



COUNTY OF AUGUSTA  
COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
P.O. BOX 590  
COUNTY GOVERNMENT CENTER  
VERONA, VA 24482-0590



**MEMORANDUM**

TO: Augusta County Board of Zoning Appeals

FROM: Sandra K. Bunch, Zoning Administrator

DATE: June 26, 2019

SUBJECT: Regular Meeting and Viewing

The Regular Meeting of the Augusta County Board of Zoning Appeals will be held on **Wednesday, July 3, 2019, at 1:30 P.M.**, in the Board Meeting Room, Augusta County Government Center, 18 Government Center Lane, Verona, Virginia.

Please meet in the Board of Supervisors Conference Room at the Augusta County Government Center in Verona at **8:00 A.M., Wednesday**, for the Staff Briefing prior to going out to view the items on the agenda. Lunch will follow at **Country Cookin' at noon**.

Enclosed are the minutes, the agenda for **Wednesday's** meeting, staff reports and site plans on each of the requests.

If you cannot attend this meeting, please notify this office as soon as possible.

SKB/bcw

Enclosures

**ADVANCED  
AGENDA**

**Regular Meeting of the Augusta County Board of Zoning Appeals**

**Wednesday, July 3, 2019, 1:30 P.M.**

**1. CALL TO ORDER**

**2. DETERMINATION OF A QUORUM**

**3. MINUTES**

Approval of the Called and Regular Meeting of May 2, 2019

**4. PUBLIC HEARINGS**

- A. A request by Kenneth Ray Bradley, Jr., agent for Kenneth Ray Bradley, Jr., Inc., for a Special Use Permit to have general outdoor storage for a contractor storage yard on property he owns, located at 391 East Side Highway, Waynesboro in the Wayne District.
- B. A request by Paul S. or Connie L. Bendick, for a Special Use Permit to have an accessory building larger than the 1,200 square foot total aggregate allowed on property they own, located at 1301 Ladd Road, Waynesboro in the South River District.
- C. A request by James E. or Mary-Elizabeth H. Toth, for a Special Use Permit to have a kennel for personal dogs on property they own, located at 1572 Lee Highway, Fort Defiance in the North River District.
- D. A request by Tracy and Deborah Shaver, for a Special Use Permit to have weddings and special events on property owned by Jerry W. Whitmore located at 453 Badger Road, Mount Solon in the North River District.
- E. A request by Alondra and Leonardo Gonzalez, for a Special Use Permit to continue the existing restaurant on property owned by Ethel M. Baber, located at 2542 East Side Highway, Crimora in the Middle River District.
- F. A request by Joseph K. or Suzan Howell, for a Special Use Permit to have a short term vacation rental on property they own, located at 2250 Indian Ridge Road, Stuarts Draft in the Riverheads District.

**5. OLD BUSINESS**

- A. A request by John Wilkinson, agent for Appalachian Aggregates, for a Special Use Permit to reopen a closed quarry operation and manufacture crushed stone in conjunction with the Interstate 81 widening on property owned by Spottswood Farms, LLC, located on the east side of Interstate 81 in the Riverheads District. – **TABLED AT THE MAY 2, 2019 AND JUNE 6, 2019 MEETINGS**

- B. A request by John Wilkinson, agent for Appalachian Aggregates, for a Variance from the required setback for a mining operation on property owned by Spottswood Farms, LLC, located on the east side of Interstate 81 in the Riverheads District. – **TABLED AT THE MAY 2, 2019 AND JUNE 6, 2019 MEETINGS** (no public hearing held for the Variance yet)

**6. APPEAL OF THE ZONING ADMINISTRATOR'S DECISION**

- A. An appeal by Michael W. Sharp, agent for Friends of Seawright Springs, to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the decision to forego requiring a Special Use Permit for a water withdrawal business on property owned by Flow Beverages, Inc. (formerly owned by Seawright Mineral Springs, LLC), located at 40 Seawright Road, Mount Sidney in the North River District.

**7. MATTERS TO BE PRESENTED BY THE PUBLIC**

**8. MATTERS TO BE PRESENTED BY THE ZONING ADMINISTRATOR**

**9. STAFF REPORT**

18-42	Pennwood D, LLC – <b>Denied</b>
18-43	Scotland Land Company, LLC – <b>Denied</b>
18-44	Robert L. Whitson

**10. ADJOURNMENT**

Agenda Item # 4A

Date 7/3/19

**PROPERTY OWNER:**

Kenneth Ray Bradley, Jr., Inc.

**APPLICANT:**

Kenneth Ray Bradley, Jr., agent for Kenneth Ray Bradley, Jr., Inc.

**LOCATION OF PROPERTY:**

391 East Side Highway, Waynesboro in the Wayne District

**SIZE OF PROPERTY:**

8.471 acres

**VICINITY ZONING:**

General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**

12/95 – Zoned General Agriculture

10/13 – SUP approved for outdoor storage of rock, millings concrete

11/14 – SUP approved to amend operating conditions

09/18 – Zoned General Business

**LAND USE MAPS:**

Urban Service Area – Community Mixed Use

**UTILITIES:**

Public water and private septic

**APPLICANT'S JUSTIFICATION:**

To have general outdoor storage for a contractor storage yard

**PLANNING COMMISSION'S COMMENTS:**

No comments.

**BUILDING INSPECTOR'S COMMENTS:**

After review, our office has no conditions.

**HEALTH DEPARTMENT'S COMMENTS:**

Health Department has no issues with the storage yard.

**HIGHWAY DEPARTMENT'S COMMENTS:**

There are two existing entrances serving the Tax Map #. Both meet VDOT's sight distance requirements. The southern entrance needs to be maintained (repaved) to the back of curb radii or to the right-of-way line; whichever is a greater distance from Rte 340. No vehicles, material, equipment, advertising or signage allowed on VDOT right-of-way.

### **SERVICE AUTHORITY'S COMMENTS:**

1. 391 East Side Highway is currently a Service Authority water only customer. If any changes to the existing structure or water fixtures are proposed to accommodate contractors/workers, a meter sizing form must be submitted to the Service Authority Engineering Department.
2. There is no public sewer available in the area of the subject parcel.

### **ENGINEERING'S COMMENTS:**

Maintain ground cover type managed turf/impervious/open space in accordance with approved site plan. Any deviance from the approved plan will require recalculation of Stormwater.

### **SECTION 25-304B - GENERAL OUTDOOR STORAGE**

**A site plan is filed meeting the requirements of division J article LXVII "Site Plan Review", approved and followed which clearly delineates the areas intended for outdoor storage and complies with the requirements of this chapter.**

The applicants submitted a site plan for the outdoor storage area pending approval of the Special Use Permit. There is an approved site plan for the existing office on file in Community Development.

**On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways. Aisleways will be appropriate for the anticipated vehicular and pedestrian traffic.**

There are two (2) existing entrances that have safely and adequately accommodated traffic to and from the public highways.

**Outdoor storage areas will not interfere with convenient, easily accessible parking for the public. Areas delineated on the site plan for parking or aisleways may not be used for outdoor storage.**

All parking and aisleways are accessible.

**Outdoor storage areas will be proportionately appropriate in size and scope to the nature of the business. Financial considerations alone will not justify the failure to use inside storage.**

The proposed outdoor storage area covers a large portion of the property and may not be appropriate for this site.

**Setbacks for proposed structures and facilities will be sufficient to protect neighboring properties.**

The existing office building meets all required setbacks.

**Items not displayed for sale or lease shall be fully shielded or screened from view unless the board of zoning appeals determines that fully shielding or screening is not necessary. Opaque screening, including fencing and landscaping, shall be**

appropriate to ensure compatibility with neighboring properties, taking into account the proper location of aiseways and gates and the compatibility of screening materials with the materials utilized in the principal buildings on site. Fencing or screening shall be maintained in a good state of repair. Chain-link fencing with slats inserted is not acceptable for this screening. Gates shall remain closed except when goods are moved to and from the enclosed area.

The applicant is proposing an eight (8') foot high privacy fence around the entire site for screening.

**There is an adequate plan for outdoor lighting showing the location of lights and shielding devices or other equipment to prevent unreasonable glow beyond the site. Any such outdoor lighting shall otherwise comply with the provisions of article VI of division I of this chapter.**

No new lighting is proposed.

**Items to be stored outside may not be items normally and customarily kept inside.**

Construction equipment and materials are items normally kept outside.

#### **STAFF RECOMMENDATIONS**

The applicant is requesting to have outdoor storage of construction vehicles, heavy equipment, shipping containers and construction materials. The applicant leases an office and outdoor space to a contractor doing work for Dominion upgrading power transmissions lines in the area. The Board granted a Special Use Permit in 2013 to have limited outdoor storage of millings, rock, and construction materials behind the building in an area limited to one hundred ninety (190') feet wide. The applicant has expanded the approved storage area and is also storing additional items such as shipping containers, power poles, heavy equipment, construction vehicles, and inoperable vehicles over a large portion of the property.

After receiving complaints from adjoining property owners, Staff inspected the property and sent notices of violation regarding the additional storage. The applicant was advised that a Special Use Permit was required. Staff is concerned that the expansion of the material storage area and the additional equipment and vehicles being stored on the property could have a negative impact on the neighboring properties. However, if the Board feels the request would be compatible and desires to approve the request, Staff would recommend the following operating conditions:

#### **Pre-Conditions:**

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

**Operating Conditions:**

1. All outdoor storage be located to the side or rear of the building and be screened by an opaque privacy fence a minimum of eight (8') feet high or higher if necessary to completely screen material and equipment.
2. The opaque privacy fence must be maintained at all times.
3. All equipment, machinery, shipping containers, and materials for the business be kept in the designated areas shown on the site plan.
4. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
5. Site be kept neat and orderly.



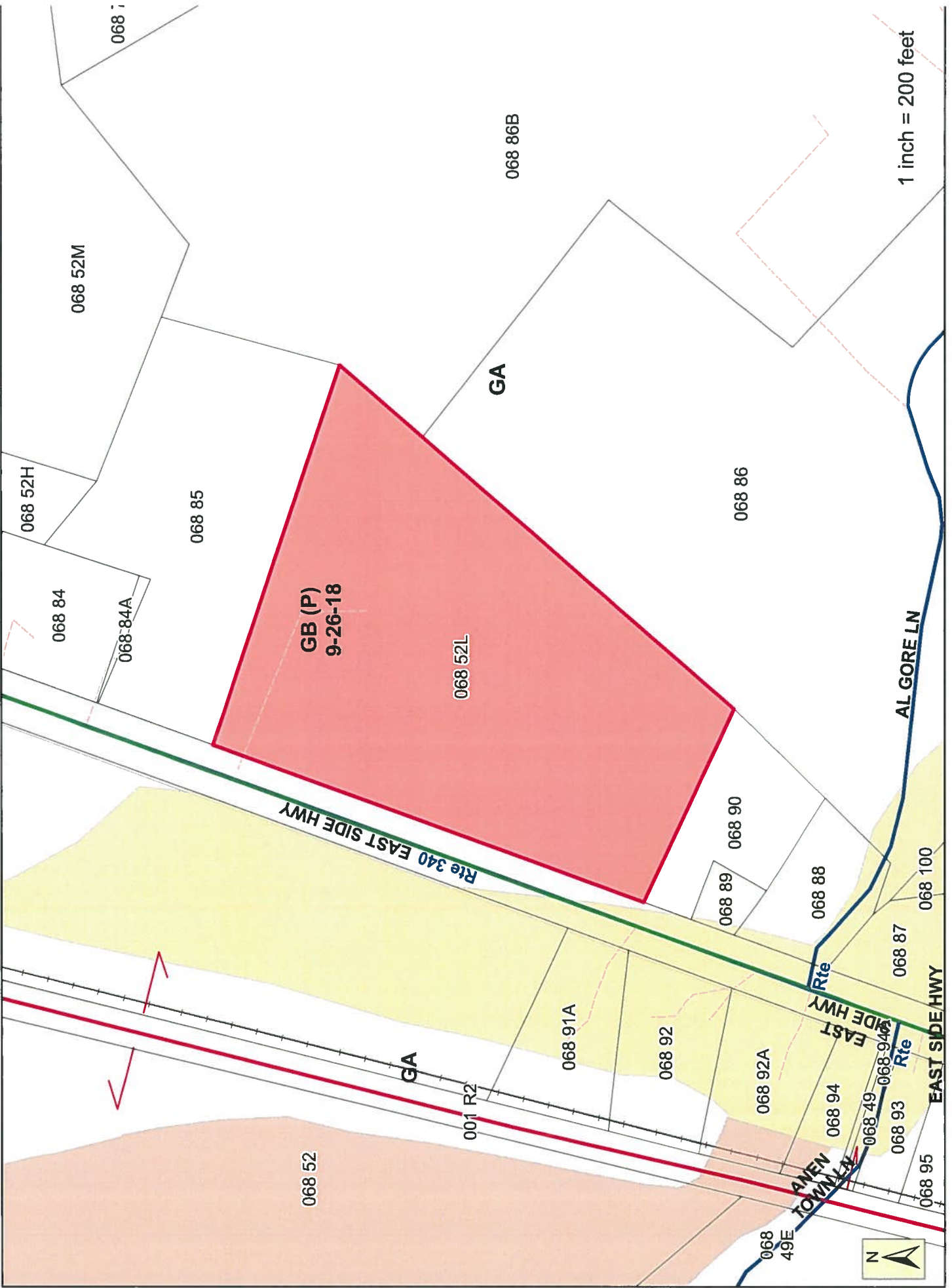
Res. Hwy







Kenneth Ray Bradley, Jr., Inc.



Kenneth Ray Bradley, Jr., Inc.





Kenneth Ray  
Bradley, Jr., INC.

**PROPERTY OWNER:**  
Paul S. or Connie L. Bendick

Agenda Item # 4B  
Date 7/3/19

**APPLICANT:**  
Same

**LOCATION OF PROPERTY:**  
1301 Ladd Road, Waynesboro in the South River District

**SIZE OF PROPERTY:**  
5.00 acres

**VICINITY ZONING:**  
General Agriculture and Rural Residential to the west, east, and north; Rural Residential and Single Family Residential to the south

**PREVIOUS ZONING OR S.U.P.:**  
11/75 Zoned Rural Residential

**LAND USE MAPS:**  
Urban Service Area – Medium Density Residential

**UTILITIES:**  
Public water and private septic

**APPLICANT'S JUSTIFICATION:**  
To have an accessory building larger than the 1,200 square foot total aggregate allowed

**PLANNING COMMISSION'S COMMENTS:**  
No comments.

**BUILDING INSPECTOR'S COMMENTS:**  
Obtain all necessary permits and inspections in accordance with the Uniform Statewide Building Code.

**HEALTH DEPARTMENT'S COMMENTS:**  
Health Department has no issues with the building. No plumbing in the building.

**HIGHWAY DEPARTMENT'S COMMENTS:**  
The existing entrance is adequate for the requested use. No additional vehicular traffic is anticipated.

**SERVICE AUTHORITY'S COMMENTS:**  
The request has no impact on the public water facilities. The Service Authority has no comments. Note: 1301 Ladd Road is currently a Service Authority water only customer.

**ENGINEERING'S COMMENTS:**

Less than 10,000 square feet on a large residential lot. No anticipated Stormwater Management impact.

**SECTION 25-122.1C – ACCESSORY BUILDINGS NOT MEETING 25-122.1A & B**

**The accessory building or structure would not be out of character with the neighborhood or disproportionately large in relation to the size, location and character of other buildings and uses on the lot on which it is to be located and on adjoining and surrounding properties. For purposes of this section, “disproportionately large” shall mean so large as to: (i) be larger than a principal building to which it is accessory; or (ii) appear out of character with surrounding properties.**

The applicants dwelling is approximately 3,000 square feet, therefore, the 1,260 square foot garage would not be larger than the principal dwelling. There are several detached larger structures on the surrounding properties. This accessory structure would not be out of character with surrounding properties.

**Accessory buildings and structures shall meet the applicable side and rear yard requirements of § 25-128.**

The existing detached garage meets all the required setbacks.

**STAFF RECOMMENDATIONS**

The applicant is requesting to have an existing accessory structure that is 30' x 42' which equals 1,260 square feet. The detached garage was built without permits prior to the ordinance change limiting the size of accessory structures on lots five (5) acres or less. The property is zoned Rural Residential and contains five (5) acres. The current Zoning Ordinance limits the total aggregate area of all accessory structures to twelve hundred (1,200) square feet. The garage is located at the rear of the property and is not visible from the road. There is a larger accessory structure on the adjoining property and within close proximity to this property.

Staff recommends approval of the request because it is not out of character with the surrounding properties as there are several larger accessory structures in close proximity to this property, and would recommend the following conditions:

**Pre-Conditions:**

None

**Operating Conditions**

1. Applicant obtain building permit and provide a copy to Community Development.
2. Site be kept neat and orderly.
3. No junk or inoperable vehicles to be kept outside,

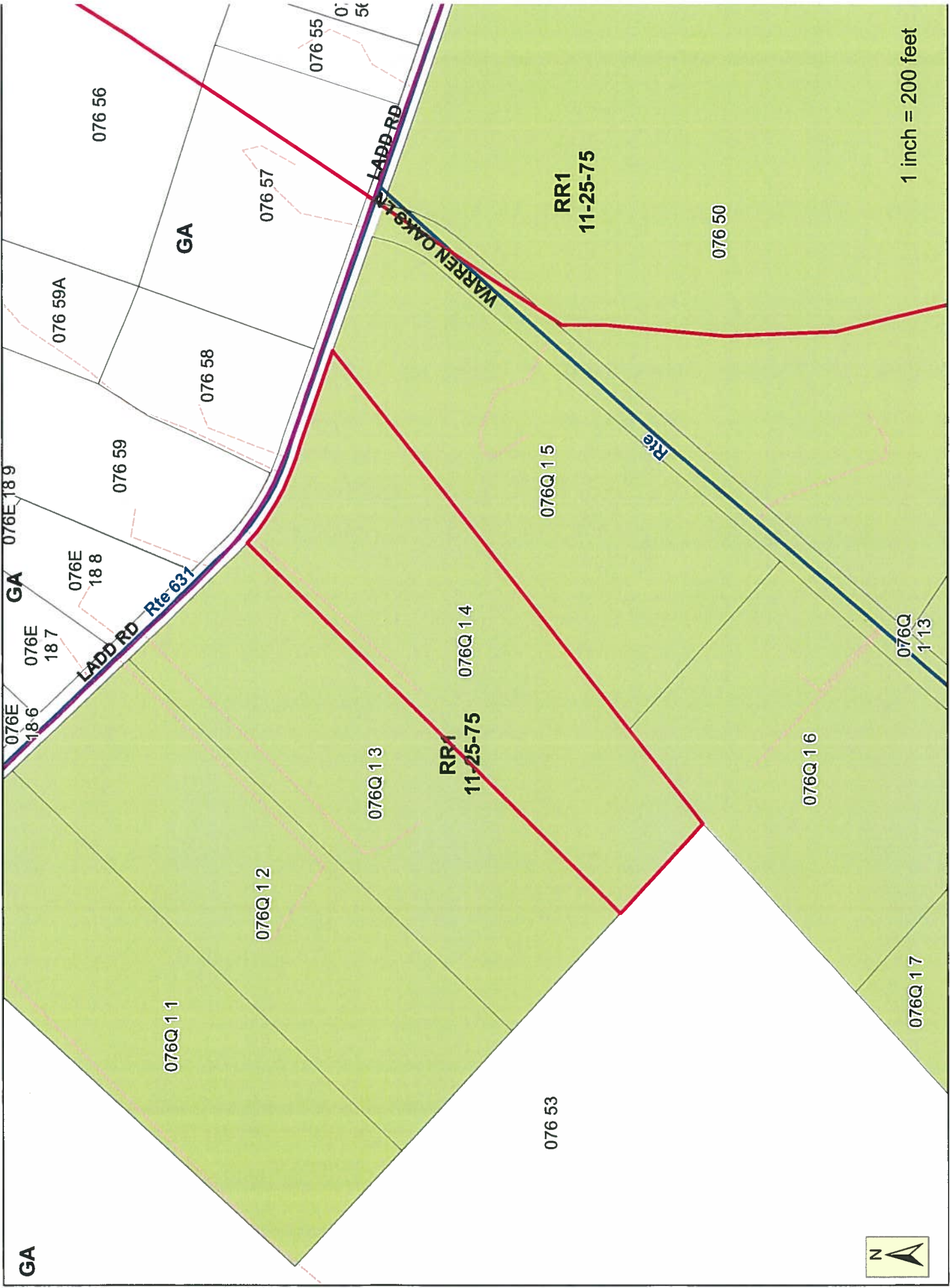


Burdick

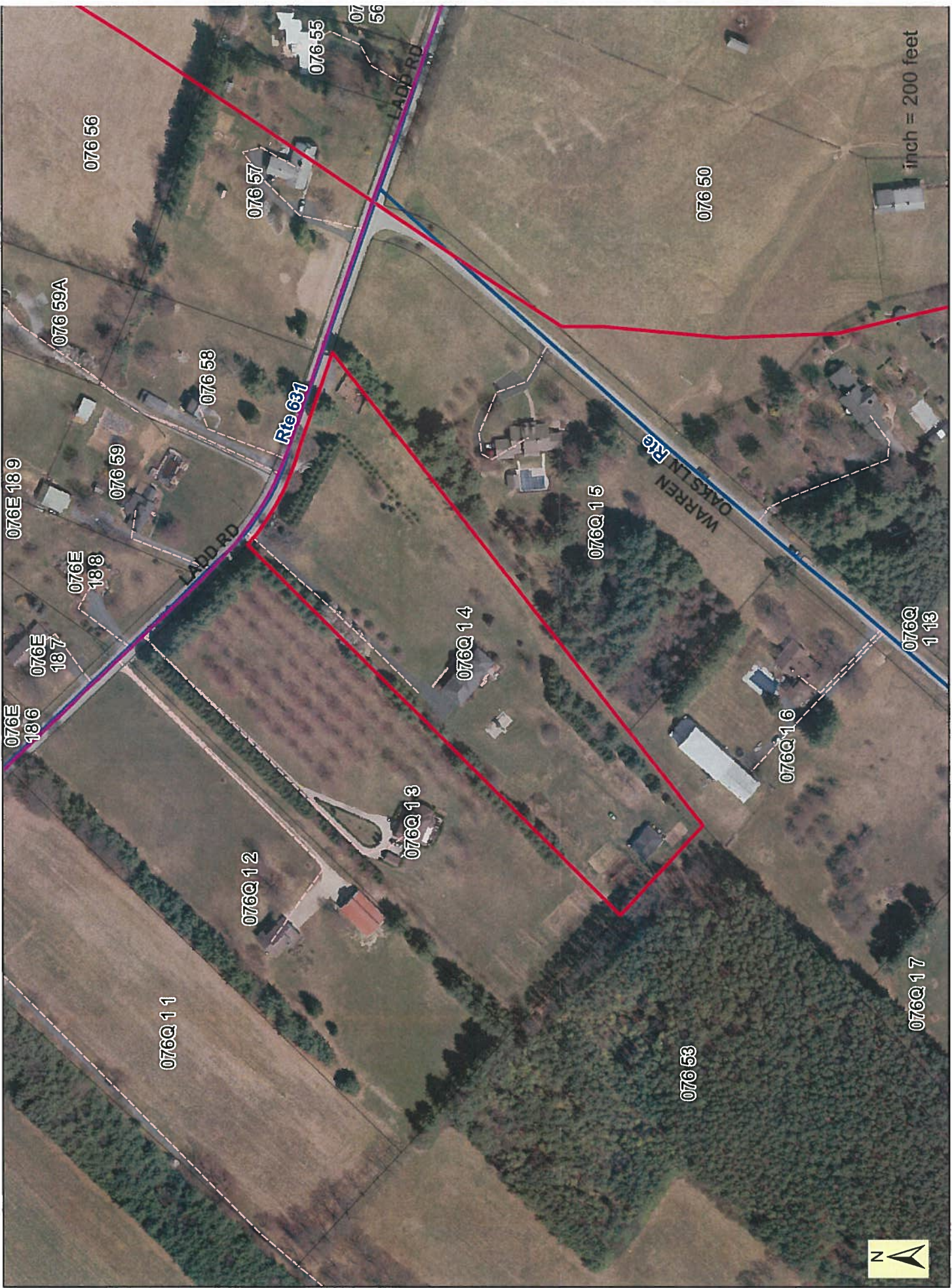




Bendick



Bendick



1 inch = 200 feet



30 x 42' Accessory building

Bendick



1 inch = 100 feet

**PROPERTY OWNER:**

James E. or Mary-Elizabeth H. Toth

Agenda Item # 4C  
Date 7/3/19

**APPLICANT:**

Same

**LOCATION OF PROPERTY:**

1572 Lee Highway, Fort Defiance in the North River District

**SIZE OF PROPERTY:**

5.956 acres

**VICINITY ZONING:**

General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**

12/95 – Zoned General Agriculture

**LAND USE MAPS:**

Urban Service Area – Medium Density Residential

**UTILITIES:**

Public water and private septic

**APPLICANT'S JUSTIFICATION:**

To have a kennel for personal dogs

**PLANNING COMMISSION'S COMMENTS:**

No comments.

**BUILDING INSPECTOR'S COMMENTS:**

After review, our office has no conditions.

**HEALTH DEPARTMENT'S COMMENTS:**

Health Department has no issues with personal kennel.

**HIGHWAY DEPARTMENT'S COMMENTS:**

It is VDOT's understanding that the dogs are for personal use only. The existing paved entrance is adequate for the requested use.

**SERVICE AUTHORITY'S COMMENTS:**

1572 Lee Highway is currently a Service Authority water and sewer customer. A kennel for personal use (non-commercial) has no impact on the water & sewer facilities. The Service Authority has no comments.

**ENGINEERING'S COMMENTS:**

No building or addition. No Stormwater Management impact.

**ANIMAL CONTROL'S COMMENTS:**

Animal Control recommends this kennel as everything looked good and was up to date when on location.

**SECTION 25-74C - ANIMAL CARE FACILITIES**

**There is an adequate plan to keep the facility neat and clean, free of dirt, fecal accumulation, odors, and parasite infestation.**

The yard is cleaned daily.

**Adequate facilities will be constructed to ensure good ventilation and the maintenance of proper temperatures within healthful and comfortable limits for the animals.**

All dogs reside inside the dwelling and have access to the fenced yard by a dog door. No kennel outside is requested.

**Fencing will be sturdy and well maintained and will be of sufficient strength and height to safely secure the animals.**

The area around the dwelling is secured with underground fencing.

**Exercise areas will provide adequate shelter from wind, rain, snow, and direct sunlight.**

All dogs have access to the inside by a dog door.

**There is an adequate plan to address safety from fire and other hazards, including alarm systems and suppression equipment when appropriate.**

There are smoke detectors and fire extinguishers inside the home.

**Both the inside and outside facilities will be of proper size to accommodate the anticipated breeds and numbers of animals.**

The home and the fenced yard is adequate to accommodate the six (6) dogs proposed.

**The site contains a minimum of five (5) acres. The minimum acreage required for the permit must be retained in the same ownership for the permit to remain valid. Nothing herein shall be deemed to limit the ability of the board of zoning appeals to require a larger site when necessary to protect the neighboring properties and to accommodate the anticipated breeds and numbers of animals.**

The property contains 5.956 acres

**The animals shall be confined within an enclosed building from 10 p.m. to 6 a.m. unless the board of zoning appeals is satisfied that keeping the anticipated animals outside during such hours will not be a nuisance to neighboring properties.**

All dogs are confined within the dwelling from 10:00 p.m. and 6:00 a.m.

**No structure occupied by animals, other than the principal dwelling of the owner/operator shall be closer than two hundred feet (200') from any lot line. No outside run or other outdoor area occupied by animals more than two (2) hours in any 24 hour period shall be nearer than five hundred feet (500') to any lot line. Nothing herein shall be deemed to limit the ability of the board of zoning appeals to require larger setbacks when necessary to accommodate the anticipated breeds and numbers of animals or to better protect neighboring properties.**

No kennel is proposed. All dogs live in the home.

### **STAFF RECOMMENDATIONS**

The applicants are requesting to have six (6) personal dogs. They currently have five (5) dogs, but they would like to adopt one (1) more. The dogs are all spayed and neutered and no breeding is proposed. The dogs reside in the dwelling and have access to the outside by a dog door. The area around the house is secured by underground fencing. Animal Control has inspected this site and recommends approval. Staff feels that a small personal kennel would not be out of character with the rural area and recommends approval with the following operating conditions:

### **Pre-Conditions:**

None

### **Operating Conditions:**

1. Maximum of six (6) adult dogs kept at this site at any time.
2. All dogs be confined within the designated invisible fenced area or inside the dwelling.
3. Dogs be kept inside from 10:00 p.m. until 6:00 a.m.
4. Site be kept neat and orderly.
5. Animal Control to inspect the site **yearly**.

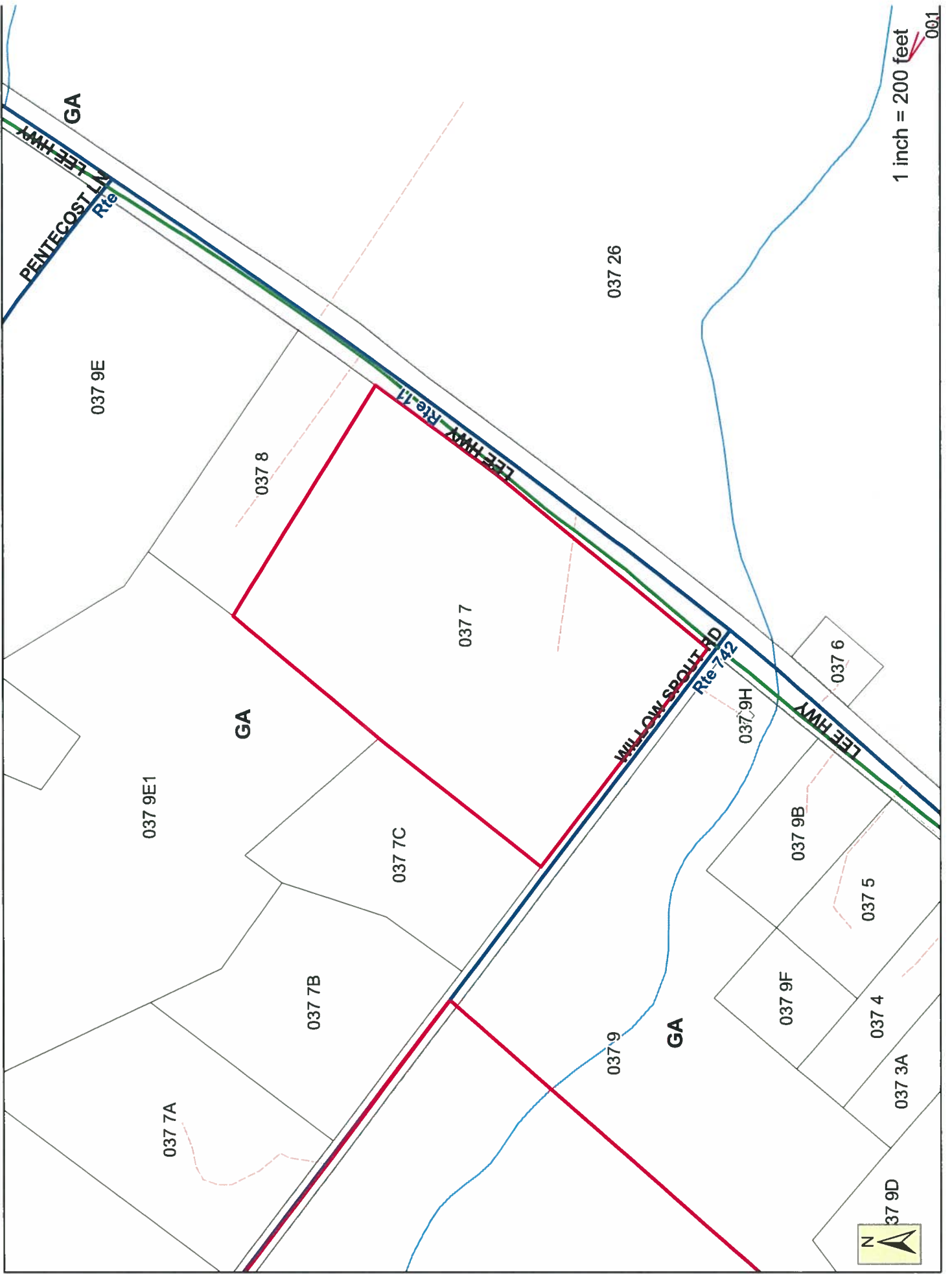


35  
11





Toth



037 9D

037 3A

037 4

037 9F

037 5

037 9B

037 6

037 9H

037 9

037 7C

037 9E1

GA

037 7

037 8

037 9E

037 26

1 inch = 200 feet

001

GA

PENTECOST LN  
Rte

LEE HWY Rte 11

WILLOW SPOUT RD  
Rte 742

LEE HWY

Toth



Toth



**PROPERTY OWNER:**

Jerry W. Whitmore

Agenda Item # 4D

Date 7/3/19

**APPLICANT:**

Tracy and Deborah Shaver

**LOCATION OF PROPERTY:**

453 Badger Road, Mount Solon in the North River District

**SIZE OF PROPERTY:**

3.473 acres

**VICINITY ZONING:**

General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**

12.95 – Zoned General Agriculture

**LAND USE MAPS:**

Agriculture Conservation Area

**UTILITIES:**

Private well and septic

**APPLICANT'S JUSTIFICATION:**

To have weddings and special events

**PLANNING COMMISSION'S COMMENTS:**

No comments.

**BUILDING INSPECTOR'S COMMENTS:**

After review, our office has no conditions.

**HEALTH DEPARTMENT'S COMMENTS:**

Applicant plans to operate 1st year with portable toilets. Health Department recommends 1 per 100 people. Applicant was advised that if they wish to have plumbed bathrooms that a private OSE/PE would be needed to design a drainfield to submit to Health Department for approval.

**HIGHWAY DEPARTMENT'S COMMENTS:**

The existing entrance does not meet VDOT's sight distance requirements. An entrance was located near the western end of the property. The entrance shall be constructed to meet VDOT's moderate volume commercial entrance requirements. Refer to Appendix F of the Road Design Manual for requirements. The existing entrance shall remain to serve the dwelling. The existing entrance shall be closed off during weddings and special events.

**SERVICE AUTHORITY'S COMMENTS:**

There is no public water or sewer available in the area of the subject property.

**ENGINEERING'S COMMENTS:**

No anticipated Stormwater impact. Using existing structure and parking on grass. If conditions change in the future, Stormwater Management Plan may be required.

**SECTION 25-74T - SPECIAL EVENT FACILITIES AND MEETING PLACES**

**Special event facilities and meeting places, including but not necessarily limited to: wedding venues, reunion venues, meeting places and other facilities of civic, community service and fraternal organizations, may be permitted by Special Use Permit provided:**

**The business and anticipated enlargements thereof will be appropriate for agriculture areas.**

Businesses are more appropriate in Business zoned areas, however, the applicants will be using the existing dwelling and outside grounds for weddings and social events which should be appropriate for the agricultural areas.

**The business, taking into account such things as its proposed size, parking facilities, setbacks, and landscaping, will not be out of character with neighboring properties.**

The applicants are requesting forty-eight (48) events per year with up to one hundred fifty (150) attendees that could have a negative impact on the neighboring properties.

**The permitting of the proposed business, when taking into account the presence of similar businesses in the neighborhood, will not result in such concentration or clustering of businesses as to create an institutional setting or business center or otherwise change the area's character and social structure.**

The permitting of a wedding venue should not result in a clustering of similar business in the area.

**The business shall have frontage on a state maintained road or the expected traffic on a legal right of way easement can be accommodated by the intersection with the state maintained road per approval by the Virginia Department of Transportation.**

The property has direct access to Badger Road, which is a State maintained road.

**On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways.**

The 3.473 acre parcel should safely and adequately accommodate all traffic to and from the public highways. VDOT's comments state a new entrance will need to be installed to meet site distance requirements.

**Only pre-existing structures will be utilized unless the board of zoning appeals finds that proposed new construction will be compatible with neighboring properties.**

The applicants will be using the existing barn. No new construction is requested.

**Reasonable limitations are imposed on the enlargement or expansion of the business. Business structures larger than four thousand (4,000) square feet or accumulated expansions by more than fifty percent (50%) shall not be permitted unless the board finds that a larger structure or expansion is compatible with neighboring properties.**

No expansions or enlargements are requested.

**Evidence that the business will be connected to public sewer or that an onsite sewage disposal system can be approved for the business use by the Virginia Department of Health.**

The dwelling is served by an existing well and septic system. The applicants will be using portable restroom trailers for the first year and will be installing restrooms in the barn. Health Department approval will be needed when a restroom is installed in the barn.

**There are adequate provisions set forth for the protection of fire, environmental and other hazards.**

The applicants will provide fire extinguishers in the barn. Additionally, several family members are certified in CPR and first aid.

### **STAFF RECOMMENDATIONS**

The applicants are purchasing the property and would like to have weddings and special events inside the existing barn and outdoors. The applicants are requesting forty-eight (48) events per year for up to one hundred fifty (150) attendees. No food will be prepared on site. All food and beverage will be catered in. Parking will be provided in the field adjacent to the barn and will remain grass. The applicants will be installing a new entrance meeting VDOT's requirements to provide access to the parking area. There will be parking attendants on site during all events for crowd control. The applicants would like to use portable restroom trailers for the events for one (1) year and then install a permanent restroom inside the barn. There is an existing septic system onsite, however, the Health Department comments state a septic system designed by a private onsite soil evaluator be submitted to the Health Department for approval prior to installing. The Board could consider portable restroom facilities for a limited time. The applicants are also requesting to have outdoor amplified music if requested.

Staff feels that a limited number of weddings and special events in a rural setting could provide a service to the area but is concerned that outdoor amplified music and the number of events requested could have a negative impact on the neighboring properties.

If the Board feels the request is compatible with the area and desires to approve this request, staff would recommend the following operating conditions:

**Pre-Condition:**

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

**Operating Conditions:**

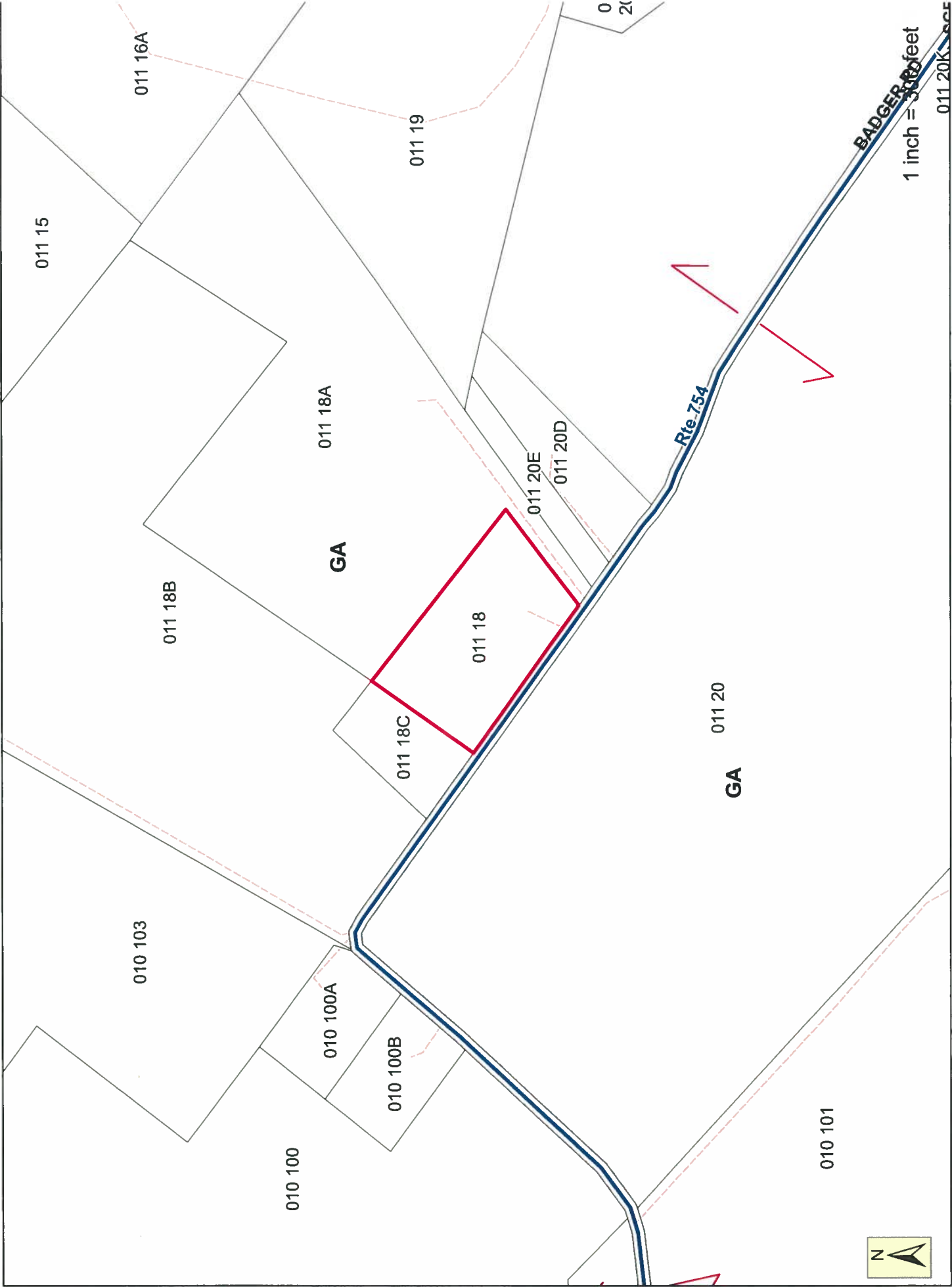
1. Applicant will install a sewage treatment system approved by the Health Department within **one (1) year**.
2. Be permitted to operate for **one (1) year** using a portable restroom until the septic system is installed.
3. Be limited to **thirty (30)** events per year but no more than **three (3) per month and only one (1) per weekend**.
4. Be limited to a maximum of one hundred fifty (150) attendees or less per event.
5. The existing entrance will be closed during events and the field entrance will be used per VDOT comments.
6. No outdoor amplified music after 10:00 p.m.
7. Events cease by 10:00 p.m. and all persons off the property by 11:00 p.m.
8. Applicant must be on the premises during events.
9. Site be kept neat and orderly.

02/20/21 11:11 AM





Whitmore



Whitmore



Whitmore



1 inch = 100 feet



DB 1265 P 600

TM 11 PCL 188  
JNN FARMS, LLC  
INST#020008825

WIRE FENCE,  
TYPICAL

TM 11 PCL 18A  
STABLES, WILLIAM L. JR.  
& MARGARET H.  
DB 714 P 327

EXISTING PROPERTY  
LINE, TYPICAL

**DRAINFIELD TAB**

A-C	196.1'
A-E	187.5'
B-C	121.8'
C-D	25.8'
C-E	33.1'
D-E	42.8'
D-G	120.0'
E-F	105.9'
E-G	97.6'
G-F	73.2'

PROPERTY CORNER,  
NO. 5 REBAR FOUND,  
TYPICAL UNLESS  
NOTED OTHERWISE

NEW PROPERTY  
LINE, TYPICAL

SHED,  
TYPICAL

**PARCEL 18**  
3.347 ACRES  
(AFTER SUBDIVISION)

TM 11 PCL 18  
CHARLES F. & NANCY M. HARLOW  
INST #080009708

NEW DRAINFIELD

REFERENCE POINT,  
NO. 5 REBAR SET  
0.41' ALONG THE  
LINE

REFERENCE POINT,  
NO. 5 REBAR SET  
10.69' ALONG THE  
LINE

LOT 1  
1.278 ACRES

TM 11 PCL 20  
JESSIE B. LLC.  
INST# 070001899

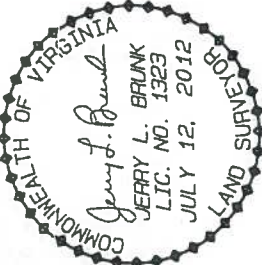
BADGER ROAD RT 754

± 1500' TO  
ROUTE 42  
POINT NOT MARKED,  
TYPICAL

PROPERTY CORNER,  
NO. 4 REBAR FOUND  
N69°58'E 0.41'  
FROM THE CORNER

EDGE OF GRAVEL, TYP.

PROPERTY CORNER,  
NO. 5 REBAR FOUND  
N67°59'E 0.40'  
FROM THE CORNER



LINE	BEARING	DISTANCE
L1	N47°05'27"E	319.22'
L2	S47°56'42"E	150.00'
L3	S38°06'11"W	318.89'
L4	N47°54'18"W	200.00'
L5	S47°56'42"E	518.42'
L6	S59°15'29"W	333.32'
L7	N47°54'18"W	397.86'

THE RESIDUAL LOT SHOWN HEREON HAS AN  
EXISTING DWELLING, SEPTIC SYSTEM,  
AND HIGHWAY ENTRANCE PERMIT WHICH  
IS NOT AFFECTED BY THIS DIVISION.

THIS DOCUMENT IS NOT  
FINAL UNLESS THE SEAL  
IS SIGNED & DATED

MINOR SUBDIVISION  
**LOT 1**  
PORTION OF TM 11  
NORTHEAST SIDE  
ROUTE 754  
NORTH RIVER DIS  
AUGUSTA COUNTY,

BRUNK & HYLTON ENGINEERING, INC.  
ENGINEERING SURVEYING PLANNING  
P. O. BOX 7  
WEYERS CAVE, VIRGINIA 24486  
540 234-9112

DSN: JLB  
DATE: JULY 12, 2012  
PLOTTED: JUN 12, 2012

DWG: JLB  
SCALE: 0 80 160 FT.

FILE: 00002.PRO  
PRC

DATE	DESCRIPTION

**PROPERTY OWNER:**

Ethel M. Baber

Agenda Item # 4E  
Date 7/3/19

**APPLICANT:**

Alondra and Leonardo Gonzalez

**LOCATION OF PROPERTY:**

2542 East Side Highway, Crimora in the Middle River District

**SIZE OF PROPERTY:**

0.50 acres

**VICINITY ZONING:**

General Agriculture to the north, south, and west, General Agriculture, Manufactured Home Park and General Business to the east.

**PREVIOUS ZONING OR S.U.P.:**

12/78 – SUP approved for restaurant

12/95 – Zoned General Agriculture

6/07 – SUP approved to continue the existing restaurant

**LAND USE MAPS:**

Rural Conservation Area

**UTILITIES:**

Private well and septic

**APPLICANT'S JUSTIFICATION:**

To continue the existing restaurant

**PLANNING COMMISSION'S COMMENTS:**

No comments.

**BUILDING INSPECTOR'S COMMENTS:**

After review, our office has no conditions.

**HEALTH DEPARTMENT'S COMMENTS:**

Applicant was advised to consultant with a private engineer to determine if the existing septic system is sized to accommodate the proposed use of the new restaurant. The applicant will also need to make an application with the Health Department for a change of owner for the restaurant. The applicant has also been advised to speak with the Office of Drinking Water concerning the water supply.

**HIGHWAY DEPARTMENT'S COMMENTS:**

The existing entrance meets VDOT's sight distance requirements. Applicant is required to maintain the entrance to VDOT right-of-way line or back of curb radius, whichever is

greater; the entrance requires new asphalt overlay. As a reminder, no advertising, signage, or parking is allowed on VDOT right-of-way.

**SERVICE AUTHORITY'S COMMENTS:**

There is no public water or sewer available in the area of the subject parcel.

**ENGINEERING'S COMMENTS:**

Existing use. No anticipated Stormwater impact with continuation of existing use. Any expansion could require submission of a Stormwater Management Plan.

**SECTION 25-74I - LIMITED BUSINESSES AND INDUSTRIES IN AGRICULTURE ZONES**

**Where outside storage is not prohibited, all outside storage areas will be adequately shielded or screened from view.**

There will be no outside storage.

**The operator will be a resident on the premises unless the board of zoning appeals determines that such residency is not appropriate in the specific case, taking into account the nature of the business and the character of the neighboring properties.**

The property owner lives on the adjacent parcel. The applicants live approximately four (4) miles from the property.

**The business and anticipated enlargements thereof will be appropriate for agriculture areas.**

The existing restaurant has been in operation for over forty (40) years.

**The business shall have direct access on to a state maintained road and approval by the Virginia Department of Transportation or the expected traffic on a private road or easement can be accommodated by the access proposed.**

The property has direct access to East Side Highway (Rt. 340), which is a State maintained road.

**On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways.**

The site has safely and adequately accommodated all traffic generated to and from the public highways for over forty (40) years.

**Only pre-existing structures will be utilized unless the board of zoning appeals finds that proposed new construction will be not only compatible with neighboring properties, but will also be a substantial benefit to neighboring properties.**

The applicants will be utilizing the existing building.

**Reasonable limitations are imposed on the enlargement or expansion of the business. Business structures larger than four thousand (4,000) square feet or accumulated expansions by more than fifty percent (50%) shall not be permitted unless the board finds that a larger structure or expansion is not only compatible with neighboring properties, but will also be a substantial benefit to neighboring properties.**

No expansions are requested.

**Evidence that the business will be connected to public sewer or that an onsite sewage disposal system can be approved for the business use.**

The restaurant is connected to an existing well and septic system.

**There are adequate provisions set forth for the protection of fire, environmental and other hazards.**

Smoke detectors and fire extinguishers are inside the building.

**All items displayed for sale or stored on site shall be set back at least twenty-five feet (25') from the edge of the pavement of any adjoining roads, and in no case shall a display or storage area be within the right-of-way of any road.**

There will be no outside display.

#### **STAFF RECOMMENDATIONS**

The applicants are requesting to continue the existing restaurant that has been in business for over forty (40) years. There will be no increase in seating and no expansions are proposed. Staff feels that the restaurant provides a service to the community and recommends approval with the following operating conditions:

#### **Pre-Conditions:**

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

#### **Operating Conditions:**

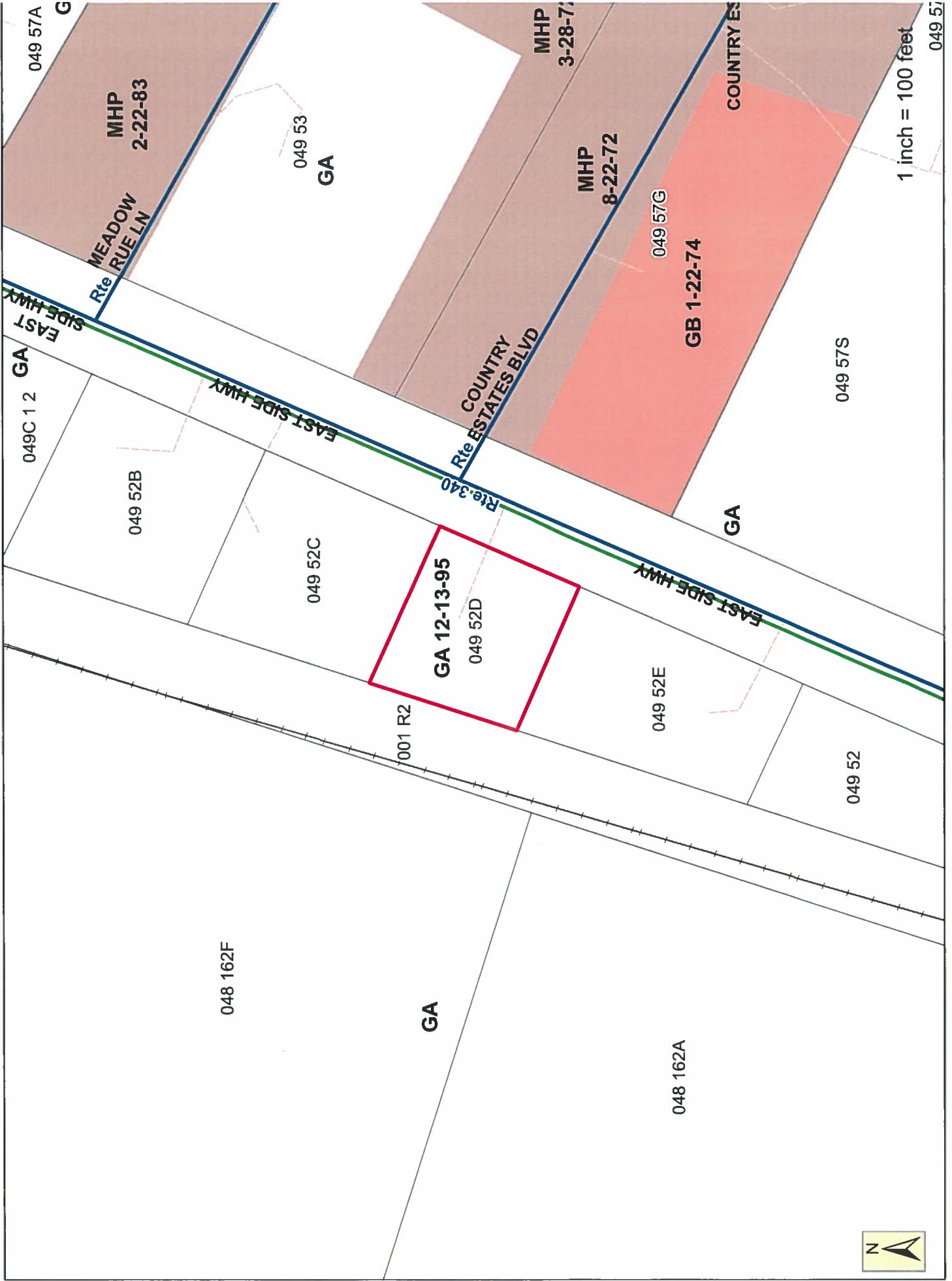
1. Be limited to three (3) employees.
2. Site be kept neat and orderly.
3. No junk or inoperable vehicles to be kept outside.
4. Any new outdoor lights over 3,000 lumens require site plan submittal and must meet the ordinance requirements of Article VI.A Outdoor Lighting.



for her



Baber



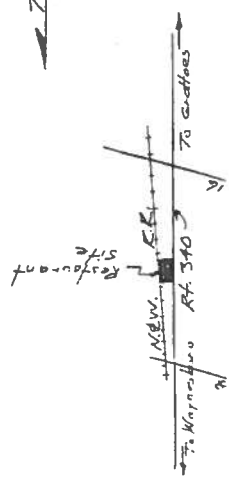
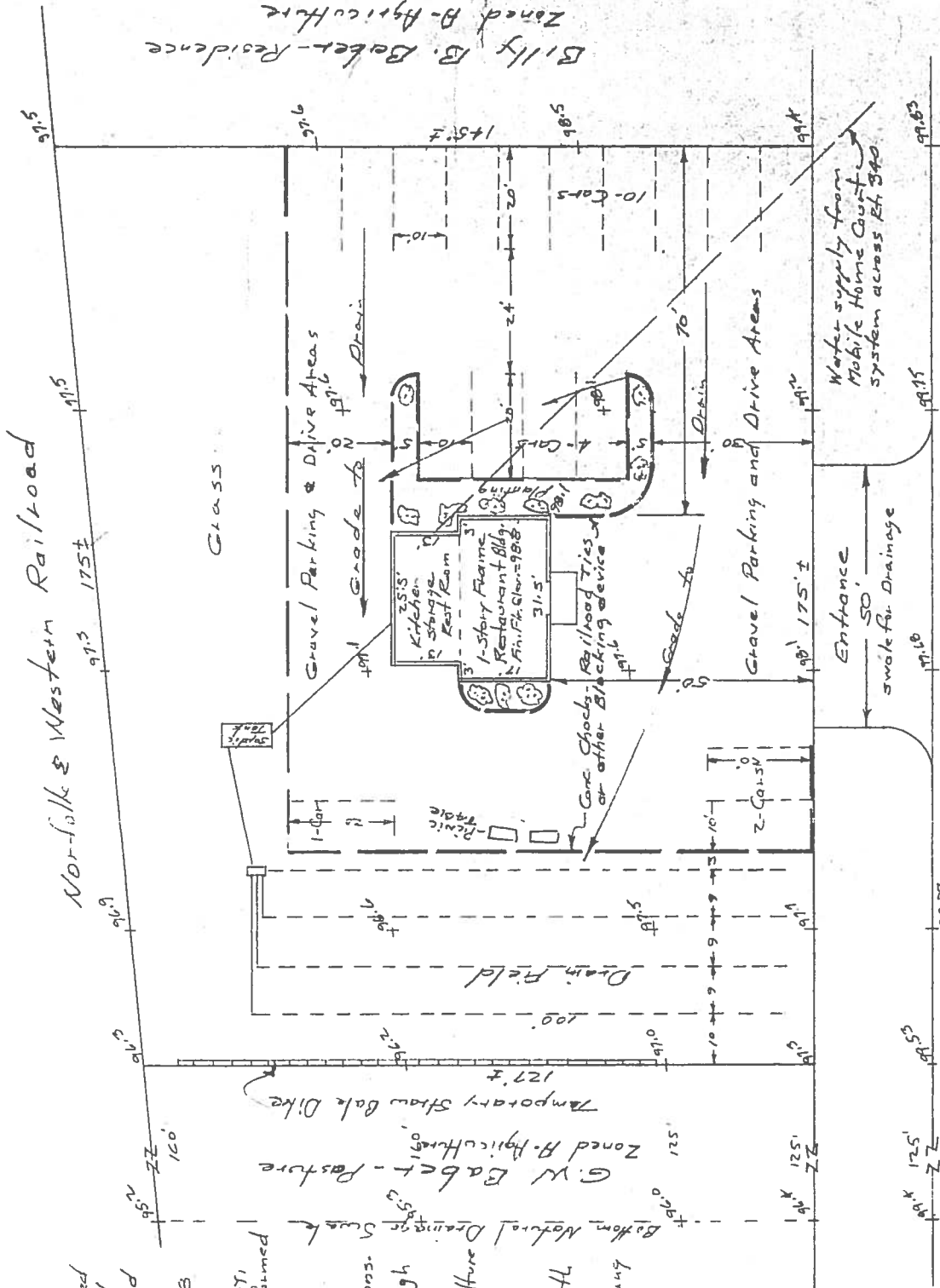
Baber



1 inch = 100 feet

**Notes:**

- 1- This property was conveyed by Geo. Wade Baber and Earl V. Baber to Billy B. Baber and Mary Ann Baber by a deed recorded in Deed Book 713, P. 598 in the Clerk's Office of the Circuit Court of Augusta County, Virginia. No Boundary Survey Returned
- 2- Use: Fast Food Restaurant
- 3- 2-Employees per shift and planned seating for 24 persons.
- 4- 1-Story Frame building 14-Ft high fin. flt. to peak.
- 5- This property zoned Agriculture with special Use Permit issued for a Restaurant.
- 6- Building to be framed with 2"x6" studs with 'A' roof on 5:12 pitch with 2 overhang on all sides



To Waynesboro 6.5 Mi.  
 To Grottos 5.7 Mi.  
 Site Plan  
 For Billy B. Baber  
 Restaurant  
 Middle River Dist., Augusta County, Va.

Billy B. Baber - Residence  
 Zoned A-Agriculture

**PROPERTY OWNER:**  
Joseph K. or Suzan Howell

Agenda Item # 4F  
Date 7/3/19

**APPLICANT:**  
Same

**LOCATION OF PROPERTY:**  
2250 Indian Ridge Road, Stuarts Draft in the Riverheads District

**SIZE OF PROPERTY:**  
1.71 acres

**VICINITY ZONING:**  
General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**  
12/95 – Zoned General Agriculture

**LAND USE MAPS:**  
Community Development Area – Low Density Residential

**UTILITIES:**  
Private well and private septic

**APPLICANT'S JUSTIFICATION:**  
To have a short term vacation rental

**PLANNING COMMISSION'S COMMENTS:**  
No comments.

**BUILDING INSPECTOR'S COMMENTS:**  
After review, our office has no conditions.

**HEALTH DEPARTMENT'S COMMENTS:**  
The Health Department has no issues as long as the dwelling is rented to a single person. If rooms are to be rented room by room applicant would need to speak to the Health Department about a lodging permit.

**HIGHWAY DEPARTMENT'S COMMENTS:**  
The existing entrance meets VDOT's sight distance requirements. VDOT does have concerns about interior parking and vehicles turning around. It is our understanding that the short term vacation rental may serve up to 3 rooms. If fully booked, the turning movements may be restricted due to others parking. VDOT recommends requiring additional parking with an adequate turnaround spot.

VDOT also has concerns with pooling water at the sag location of the driveway. It is VDOT's recommendation that positive drainage be created to allow water to divert from the driveway. This may be accomplished by a swale.

**SERVICE AUTHORITY'S COMMENTS:**

1. There is an existing water service approximately 170' east of 2250 Indian Ridge Road. This service is noted as being for a cattle waterer but is listed for the physical address of 2250 Indian Ridge Road in the Service Authority's records. The applicant needs to clarify if the residence at 2250 is served by a well.
2. There is no public sewer available in the area of the subject parcel.

**ENGINEERING'S COMMENTS:**

No anticipated Stormwater Management impact from use as a short term rental.

**SECTION 25-74R – SHORT-TERM RENTALS, BED AND BREAKFASTS, AND VACATION RENTALS**

**There is no more than one principal dwelling, or part thereof, operating as a bed and breakfast or short-term rental per parcel.**

There is only one (1) dwelling on the property used for short term rental.

**There is no more than one detached accessory dwelling unit operating as a bed and breakfast or short-term rental per parcel.**

There are no detached dwelling units on the property.

**The lot is at least five (5) acres in area, unless the Board of Zoning Appeals determines that operation of the use on a smaller acreage will be compatible with neighboring properties.**

The property contains 1.71 acres. A short term vacation rental in the existing dwelling should be compatible with the neighboring properties.

**The owner of record's primary residence is the principal dwelling or accessory dwelling unit.**

The owner states this is their primary residence.

**The Building Inspection Department has indicated that either a Building permit is not required, or can be issued for the use once the Special Use Permit has been approved.**

No permits are needed per Building Inspection comments.

**If the principal and/or detached accessory dwelling unit is not connected to public sewer, the Virginia Department of Health has confirmed that the sewage disposal system is adequate for the proposed use.**

The dwelling is connected to an existing septic system.

**All parking shall be accommodated on-site.**

All parking will be on site. VDOT has concerns that there is not adequate turnaround area and recommends a turnaround area be added.

**STAFF RECOMMENDATIONS**

The applicants are requesting to lease the existing dwelling for short term vacation stays. The dwelling is currently for sale and the applicants would like to operate the short term rental to provide additional income until it is sold. The applicants have been leasing the property and were not aware that a Special Use Permit was needed. The current Zoning Ordinance standards require that the owner of record reside in the principal or accessory dwelling on the property in order to obtain the Special Use Permit for a short term vacation rental. The applicant's current mailing address according to the County's real estate records is a P.O Box in Orange, VA. The applicant states the mailing address was changed due to vandalism, but they reside on the property. The applicants are proposing to lease the entire four (4) bedroom dwelling and will be vacating the premise while it is rented. No meals will be provided by the applicants. If the Board feels the request meets the current standards of the ordinance and desires to approve the request, Staff would recommend the following operating conditions.

**Pre-Conditions:**

None

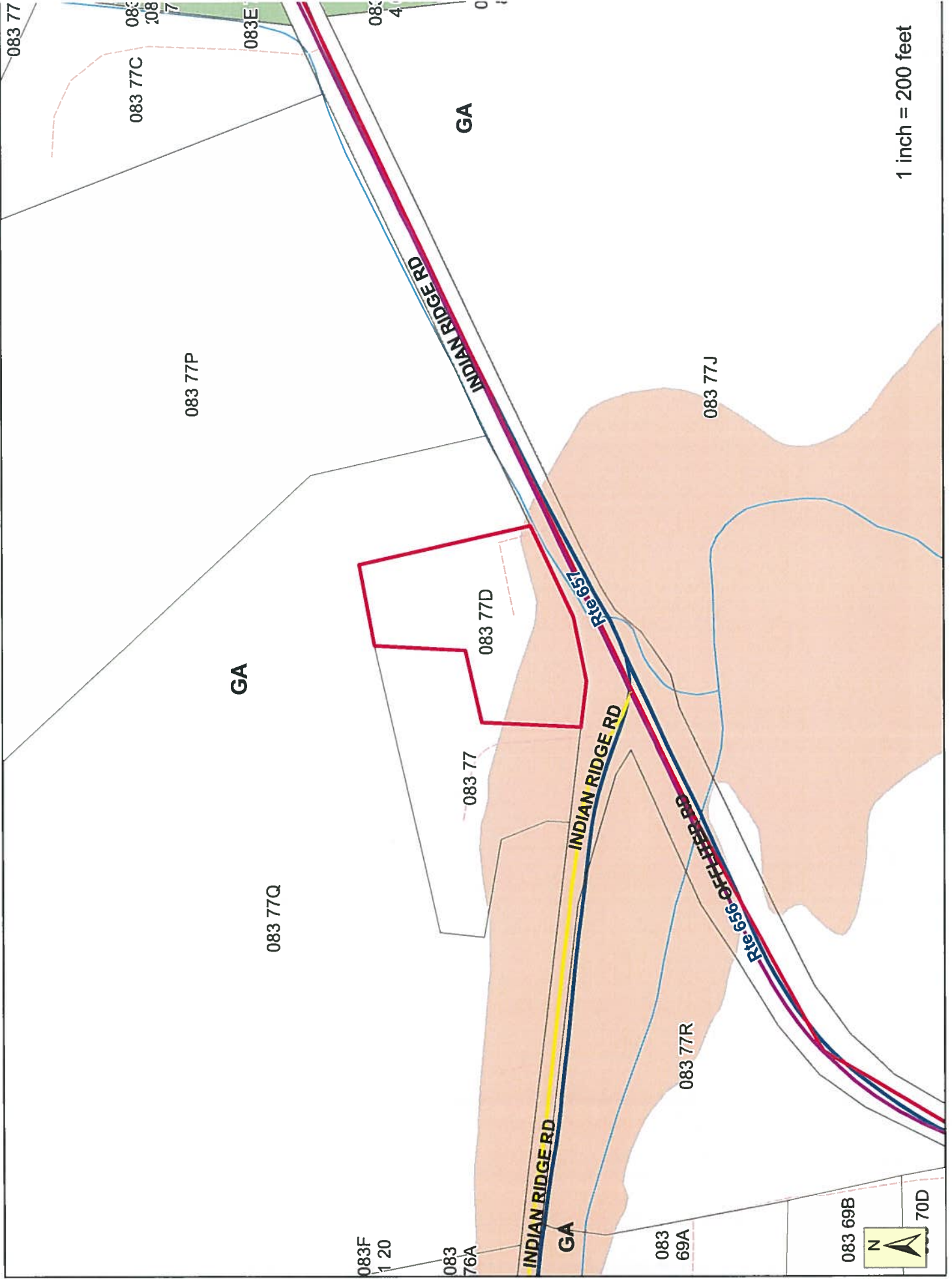
**Operating Conditions:**

1. Be allowed to lease the existing four (4) bedroom dwelling for short term vacation stays.
2. A maximum of eight (8) persons occupying the dwelling.
3. Applicant must reside on premise and be on site when the property is rented.
4. No weddings, special events, or outdoor amplified music
5. Site be kept neat and orderly.

Hessell



Howell



1 inch = 200 feet



Howell

083 7

083 77C

083 77D

083 77

083 77J

1 inch = 50 feet

INDIAN RIDGE RD Rte 637



**TABLED**

Agenda Item # 5A  
Date 7/3/19

**PROPERTY OWNER:**  
Spottswood Farms, LLC

**APPLICANT:**  
John Wilkinson, agent for Appalachian Aggregates

**LOCATION OF PROPERTY:**  
On the east side of Interstate 81 in the Riverheads District

**SIZE OF PROPERTY:**  
86.374 acres

**VICINITY ZONING:**  
General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**  
04/64 – SUP approved for rock quarry  
12/95 – Zoned General Agriculture  
05/97 – SUP to construct a 199' cell tower  
05/00 – SUP approved for co-location  
07/00 – SUP approved to transfer ownership of tower  
01/01 – SUP to replace antenna and equipment cabinet  
07/03 – SUP to have a quarry and manufacture crushed stone

**LAND USE MAPS:**  
Agriculture Conservation Area

**UTILITIES:**  
None

**APPLICANT'S JUSTIFICATION:**  
To reopen a closed quarry operation and manufacture crushed stone in conjunction with the Interstate 81 widening

**PLANNING COMMISSION'S COMMENTS:**  
No comments.

**BUILDING INSPECTOR'S COMMENTS:**  
Obtain all necessary permits and inspections in accordance with the Uniform Statewide Building Code for any new work.

**HEALTH DEPARTMENT'S COMMENTS:**

Before the quarry is put into operation bathroom facilities will be needed for the employees. The applicant is advised to seek the services of a private onsite soil evaluator for drainfield design.

**HIGHWAY DEPARTMENT'S COMMENTS:**

Access is provided to the property by a gravel surfaced frontage road (F-213). The potential traffic generation from a quarry operation could significantly affect the condition of the existing gravel road. Additionally, the intersection of F-213 and Spottswood Road (Rt. 620) meets stopping sight distance, but not intersection sight distance. VDOT has significant concerns pertaining to the scope of the operation and the potential traffic generation. I am willing to meet with the County staff and applicant to clarify the scope if desired.

**5/21/19 HIGHWAY DEPARTMENT'S COMMENTS:**

My understanding, after speaking with folks tied to the I-81 improvements more closely than me, is that there are no foreseeable improvements to the interstate proposed adjacent to the quarry. If a work zone was adjacent to the frontage road, there is a chance that a direct connection could be allowed as part of the contract. However, VDOT would not support a temporary access directly into interstate traffic outside of existing ramps (limited access breaks).

**SERVICE AUTHORITY'S COMMENTS:**

There is no public water or sewer available in the area of the subject parcel.

**ENGINEERING'S COMMENTS:**

Mining exempt from Erosion and Sediment Control and Stormwater as long as they have a permit from DMME.

**SECTION 25-74D - USES AWAY FROM DEVELOPED AREAS**

**The neighboring area is not characterized by residential, commercial, or industrial development which would be adversely impacted by the proposed use.**

The property is surrounded by General Agriculture zoned property. There are no dwellings within close proximity.

**Traffic generated by the proposed project will be compatible with the roads serving the site and other traffic utilizing said roads**

Access to the site is by Frontage Road F213, which is gravel, heavy trucks on a narrow road may not be compatible and be a safety concern.

**On-site traffic flow will adequately and safely accommodate all traffic to and from the public highways.**

The 86.374 acre property should adequately and safely accommodate all traffic to and from the highway.

**The business shall have direct access to a state maintained road.**

The property has access to Spottswood Road, which is a state maintained road.

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

The quarry is existing

**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.**

The applicants submitted a site plan with a two hundred foot (200') setback. They are requesting a Variance to locate within one hundred feet (100') of the interstate and the property line east of the interstate.

### **STAFF RECOMMENDATIONS**

The Board granted a Special Use Permit to reopen the existing quarry in 2003. The permit was issued non-transferrable to Pounding Mill Quarry Corporation. The main purpose of the reopening was to provide aggregate for use in the widening of Interstate 81. Plans for the project were never approved and the mining operation was never started. Pounding Mill Quarry Corporation recently sold to Appalachian Aggregate, LLC, and they are now requesting the permit in their name. The applicant states construction plans are nearing approval and the Interstate 81 project should be starting soon.

Staff is concerned the neighboring properties may be impacted by heavy truck traffic, noise, lights, dust, odor, fumes and vibration, and visual impacts from the quarry operation. However, if the Board desires to approve the request Staff would recommend the following operating conditions:

#### **Pre-Condition:**

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

#### **Operating Conditions:**

1. Mining to be limited to Areas B and C as shown on site plan.
2. No operation or structures be located within two hundred foot (200') from all property lines as shown on the site plan.
3. Applicant will install a sewage treatment system approved by the Health Department prior to operation.
4. A berm to be constructed and pine trees planted to screen quarry operation from Interstate 81. Berm to be installed and pine trees planted within six (6) months of commencement of mining operations.

5. The mining operation should be set up in 15 plus acre phases and shown on the site plan prior to commencement of mining operations.
6. Reclamation plan be submitted to the Board.
7. Each phase must be reclaimed as soon as possible, but not later than six (6) months after a new phase has been commenced.
8. Hours of operation be Monday-Friday, 7:00 a.m. to 6:00 p.m. and Saturday, 7:00 a.m. to 12:00 Noon, and during daylight savings time Monday-Saturday, 7:00 a.m. to 9:00 p.m., no Sunday operation.
9. All local, state and federal regulations must be complied with.
10. Debris, including residue rock and stone and other waste material stored on the property must have originated from the property and not brought in from other sites.
11. Survey of contours and intervals shall be submitted upon the request of the Board.
12. Whenever the applicant amends the permit with the Department of Mines, Minerals, and Energy, they must notify the Community Development Department.
13. Permit be issued for five (5) years and renewed if all stipulations are met.
14. Pre-blast survey to be completed (check to determine condition of well and residences) prior to mining in each area.
15. Mining to start no sooner than six (6) or seven (7) months prior to start of the expansion and widening of I-81.
16. Term of use will be limited to the period of the need for aggregate for construction of I-81 and for disposal of any remaining aggregate excavated on site prior to completion of construction, subject to review and renewal requirements.
17. Dust to be suppressed by water on site and recirculated; water truck to be on site at all times to maintain any site and road dust not equipment related.
18. Blasting to be small "shots"; no more than three (3) times per week.
19. Plant to be portable; five (5) to seven (7) individuals to operate plant.
20. Quarry/mining to have minimal effect on livestock.

**JULY 3, 2019 STAFF COMMENTS:**

The Board tabled the request to give the applicant an opportunity to submit documentation regarding mitigation procedures if a well or other water source is damaged due to mining operations. If approved, Staff would recommend the following conditions:

**Pre-Condition:**

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

**Operating Conditions:**

1. Mining to be limited to Areas B and C as shown on site plan.
2. No operation or structures be located within two hundred foot (200') from all property lines as shown on the site plan.
3. Applicant will install a sewage treatment system approved by the Health Department prior to operation.
4. A berm to be constructed and pine trees planted to screen quarry operation from Interstate 81. Berm to be installed and pine trees planted within six (6) months of commencement of mining operations.
5. The mining operation should be set up in 15 plus acre phases and shown on the site plan prior to commencement of mining operations.
6. Reclamation plan be submitted to the Board.
7. Each phase must be reclaimed as soon as possible, but not later than six (6) months after a new phase has been commenced.
8. Hours of operation be Monday-Friday, 7:00 a.m. to 6:00 p.m. and Saturday, 7:00 a.m. to 12:00 Noon, and during daylight savings time Monday-Saturday, 7:00 a.m. to 9:00 p.m., no Sunday operation.
9. All local, state and federal regulations must be complied with.
10. Debris, including residue rock and stone and other waste material stored on the property must have originated from the property and not brought in from other sites.
11. Survey of contours and intervals shall be submitted upon the request of the Board.

12. Whenever the applicant amends the permit with the Department of Mines, Minerals, and Energy, they must notify the Community Development Department.
13. Permit be issued for five (5) years and renewed if all stipulations are met.
14. Pre-blast survey to be completed (check to determine condition of well and residences) prior to mining in each area.
15. Mining to start no sooner than six (6) or seven (7) months prior to start of the expansion and widening of I-81.
16. Term of use will be limited to the period of the need for aggregate for construction of I-81 and for disposal of any remaining aggregate excavated on site prior to completion of construction, subject to review and renewal requirements.
17. Dust to be suppressed by water on site and recirculated; water truck to be on site at all times to maintain any site and road dust not equipment related.
18. Blasting to be small "shots"; no more than three (3) times per week.
19. Plant to be portable; five (5) to seven (7) individuals to operate plant.
20. Quarry/mining to have minimal effect on livestock.
21. Appalachian Aggregates will mitigate any off site disruption of water service determined by a third party consultant.

**TABLED**

Agenda Item # 5B  
Date 7/3/19

**PROPERTY OWNER:**  
Spottswood Farms, LLC

**APPLICANT:**  
John Wilkinson, agent for Appalachian Aggregates

**LOCATION OF PROPERTY:**  
On the east side of Interstate 81 in the Riverheads District

**SIZE OF PROPERTY:**  
86.374 acres

**VICINITY ZONING:**  
General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**  
04/64 – SUP approved for rock quarry  
12/95 – Zoned General Agriculture  
05/97 – SUP to construct a 199' cell tower  
05/00 – SUP approved for co-location  
07/00 – SUP approved to transfer ownership of tower  
01/01 – SUP to replace antenna and equipment cabinet  
07/03 – SUP to have a quarry and manufacture crushed stone

**LAND USE MAPS:**  
Agriculture Conservation Area

**UTILITIES:**  
None

**APPLICANT'S JUSTIFICATION:**  
Variance from the required setback for a mining operation

**STAFF RECOMMENDATIONS**

The applicants are requesting a Variance from the required two hundred foot (200') setback from all property lines for mining operations. A Special Use Permit was issued in 2003 to reopen the existing quarry and at that time the Ordinance had a one hundred foot (100') setback requirement for mining operations. The applicants would like to be allowed to operate within one hundred feet (100') of the property line adjacent to Interstate 81, and the property line to the East of Interstate 81 as permitted on the previous Special Use Permit. The applicants would like to utilize the existing exposed rock within the two hundred foot (200') setback.



Section 15.2-2201 of the Code of Virginia **defines** Variance "In the application of a Zoning Ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure when the strict application of the Ordinance would unreasonably restrict the utilization of the property, and such need for a Variance would not be shared generally by other properties, and provided such Variance is not contrary to the purpose of the Ordinance. It shall not include a change in use which change shall be accomplished by a rezoning or by a confidential zoning."

The two hundred foot (200') setback only applies to mining operations. The two hundred foot (200') setback is intended to help protect life and property for these types of businesses.

No specific hardship as defined by the State has been identified other than the use would not be generally shared by other properties. The fact that existing exposed rock cannot be mined does not prohibit or unreasonably restrict the utilization of this property. Therefore, Staff could not support approval of the Variance request.

Agenda Item # 6A

Date 7/3/19

**PROPERTY OWNER:**

Flow Beverages, Inc. (formerly owned by Seawright Mineral Springs, LLC)

**APPLICANT:**

Michael W. Sharp, agent for Friends of Seawright Springs

**LOCATION OF PROPERTY:**

40 Seawright Road, Mount Sidney in the North River District

**SIZE OF PROPERTY:**

140.55 acres

**VICINITY ZONING:**

General Agriculture surrounds the entire parcel

**PREVIOUS ZONING OR S.U.P.:**

12/95 – Zoned General Agriculture

**LAND USE MAPS:**

Rural Conservation Area

**UTILITIES:**

Private Well

**APPLICANT'S JUSTIFICATION:**

An appeal to the Board of Zoning Appeals of a decision of the Zoning Administrator regarding the decision to forego requiring a Special Use Permit for a water withdrawal business

**STAFF COMMENTS:**

The applicants are appealing the Zoning Administrators decision to not require a Special Use Permit for the withdrawal and hauling of water on the property.

In 1996 a determination letter by Debbie Balsler, Zoning Analyst, was sent to Seawright Spring Water Corporation stating that water could be extracted, marketed, packaged and sold in bulk and bottles (cases) and shipped, which includes nine (9) tankers and (3) trailers per day as the previous owners. The letter specifically references a Zoning Certificate. A Zoning Certificate is defined in the ordinance as **an official finding that a planned use of a property, as indicated by an application, complies with the requirements of the Zoning Ordinance.**

For **twenty-three (23) years** both the County and various landowners of Seawright Springs property have governed themselves under the terms of the 1996 determination letter. The County has consistently upheld the decision of previous Zoning Administrators that the extraction, hauling, marketing, and shipping of water is a by right use and can continue within the limitations of the determination letter on this property.

In 2004, in accordance with the 1996 zoning determination letter, Seawright Springs, LLC applied for and received a Special Use Permit to **expand** the facility by reconstructing the catchment structure, **adding** buildings and structures, and to add six (6) 20,000 gallon water tanks (See attached 2004 Staff report). All adjoining property owners were given written notice of the public hearing and it was advertised in the local newspaper once a week for two (2) successive weeks. A copy of the 1996 determination letter was included in the Special Use Permit file provided to the Board of Zoning Appeals. According to the minutes of the meeting, neither the adjoining property owners who were sent notice nor anyone else in the community spoke in opposition to permit to expand or filed an appeal after the Boards approval of the permit.

In 2009, John Wilkinson, Zoning Administrator, sent another determination letter to First American Title Insurance Company, affirming the use was a legal use.

On December 4, 2018, I sent a determination letter to Protora Law, PLLC, counsel for the current landowner, reaffirming that the extraction, hauling, marketing, and shipping of water (9 tankers and 3 trailers) is permitted on the property without a Special Use Permit within the limits of the 1996 determination letter.

According to Flow Beverage, Inc., it purchased the property in reliance on that determination letter.

On May 28, 2019, our office received a letter addressed to John Wilkinson requesting an appeal of the Zoning Administrator decision not to require a Special Use Permit for the extraction and hauling of water.

It was my determination that the landowner can continue to operate under the conditions of the 1996 determination letter and my reaffirmation of that decision in my letter dated December 4, 2018. The County did not receive an appeal of **any** determination until May 28, 2019.

Due to the fact the 1996 decision was not appealed, and my December 4, 2018 letter was not appealed within thirty (30) days it was then and is now, a **“thing decided”**.

In addition, according to **Virginia State Code §15.2-2311(C)**, after sixty (60) days had elapsed from the date of my decision, my decision cannot be changed. **It is a vested right and a “thing decided”**.

**§15.2-2311(C)** provides in part: **“in no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer.”**



Copyright © 2015



# Seawright Mineral Springs, LLC

