vice Chairman Shreckhise moved that the minutes from the June 1, 2017, meeting be approved.

Mr. Coyner seconded the motion, which carried unanimously.

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NADIAH YOUNUS, AGENT FOR DOMINION VIRGINIA POWER - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Nadiah Younus, agent for Dominion Virginia Power, for a Special Use Permit to continue the contractor's office and storage yard on property owned by Eastside Speedway, Inc. c/o A.L. Gore, located at 115 Al Gore Lane, Waynesboro, in the Wayne District.

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Ms. Nadiah Younus stated she would like to continue to use the existing storage yard. She is requesting to use the site for an additional five (5) years. She noted Dominion Virginia Power will use twelve (12) acres of the land for storage.

Chairman Byerly asked how is the progress on the power installation?

Ms. Younus stated there are many projects coming through.

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

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

Vice Chairman Shreckhise stated the site remains neat and orderly and the Board has not received any complaints regarding this site. He moved the request be approved with the following conditions:

Pre-Conditions:

None

Operating Conditions:

1. All equipment be kept in the designated area shown on the site plan.
2. Site be kept neat and orderly.
3. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
4. Permit be issued for five (5) years.
5. The utility storage lot be used only for tower/transmission line replacement projects.

Ms. Brown seconded the motion, which carried unanimously.

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GEORGE D. AND JANET B. JONES - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by George D. and Janet B. Jones, for a Special Use Permit to have a dog kennel on property they own, located at 177 Dudley Road, Bridgewater, in the North River District.

Mr. George Jones stated they have a small kennel with three (3) hounds and would like to expand the number of dogs to eight (8).

Mr. Coyner asked what are the dogs used for?

Mrs. Janet Jones stated they have a search and rescue dog now that is middle aged. She said her plan is to get and train a puppy for search and rescue.

Mr. Coyner asked if the dogs are also used for hunting?

Mr. Jones stated yes.

Mrs. Jones stated the Labrador Retriever lives in the house with her. She asked that the operating condition be amended so that she is able to keep the Labrador Retriever in her home since he is a family dog.

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

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

Ms. Bunch read a letter of support from William Ceccolini (copy of the letter located in the Special Use Permit file). She said he had no objections to this request.

Mr. Coyner stated the Board visited the site this morning. He said this is an ideal place for a kennel. He noted the property is kept immaculate. He moved that the request be approved with the following conditions:

Pre-Condition:

1. A six (6') foot high chain-link fence be installed adjacent to the building.

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Operating Conditions:

1. Maximum of eight (8) adult dogs kept at this site at any time.
2. All dogs be confined within the dwelling, 10' x 16' building, or the fenced area designated on the site plan unless under direct supervision of the owner.
3. Dogs be kept inside from 10:00 p.m. until 6:00 a.m.
4. Animal Control to inspect the site every **year**.

Vice Chairman Shreckhise seconded the motion, which carried unanimously.

Chairman Byerly thanked the applicants for their service to the community.

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RANDALL LEE AND ALLISON M. FINK - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Randall Lee and Allison M. Fink, for a Special Use Permit to have a bed and breakfast and to use an existing cabin as a vacation home on property they own, located at 19 and 23 Corey Hill Lane, Staunton in the Pastures District.

Mr. Randall Fink stated this is a large home and he has been advertising his bedroom suites with Airbnb since he was laid off in November. He said it became quite popular so he wanted to expand the site. He would like to have a bed and breakfast and convert the cabin into a tourist home rental.

Mr. Coyner asked if the applicant will have employees?

Mr. Fink stated he will not have employees.

Ms. Brown asked if the applicant will serve breakfast?

Mr. Fink stated yes.

Ms. Brown asked how will the applicant advertise?

Mr. Fink stated through Airbnb. He noted he is applying for a permit for the septic system.

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

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

Mr. Coyner stated this would be a good way to provide for his family.

Ms. Tilghman moved to approve the request with the following conditions:

Pre-Conditions:

1. Obtain Service Authority approval and provide a copy of Community Development.
2. Obtain Health Department approval and provide a copy to Community Development.
3. Obtain a letter of approval from Building Inspection for the change of use of the accessory building to a bedroom and bath.

Operating Conditions:

1. Be permitted to convert the existing accessory building into a bedroom and bath for the bed and breakfast.
2. Be limited to two (2) rooms for the bed and breakfast.
3. Be permitted to rent out the existing four (4) room cabin as a vacation home.
4. Applicant must reside on premises.

Ms. Brown seconded the motion, which carried unanimously.

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DONALD L., SR. AND KAREN R. QUICK - SPECIAL USE PERMIT

This being the date and time advertised to consider a request by Donald L., Sr. and Karen R. Quick, for a Special Use Permit to have motor vehicle repair within an existing garage on property they own, located at 1611 Mt. Torrey Road, Lyndhurst in the South River District.

Mr. Donald Quick stated he would like to operate a small motor vehicle operation. He said he also drives a tow truck for another company. He would like to help the people in the neighborhood. He plans on fixing the cars and hauling them out.

Mr. Coyner asked if the applicant plans on bringing vehicles back to the site with the tow truck?

Mr. Quick stated no. He drives the tow truck for Bradley's Towing. He only leaves the tow truck at his house so that he does not have to drive to Bradley's Towing to pick up the tow truck. He needs to be at the scene within twenty (20) minutes of receiving a call. He uses a Dodge truck with a trailer for his motor vehicle repair business.

Mr. Coyner asked if the applicant checked with the neighbors?

Mr. Quick stated he has heard no complaints from them. He plans on helping the neighborhood.

Mr. Coyner asked if the applicant planned on having employees?

Mr. Quick stated no employees but his family sometimes uses the garage to change the oil in their vehicles.

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

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

Ms. Brown stated the applicant has operated at the site for quite a while with no complaints. She stated the site is kept neat and orderly. She moved to approve the request with the conditions recommended by staff.

Ms. Tilghman asked if the applicant is required to modify the entrance at the site?

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Ms. Bunch stated the Virginia Department of Transportation did not request the applicant to obtain a highway entrance permit to modify the entrance.

Ms. Brown said she can amend her motion as follows:

Pre-Condition:

1. Obtain Building Inspection approval and provide a copy to Community Development.

Operating Conditions:

1. Be permitted to use the existing 30' x 40' garage for motor vehicle repair operations and a 60' x 60' vehicle impound area between the buildings.
2. The 60' x 60' vehicle impoundment area be screened by an eight (8') foot high opaque fence and must be maintained at all times.
3. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
4. Site be kept neat and orderly.
5. Hours of operation be 8:00 a.m. to 7:00 p.m., Monday – Saturday.
6. No Sunday work.
7. No employees other than family members.
8. Permit be reviewed in a year and renewed if all of the conditions are met.
9. Each entrance will be required to be modified to VDOT requirements. Obtain VDOT entrance permit and provide a copy to Community Development.

Vice Chairman Shreckhise seconded the motion, which carried unanimously.

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R. CREIGH DEEDS, P.C., AS AGENT FOR PLECKER BROTHERS, INC. – APPEAL TO THE BOARD OF ZONING APPEALS OF A DECISION OF THE ZONING ADMINISTRATOR

This being the date and time advertised to consider an appeal by R. Creigh Deeds, P.C., as agent for Plecker Brothers, Inc., to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the property they own being used for a non-permitted use (storage of construction equipment and materials) located at the intersection of Sangers Lane and Balsley Road, Staunton in the Beverley Manor District.

Ms. Bunch stated Plecker Brothers, Inc. purchased the property in 1973 and the property was zoned General Agriculture. She stated General Agriculture uses were permitted but anything other than that like storage yards, junkyards, or similar uses required a Special Use Permit. She said the property was rezoned in 1985 to General Business. She said anything permitted in General Business would have required a site plan. She noted any outdoor storage including a junkyard or storage yard required a Special Use Permit at the time. She stated a Special Use Permit was never obtained. She said in 1994 an Erosion and Sediment Control plan was approved to have a fill site on the property. She stated this site was approved to add fill, re-stabilize, and reseed. She said staff first noticed the property being in violation on February 16, 2017. She stated Mr. Plecker was in violation of the Zoning Ordinance. She stated there is storage of equipment, materials, pipes, culverts, rocks, and gravel at the site. She stated on February 27, 2017, Mr. Plecker made application for the Special Use Permit to have a storage yard. She noted on February 28, 2017, he withdrew his request for a Special Use Permit and said he would clean up the site. She noted the property was inspected on March 13, 2017, and April 6, 2017, and the site continued to remain the same. She sent Mr. Plecker a final notice on April 7, 2017, that the site still remained in violation and the illegal storage needed to be removed or obtain a Special Use Permit. She received a notice that Mr. Plecker would like to appeal her decision to the Board of Zoning Appeals. She said the property has never been in compliance or it was never listed as a permitted use. She does not have a site plan on file for this property. She noted any business use of the property would require a site plan as well as a Special Use Permit for the outdoor storage at the site. She said the property was never in compliance for bulk storage, only for a fill site.

Mr. Creigh Deeds stated Plecker Brothers, Inc. bought the property in 1973. He stated Timothy Plecker worked for the business after finishing high school and took over the business when his father passed away. He stated the usage has not changed since Plecker Brothers, Inc. bought the property in 1973. He explained the laches law. He stated the property has been used this way for 44 years. He stated there has been no complaints on this site in the 1970s, 1980s, 1990s, and 2000. He said a complaint was

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never made until February of this year. He noted it is fundamentally unfair to sit on a right for 44 years. He said Mr. Plecker has the right to use it that way since the property has always been used this way. He asked what does the applicant need to do to comply with the ordinance. He said his client has cleaned stuff off of the property. He stated the business has been there for many years. He stated before February 2017, Mr. Plecker has never received any notification of complaints and he has been using the land the same way since 1973. He asked what needs to be done to bring the site into compliance?

Mr. Coyner asked what is the reluctance of the applicant applying for a Special Use Permit?

Mr. Deeds stated his client never knew he had to apply for a Special Use Permit before. He tried to clean up the property but did not know he needed a permit. He said if that is all he needs to do, his client will try to be in compliance with the ordinance.

Mr. Coyner stated an application was made and then withdrawn. He stated it is difficult for him to understand why the applicant did not pursue the Special Use Permit.

Mr. Deeds stated a Special Use Permit was never required before he questioned what has changed now. He will advise him that is what he needs to do.

Vice Chairman Shreckhise stated the reason for a Special Use Permit is so the Board can put limitations on the permit in order to be sure there are no piles of junk or inoperable vehicles at the site. He noted the applicant stated the site was used for outdoor storage for a long time but it was never brought to the County's attention that the site was in violation.

Mr. Deeds said it has been forty-four (44) years.

Ms. Tilghman stated the first few years did not look like the way the site is today. She said the applicant should have always had a Special Use Permit in order to be in compliance. She said until it is brought to staff's attention, they would not know. She said the County does not have someone hunting for violations. She stated the Board is not trying to shut Mr. Plecker down but we need him to come into compliance. She stated the applicant must apply for a Special Use Permit and submit a site plan in order to be in compliance. She said this is a good spot for the applicant and very convenient for his business.

Chairman Byerly stated the right is not available if you are not in compliance. He stated Mr. Plecker has had other permits and, appears to be knowledgeable of the County's regulations since he made application for the Special Use Permit and then withdrew it.

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Mr. Deeds stated Mr. Plecker filed a Special Use Permit application this year when he was advised he was not in compliance.

Chairman Byerly stated the site is a perfect place for this type of use but this is a compliance issue. He stated a site plan and a Special Use Permit would give him the legal right to operate.

Mr. Timothy Plecker stated he was never aware that all of these years the site was illegal. He applied for a Special Use Permit previously on his Route 254 site. He does receive Erosion and Sediment Control inspection permits and reports and it was never mentioned that he needed a Special Use Permit for this site. He wanted to wait a month or two to actually apply for the Special Use Permit but he was told he needed to apply for it right then and there. He is working with the Virginia Department of Transportation (VDOT) on obtaining an entrance permit. He is having issues getting the sight distance because of the speed. He did not want to apply unless he gets his VDOT permits. He said VDOT is working on a speed study. He is hoping to adjust the entrance and work with VDOT. He said that he was not sitting and doing nothing. He noted the site looks better than what it has ever looked. He stated it is detrimental to his business to have a place for storage. He asked if the site plan he has on file is adequate?

Ms. Bunch stated a site plan will need to be submitted showing the outdoor storage area. She stated all of the appropriate departments and agencies will need to review the site plan. She stated the plans on file is an Erosion and Sediment Control plan for a fill site. She noted the storage of gravel, concrete, equipment, and culverts require a Special Use Permit for outdoor storage.

Mr. Plecker stated he has a problem with that because he pays taxes on the equipment and he still cannot store it there without a permit.

Chairman Byerly stated some of the equipment appears inoperable.

Mr. Plecker said the two (2) pieces of equipment that are on site today are operable.

Mr. Wilkinson stated in 1991 this looked like a fill site with very little equipment. He stated Business property requires a site plan for any use of the property. He noted Mr. Plecker has an Erosion and Sediment Control plan but he needed a site plan and a Special Use Permit for the outdoor storage. He said after it was rezoned to Business, the aerals in 2002 show equipment, rock, gravel, pipes, and culvert pipes. He stated the site is turning more like a business contractor storage yard rather than a fill site. He stated the site Mr. Plecker has on Route 254 is similar to what he has here. He stated a Special Use Permit

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is required for a contractor storage yard. He stated the applicant will need to obtain all of the proper permits. He stated the site has changed a great deal since 1991. He said it has went from a fill site to a construction storage site in a ten (10) year period of time. He stated there are no fines charged but we look for compliance with Augusta County laws for zoning. He noted this would be the same process as the other site Mr. Plecker has storage on.

Chairman Byerly stated the site needs to be brought into compliance.

Mr. Plecker said he still needs to wait on VDOT approval before he can apply for a Special Use Permit or submit a site plan. He may have to adjust the entrance and raise the grade. He stated only after he applied for a rezoning of the lower parcels is when the County saw what he was storing at the site.

Mr. Coyner stated safety is one the concerns of the Board.

Mr. Plecker stated until he gets an entrance at the site there is no need for him to apply.

Mr. Deeds asked if the Board would give Mr. Plecker ninety (90) days.

Mr. Plecker asked once he receives his entrance approval, what else needs to be done at the site?

Ms. Bunch stated any inoperable vehicles need to be removed.

Vice Chairman Shreckhise stated when application is made, the County staff will go out to inspect the site.

Mr. Plecker stated he has the site currently the way he wants it. He asked if the Board saw something that they do not want at the site?

Vice Chairman Shreckhise stated there are two (2) pieces of equipment at the site that appear to be inoperable.

Mr. Benkahla stated this hearing is for the appeal of the Zoning Administrator's decision. He noted once the applicant applies for a Special Use Permit then the Board can discuss the site and the outdoor storage.

Mr. Wilkinson stated staff is willing to meet with you to discuss the Special Use Permit.

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John and Patricia Johnson, 3 and 56 Balsley Road, Staunton. They said their farm property adjoins Plecker Brothers. They were concerned about safety along the road. They stated there has been times when their fence was removed from other drivers. They have speed limit concerns.

Chairman Byerly asked if they had concerns on the Plecker operation?

Mr. Johnson stated when the Pleckers first bought the property it was being used as a fill site but then it changed in 2002. He does not have an issue with the vehicles or storage at the site.

Mrs. Johnson stated some of the trees should be cleared out better towards the roadway. Mr. Wilkinson suggested that the neighbors contact VDOT to discuss their concerns about the road while they are working on the speed study.

Ms. Tilghman asked about the doctrine of laches?

Mr. Benkahla stated in his opinion, it is not applicable in a government or agency function.

Chairman Byerly declared the appeal hearing closed.

Mr. Coyner stated they have heard from the applicant and their representative. He stated the applicant should have applied for a Special Use Permit. He moved to uphold the decision of the Zoning Administrator.

Ms. Brown seconded the motion, which carried unanimously.

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MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR

ERIN TRZELL - SPECIAL USE PERMIT

A request by Erin Trzell, for a Special Use Permit to have a bed and breakfast, inn operation, counseling service or therapy retreat, restaurant, and special events on property owned by Yoder Investments, LLC, located at 2487 Hankey Mountain Highway, Churchville in the North River District. – **Applicant would like to cancel the Special Use Permit.**

Mr. Coyner moved to cancel the Special Use Permit.

Ms. Brown seconded the motion, which carried unanimously.

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STAFF REPORT

- 16-31 Jane M. Swan Jenkins
- 16-32 Edward L. or Tracy M. Armentrout
- 16-33 Carolyn G., Wesley L. or Logan W. Bean
- 16-34 Huey W. or Mary L. Mullins
- 16-35 James W. or Teresa C. Howdysshell

Ms. Bunch stated the permit for SUP#16-31 was never established. She stated the property was sold to someone else. She stated the applicant has found a business location and the vehicles are gone for SUP#16-32. She noted the permit was valid for only six (6) months. She stated SUP#16-33 has been inspected and is in compliance. She said staff sent the applicant a letter regarding SUP#16-34 asking if they would like to cancel because the site is for rent. She also sent a cancellation letter to Mr. Mullins asking if he would like to cancel the permit. She noted SUP#16-35 was denied.

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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

Secretary