

February 4, 2021

**PRESENT:** Justine D. Tilghman, Chair  
 George A. Coyner, II, Vice Chair  
 Thomas W. Bailey  
 Thomas V. Thacker  
 James R. Benkahla, County Attorney  
 Sandra K. Bunch, Zoning Administrator and Secretary  
 John R. Wilkinson, Director of Community Development  
 Kathleen Keffer, Assistant County Attorney  
 Beatrice B. Cardelicchio-Weber, Executive Secretary

**ABSENT:** None

**VIRGINIA:** At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, February 4, 2021 at 10:00 A.M., in the County Government Center, Verona, Virginia.

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The staff briefing was held at **10:00 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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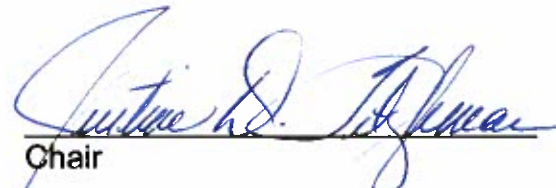
**VIEWINGS**

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

- **BILL HENSON, AGENT FOR MEADE MOBILE HOME PARK, LC - SPECIAL USE PERMIT**
- **TRAVIS LACOMBE, AGENT FOR 1 TRIBE, LLC - SPECIAL USE PERMIT**
- **TODD FRETWELL, AGENT FOR FAIRFIELD-ECHOLS - VARIANCE**

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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 Chair

  
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 Secretary

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Sandra K. Bunch, Zoning Administrator and Secretary  
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, February 4, 2021, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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**MINUTES**

Vice Chair Coyner moved that the minutes from the January 7, 2021, meeting be approved.

Mr. Thacker seconded the motion, which carried unanimously.

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**RODNEY OR KIMBERLY HERNDON - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Rodney or Kimberly Herndon, for a Special Use Permit to have a convenience store and outdoor storage of a food trailer and picnic tables on property owned by Doris S. Wright, located at 1670 Lee Jackson Highway, Staunton in the Riverheads District.

The applicants requested this item be withdrawn.

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**BILL HENSON, AGENT FOR MEADE MOBILE HOME PARK, LC - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Bill Henson, agent for Meade Mobile Home Park, LC, for a Special Use Permit to replace a nonconforming manufactured home in a manufactured home park with a larger unit on property owned by J.R. Ridenour, located at 95 Meade Park Circle, Lot 53, Verona in the North River District.

Chair Tilghman stated your intention is just to replace an older mobile home that you have on the lot. She said the reason for this is that over the years the width of the homes have changed.

Mr. Bill Henson stated many of the homes are older and they want the place to look better.

Vice Chair Coyner stated the applicant has made some nice improvements with upgrading the homes.

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

There being none, Chair Tilghman declared the public hearing closed.

Mr. Bailey moved to approve the request with the following conditions:

**Pre-Condition:**

1. Applicant obtain a Placement Permit from Building Inspection and provide a copy to Community Development.

**Operating Condition:**

1. Replacement home be no closer than twenty-two (22') feet to the side of the adjacent home as shown on the BZA sketch plan.

Vice Chair Coyner seconded the motion, which carried unanimously.

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**CASEY L. CASH - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Casey L. Cash, for a Special Use Permit to operate a day care center for up to twelve (12) children on property owned by James B., Jr. or Mary B. Cash, located at 38 Little Spy Road, Greenville in the Riverheads District.

The applicant requested this item be withdrawn.

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**TRAVIS LACOMBE, AGENT FOR 1 TRIBE, LLC - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Travis Lacombe, agent for 1 Tribe, LLC, for a Special Use Permit to construct a pavilion for the campground/therapy weekend retreat facility on property owned by Kimball E. Stowers, Trustee, located at 877 Todd Road, Mount Sidney in the North River District.

Mr. Travis Lacombe stated he would like to construct the pavilion next to the bathhouse on the opposite side from the road.

Vice Chair Coyner asked if it is where the flat spot is?

Mr. Lacombe stated yes.

Vice Chair Coyner stated the Board has not been there since the cabins were built. He said they look nice and you did a great job. He asked if they are operating?

Mr. Lacombe stated they have not opened up yet. He said they are still trying to get some stuff taken care of. He said there was an oversight with the engineer and the contractor where they tied into the septic. He said he was not open at all last year in relation to the campground.

Chair Tilghman asked if they had clients coming in for the day?

Mr. Lacombe stated yes but it was very sparse due to Covid-19.

Chair Tilghman asked if this will be in keeping with what you already have and be a wooden structure?

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Mr. Lacombe stated yes and the structure will blend in.

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

There being none, Chair Tilghman declared the public hearing closed.

Mr. Thacker moved to approve the request with the following conditions:

**Pre-Conditions:**

- 1. Submit an updated Site Plan including Erosion and Sediment Control and Stormwater Management to Community Development.
- 2. Applicant obtain all necessary permits and inspections in accordance with the Uniform Statewide Building Code.
- 3. Obtain Health Department approval for the campground and provide a copy to community Development.

**Operating Conditions:**

- 1. Be permitted to construct a 16' X 24' pavilion as shown on the site plan.
- 2. All Operating Conditions of SUP #19-17 remain in effect.

Vice Chair Coyner seconded the motion, which carried unanimously.

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**TODD FRETWELL, AGENT FOR FAIRFIELD-ECHOLS - VARIANCE**

This being the date and time advertised to consider a request by Todd Fretwell, agent for Fairfield-Echols, for a Variance from the rear setback in order to construct a new building on property owned by Fishersville Realty, LLC, located at 85 Construction Lane, Fishersville in the Beverley Manor District.

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Mr. Todd Fretwell stated he is the President of Fairfield-Echols. He stated he would like to complete construction of the shed that they put the foundation in that was constructed in compliance with the setbacks and site plan at that time. He said they are currently between projects and they would like to finish the storage shed. He said by doing this, it will allow them to keep their personnel employed and keep their equipment out of the weather. He said they have planned to do this since the mid-90s. He noted currently they have personnel available that would allow us to keep them employed instead of placing them on the unemployment line.

Chair Tilghman stated a permit was applied for in the late 90s but it was never done. She said the foundation was never in compliance with what they originally asked for. She said we have the figures here but the foundation actually was bigger than what they asked for. She said they failed to renew their permit. She said the building foundation ended up being larger than they originally asked for.

Vice Chair Coyner asked when was a letter sent to them?

Ms. Bunch stated the Building Official sent a letter on May 26th asking the applicants if they wish to continue with the project or if it should be canceled. She said then on June 6th, the applicants sent a letter asking for an extension to complete the building. She noted on June 8, 2000, the Building Official granted a six month extension and advised the applicants by letter that the permit would expire on December 7, 2000, unless construction was resumed and further inspections were requested. She said according to Building Inspection, there were no other inspections requested so the permit expired December 7, 2000. She said the original building permit was for 24 x 152 and now it is measuring 264 and not the 152.

Vice Chair Coyner stated there is not much use or reason to grant a Variance if you do not really need to grant one. He said the applicant can either move the building back to be in compliance or acquire additional property next door. He said he is not inclined to approve if there are alternative options.

Mr. Fretwell stated moving the foundation is not an option. He said they have a significant investment in the foundation.

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

There was none.

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Vice Chair Coyner stated the applicant should definitely pursue getting additional property. He said it looks like getting this approved might be difficult or the Board could table this for a month or two to let the applicant pursue purchasing additional land. He stated the applicant has a vested interest in trying to pursue that.

Mr. Fretwell stated he thought this would be very cost prohibitive and he does not know what they would want for that property but he can certainly contact them.

Vice Chair Coyner stated the applicant mentioned cost prohibitive but the Board cannot look at that. He said the site needs to be in compliance.

Mr. Bailey stated under the Code of Virginia it does not meet the definition that the Board could grant a Variance and this is a self-inflicted violation.

Chair Tilghman stated this gentleman had nothing to do with it but twenty (20) years ago they asked for 152 feet, but built 264 feet, and maybe they never intended to make it that long. She said we are starting off with a foundation that was larger than what was originally approved although the applicant would not have to use the entire foundation. She declared the public hearing closed.

Vice Chair Coyner moved to table the request for sixty (60) days.

Mr. Thacker seconded the motion, which carried unanimously.

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## **OLD BUSINESS**

### **RYAN OR ALLIE ARMSTRONG - VARIANCE**

A request by Ryan or Allie Armstrong, for a Variance from the rear setback requirement on property owned by Ryan, Randy and Benjamin Armstrong, located at 398 Cherry Grove Road, Middlebrook in the Riverheads District. - Tabled at the January 7, 2021 Meeting

Vice Chair Coyner moved to bring the item forward.

Mr. Thacker seconded the motion, which carried unanimously.

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Ms. Allie Armstrong stated the Board gave us the opportunity to investigate whether or not the adjacent property owner would be willing to consider a boundary line adjustment. She submitted a letter that her attorney prepared for the Board (copy is in the file).

Vice Chair Coyner stated he would have to disagree with the lawyer because he says the only means to rectify the setback issue was through a form of a Variance application and he is wrong because another remedy is to tear off part of the house. He stated this is a self-inflicted situation and he does not see there is a need to grant the Variance. He said regardless of permits issued by the County, it is incumbent upon the landowner to build a house in compliance and here there is a fourteen (14) acre piece of property and the house was built close to that lot line.

Ms. Armstrong stated at the last meeting, the question was just brought to us that we needed to investigate if the easement would allow for a boundary line adjustment and that was the concern of the Board that if through the permission of the landowner acquire that property in a legal manner so that it did not involve a Variance application and so that is what we were able to show here. She said their attorney reviewed the deed granting that easement, and it does place severe restrictions on the property, including the requirement of the property that it not be divided or separately conveyed except in limited circumstances which is not applicable here. She said that was the original concern that the easement may allow for a division and that has clearly been investigated and it is not an option. She said they have no other avenue and I understand what you are saying about removing a portion of the house but under the Virginia Code, because the property has been owned for greater than fifteen (15) years, it becomes vested at that point and so she does not believe at that point that part of the property or part of the house would have to be removed. She said she properly investigated that as an avenue and shown that it is not possible.

Chair Tilghman said the easement was more of concern but obviously that would have been the easy way to make it legal. She said she would not put her land in a conservation easement if this is the case.

Ms. Armstrong stated the easement makes that impossible but in this situation the landowner has to be willing also and we cannot force the landowner.

Mr. Benkahla stated because of them paying taxes for fifteen (15) years this cannot be declared illegal but that does not mean the Board has to grant the Variance for them to subdivide. He said the applicants want to subdivide and that is why they want the



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Variance. He stated the deck is in violation because it was built 4-5 years ago without a building permit. He said if it wasn't for the subdivision this would have never come up. He stated the applicants do have a vested right and the question is whether you want to grant the Variance in order for them to subdivide.

Ms. Armstrong stated they would like to split the land into three (3) equal pieces.

Chair Tilghman stated she does not like approving Variances but if we do not, we are forcing the three brothers to own it together forever because there is no way they can split it.

Mr. Benkahla stated he does not think there is a self-inflicted hardship because it was passed to them. He said there are ways it can be done judicially. He said the Variance definition reads that it should be granted if it unreasonably restricts the use of the property which would be one way to obviously do what the applicants want to do. He said there are traditional options but what he heard here was there are no other options but he does not think that is the case.

Vice Chair Coyner stated the house was built too close to the property line, then later, the deck was built. He asked if there was a permit to build the deck?

Ms. Bunch stated no. She stated the deck was constructed in 2018 according to the aeriels.

Mr. Ryan Armstrong stated they have just inherited this property. He stated it was my grandfather's property but then he passed away. He said they made a wheelchair ramp. He said they did not build it.

Ms. Bunch said the ramp is seen on the 2015 aeriels and then the deck was added around 2018.

Vice Chair Coyner stated the Board may want to grant the house Variance and then the applicants remove the deck.

Mr. Benkahla stated the deck is in violation of the setback. He said the deck was put on within the past few years without a building permit and it is clearly in violation. He stated they can mitigate the setback by eliminating the structure itself. He said given that the deck was illegally constructed and if it is removed that would lessen the impact of the Variance.

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Ms. Armstrong stated she thought the structure itself was in violation and it did not include the deck.

Ms. Bunch stated if the deck is removed the Board would not have to grant as large of a Variance. She said the deck is much closer to the boundary line. She said the deck is only 14.7 feet from the rear property line so that would require a Variance of 10.3 feet.

Mr. Benkahla stated the deck was built in violation of the Zoning Ordinance because it was built without a building permit and it was never legal to begin with.

Ms. Bunch stated if you separate the deck from the house a little bit so that it is not connected to the house then it would be a freestanding structure. She said freestanding structures less than 900 square feet can be as close as five (5') feet to the property line, if it is not part of the house.

Chair Tilghman stated that you all inherited this and you had no control over the way you received it. She said the house itself is vested but the deck is not. She said there may be other legal ways to settle it.

Mr. Barry Lotts stated the new boundary has nothing to do with this. He said we are just trying to make a revision of the property. He said they can make it a freestanding structure under 900 square feet. He said he is getting conflicting information here because when this thing started staff could not sign the plat because the house is in violation but now you are saying the house is vested.

Ms. Bunch stated you still need the Variance to divide the lot.

Mr. Lotts stated the new property line is not affecting what is already there. He said you are saying the house has already been vested so therefore, it is declared legal and the plat should not have been denied.

Ms. Armstrong stated the way that it was even discovered is that she was applying for a mortgage and so without the deed being able to be recorded, she cannot have a mortgage for the house which means she cannot live there. She said that becomes prohibitive to her and she cannot use the structure as it was designed. She said if you cannot record the deed or the survey then she cannot close on it and then she cannot divide the property, therefore, the property will sit there forever.

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Mr. Benkahla stated the Zoning Administrator has already provided an easy way for that to be remedied so they could make the house totally legal with the stipulation that the deck must either be removed or made freestanding.

Vice Chair Coyner moved to approve the Variance with the following condition:

**Operating Condition:**

- 1. Be granted a 1.6' Variance for the dwelling and the deck be removed or brought into compliance with the Zoning Ordinance within **six (6) months**.

Mr. Thacker seconded the motion, which carried unanimously.

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

**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.

Chair Tilghman stated the applicant has been looking to enlarge the fire department going on ten (10) years now.

Mr. Craig Williams stated they have hit substantial road blocks and floodplain issues. He said the project has gone out to bid. He said the project is now in excess of \$3 million. He said they have made some changes. He said it is time to get the project done. He said they have had growth in our department. He said this is a much needed addition/renovation to the property. He hoped to have something constructed in the next year or year and a half. He said this will be the last extension. He said this has taken so long because they are volunteers. He said two (2) years would allow for construction.

Vice Chair Coyner stated if the construction does not happen within the next two (2) years, the applicant will need to reapply.

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Mr. Thacker moved to approve the two (2) year Extension of Time.

Vice Chair Coyner seconded the motion, which carried unanimously.

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**ALLEN P. DAHL - EXTENSION OF TIME REQUEST**

A request by Allen P. Dahl, for a Special Use Permit to have outdoor storage of commercial vehicles, semi -trailers, and equipment on property owned by Leslie K. Graham, Trustee of Leslie K. Graham Revocable Trust, located at 11 Orchard Hills Square, Staunton in the Beverley Manor District.

Vice Chair Coyner moved to approve the ninety (90) day Extension of Time.

Mr. Bailey seconded the motion, which carried unanimously.

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**DAISY BROWN**

Chair Tilghman stated that Daisy Brown resigned from the Board due to health and personal reasons. She appreciated her services over the years to the Board. She said she will miss her cheery smile and her input on the Board will certainly be missed. She said that she hopes to have her back here to recognize her services in the future.

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**STAFF REPORT**

There were no staff reports this month to review.

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Mr. Benkahla discussed the court cases with the Board.

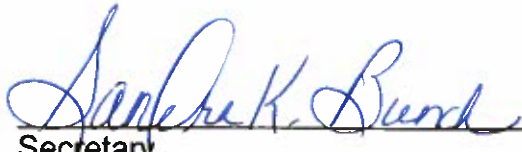
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There being no further business to come before the Board, the meeting was adjourned.

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Chair

  
Secretary

