

September 6, 2007

PRESENT: C. E. Swortzel, Chairman  
J. W. Callison, Jr., Vice Chairman  
D. A. Brown  
G. A. Coyner, II  
J. R. Wilkinson, Zoning Administrator & Secretary  
S. K. Shiflett, Zoning Technician I

ABSENT: S. F. Shreckhise

VIRGINIA: At the Called Meeting of the Augusta County Board of Zoning Appeals held on Thursday, September 6, 2007, at 9:00 A.M., in the County Government Center, Verona, Virginia.

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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:

- **GLADYS A. COEYMAN OR ROGER LOWERY - SPECIAL USE PERMIT**
- **SALLIE A. CHAPMAN – VARIANCE**
- **VIVIAN LYNN KILLINGSWORTH – VARIANCE**
- **JAMES W. SIZEMORE FAMILY, L.P. - SPECIAL USE PERMIT**
- **JOHN C. LEAVELL - SPECIAL USE PERMIT**

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

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Chairman

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Secretary

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PRESENT: C. E. Swortzel, Chairman  
 J. W. Callison, Jr., Vice Chairman  
 D. A. Brown  
 G. A. Coyner, II  
 S. F. Shreckhise  
 J. R. Wilkinson, Zoning Administrator & Secretary  
 S. Rosenberg, County Attorney  
 S. K. Shiflett, Zoning Technician I  
 B.B. Cardellicchio-Weber, Administrative Secretary

Absent: None

VIRGINIA: At the Regular Meeting of the Augusta County Board of Zoning Appeals held on Thursday, September 6, 2007, at 1:30 P.M., in the County Government Center, Verona, Virginia....

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**MINUTES**

Mr. Coyner moved that the minutes from the August 2, 2007 meeting be approved.

Ms. Brown seconded the motion, which carried unanimously.

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**TIMMY W. PLECKER - SPECIAL USE PERMIT**

A request by Timmy W. Plecker, for a Special Use Permit to have outdoor storage of excavating equipment, vehicles, and materials on property he owns, located on the south side of Parkersburg Turnpike (Route 254), just east of the intersection of Parkersburg Turnpike (Route 254) and Cedar Green Road (Route 693) in the Pastures District. -  
 TABLED FROM THE JULY 5, 2007 AND AUGUST 2, 2007 MEETINGS

Mr. Wilkinson stated that Mr. Plecker withdrew his request from the agenda.

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### **DAVID L. GARDNER - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by David L. Gardner, for a Special Use Permit to expand the existing veterinary clinic on property he owns, located on the south side of Fadley Road (Route 646), just west of the intersection of Fadley Road (Route 646) and Lee Highway (Route 11) in the North River District.

Ms. Ann Gardner stated that they would like to have an expansion on the existing clinic to accommodate their growth. She stated that they need a bigger X-ray, surgery, and treatment room. She stated that they need additional holding space for cats and dogs.

Mr. Wilkinson asked if the addition would be on the back of the existing facility?

Ms. Gardner stated yes.

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

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

Chairman Swortzel stated that this is a well run business and a great service to the community.

Mr. Shreckhise moved that the request be approved with 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 Condition:**

1. All dogs be confined within the facility unless under control of staff members or pet owner.

Vice Chairman Callison seconded the motion, which carried unanimously.

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**DONNA MIDDLETON - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Donna Middleton, for a Special Use Permit to have a dog kennel on property owned by Byron or Karen Brenneman, Etal, located on the east side of Churchmans Mill Road (Route 651), approximately .5 of a mile northwest of the intersection of Churchmans Mill Road (Route 651) and Twin Hill Road (Route 653) in the Riverheads District.

Ms. Donna Middleton stated that she has eight (8) dogs. She stated that two (2) of those dogs are her daughter's dogs. She stated that she has a beagle and a black dog. She stated that she has six (6) other dogs currently. She stated that she works with a group called Humanitarians of Pet Education (HOPE). She stated that she has a letter which states that HOPE is a non-profit organization that became incorporated in 1998. She stated that HOPE is dedicated to spaying and neutering stray animals and helping pet owners on limited incomes. She stated that HOPE operates solely on donations and fundraisers in the community. She stated that HOPE operates out of the homes of the volunteers. She stated that HOPE fosters mostly cats but some dogs. She stated that she is a volunteer for HOPE. She stated that she has two (2) foster dogs right now. She stated that she has three (3) dogs in the fences. She stated that two (2) dogs come out of the basement which are within two (2) fences. She stated that one dog is not house broken. She stated that the other fence comes out of her back door. She stated that the dogs inside the house have never been in the fenced in area. She stated that her personal dogs are elderly. She stated that she does not put them with the other dogs because they are too high energy. She stated that if it is necessary for her to fence her front yard she would. She stated that the dogs that are fenced in do not ever get out of the fenced in area. She stated that the dogs that are seen out are her house dogs. She stated that she hopes the Board changes the pre-condition regarding the fence because it is really expensive and her foster dogs do not get out. She stated that she would also like to change the number of dogs on this request. She stated that she did not know how many dogs to include on the request. She stated that she put twenty (20) just in case there was ever a national disaster and she needed to care for that many dogs. She stated that the neighbors are concerned that she wants twenty (20) dogs. She stated that she would like to reduce the number of dogs to twelve (12). She stated that she does not have dangerous animals. She stated that her grandchildren can go in the fenced in areas with the dogs. She stated that she has an adoption contract that she uses. She stated that animals can never go to the SPCA if they are adopted out. She stated that she has a seventeen (17) year old dog which will not be around much longer. She stated that her population will be going down and not up. She stated that the Board may want to include that in the condition that if there was some area disaster she could have her site used for housing of the animals.

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Mr. Coyner asked how long does a dog stay at the site?

Ms. Middleton stated it depends. She stated that she has one that she has had for a year. She stated that she only has one other rescue dog. She stated that every other dog has been adopted.

Chairman Swortzel asked how many dogs do you have personally?

Ms. Middleton stated that personally she has three (3) and her daughter has two (2) dogs.

Chairman Swortzel asked if the dogs outside that were loose were the applicant's dogs?

Ms. Middleton stated that they were her daughter's dogs. She stated that when the Board drove up the dogs barked and then she spoke to them and they came in the house. She stated that the only dog that does not listen to her is the beagle.

Ms. Brown asked if the applicant chained the dogs?

Ms. Middleton stated no. She stated that she would be willing to fence her front yard if she has to. She stated that the property is fifty-seven (57) acres and the dogs do not leave the property except for the beagle. She stated that the beagle will not hurt anyone.

Mr. Wilkinson stated that they received four (4) letters in opposition from neighboring properties. He stated the neighbors were concerned that when they walk along the road and the dogs are loose, they come up and bark at them. He stated that there is a leash law in Augusta County.

Ms. Middleton stated that she will fence the front if she needs to.

Chairman Swortzel asked if the applicant has a choice of the type of dog that she rescues because the fence will not hold a lot of dogs?

Ms. Middleton stated that she has had six (6) requests over the last two (2) months. She stated that she has not taken in any more dogs. She stated that she will not take anything that she could not comfortably handle.

Mr. Wilkinson stated that one of the ordinance requirements for the Board's consideration is that the applicant's fencing height and strength of the fence be adequate.

Ms. Middleton stated that she would not take a dog if she could not keep it within her fence. She stated that the dogs that are currently in the fence do not come out unless

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someone opens the gate. She stated that any dog that has been seen out loose is her personal dogs.

Mr. Coyner asked if all of the dogs that are rescued come through the organization?

Ms. Middleton stated that one of her dogs was lost in Stuarts Draft and as a HOPE volunteer she spoke with the group and they took in that dog.

Chairman Swortzel asked if the dog's information was advertised in the newspaper as being lost?

Ms. Middleton stated yes but no one responded to the ad. She stated that she also has some other letters from her veterinarian and her son-in-law who helps her with the dogs.

Chairman Swortzel asked if there was anyone wishing to speak in favor to the request?

There being none, Chairman Swortzel asked if there was anyone wishing to speak in opposition to the request?

Ms. June Whitesell, 731 Churchmans Mill Road, stated that there is enough dogs in the community. She stated that if the applicant wants a kennel, a lot of things need to be done to approve it. She stated that the applicant only lives in the house and the other fifty (50) acres is farmed and rented by other people. She stated that dogs can dig out and jump the fence. She stated that this request would lower the property values in the area. She stated that she has a letter from Mr. Schrock as well as another neighbor that could not be here today. She read the letter to the Board which stated that they are adjacent to this site. She does have a concern that the dogs barking at all hours day and night is an irritation that most of them want to avoid if possible. She stated that to have one (1) or two (2) dogs as pets is usually acceptable but to have multiple dogs in a kennel that bark at all hours especially during evening hours is not acceptable. She stated that Churchmans Mill Road is used by families and children for walks. She stated that there may be pit-bulls, Dobermans, German Shepherds, or other dogs that may attack which could be seen as a potential hazard to those using the road. She stated that as people walk the dogs will bark. She stated that she has another letter that states a dog kennel in Ms. Middleton's basement and backyard is not needed in this area and is not compatible with the residential homes nearby because of the noise and the problems with dogs wondering at large in the neighborhood. She stated that Ms. Middleton has already violated the County's leash law and the situation will only worsen if she is allowed to keep even more dogs. She stated that the dogs are supposed to be confined from 10:00 p.m. to 6:00 a.m. but unless the dog doors are locked or blocked the dogs will be free to go outside anytime they want. She stated that the applicant works and does not come home until midnight. She stated that maybe her son-in-law could close the basement if he

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happened to be at home. She asked how does she plan to secure her dogs when she is not even home. She stated that noise does carry and the dogs barking constantly already create a nuisance and no one can walk or bike passed the home without the dogs barking. She stated that the applicant will bag the waste and take it to the County landfill. She stated taking care of the dogs will be a full-time job that will require several people. She stated that she has taken stray dogs and has expressed an opinion that pit-bulls and Dobermans are nice dogs and she would not have a problem keeping them. She stated that this area will not be safe for the children. She stated this kennel will definitely decrease the property value of nearby homes as well as cause a problem for children, adults, and livestock in the area. She asked that the Board deny the request and maintain a good peaceful Rural Residential area which existed previously. She stated that if the Board considers granting the request, please consider lowering the dogs to no more than eight (8) dogs and monitor the request. She stated that letter was from Theresa Brents.

Mr. Coyner asked where she lived in relation to the kennel and if she heard dogs barking?

Ms. Whitesell stated across the road and she does here dogs barking.

Mr. Coyner asked how long has the applicant been keeping dogs at the site?

Ms. Whitesell stated quite awhile.

Chairman Swortzel asked if there was anyone else wishing to speak in opposition to the request?

Ms. Laferne Harris, 745 Churchmans Mill Road, stated that she walks with her grandchildren down the road and the dogs run to the road and scare them. She stated that the beagle has ran down to their property several times and her grandchildren are scared of the dogs. She stated that there is a lot of barking going on. She stated that she is opposed to the request.

Mr. Coyner stated that the dogs run out to the road and bark.

Ms. Harris stated that is correct.

Chairman Swortzel asked if there was anyone else wishing to speak in opposition to the request?

There being none, Chairman Swortzel asked if Ms. Middleton would like to speak in rebuttal?

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Ms. Middleton stated that she did decrease the number of dogs that she is requesting and she is willing to fence the front yard so that the house dogs would not be loose and be a concern to anyone. She stated that she does not take in vicious dogs. She stated that she would not take a dog that her grandchildren would not be safe with. She stated that she does get home between 10:30 p.m. to midnight. She stated that her son-in-law has agreed to close the dog doors at night and she also has another person who comes to her house every evening and if for any reason they were not put up then, she would go and close the doors when she got there.

Ms. Brown asked if the grass is maintained on the both sides of the fenced in area?

Ms. Middleton stated that she put in a new fence so that they can go in with a riding mower. She stated that her lawn mower just broke and her son-in-law is working on fixing it.

Ms. Brown asked if the rescue dogs use front of the property?

Ms. Middleton stated that the dogs that are in the fences stay in those fences all of the time. She stated that her personal dogs come out with her.

Mr. Coyner stated that the fence that the applicant has would not hold certain dogs.

Ms. Middleton stated that if she could not hold a certain type of dog she would not take them in. She stated that her population will be decreasing. She stated that she will fence in her front yard so that they do not come up to the road. She stated that she does not want her neighbors to be afraid. She stated that she lets the dogs out at 7:00 a.m. She stated that her son-in-law comes around 9:30 p.m. She stated that the other lady will come around 10:00 p.m. and if they are not closed in she will do that.

Mr. Coyner stated that he understands why the neighbors are concerned.

Chairman Swortzel stated that the son-in-law lives on the property west of the site. He declared the public hearing closed. He stated that there are seven (7) letters in opposition and two (2) neighbors spoke in opposition. He stated that the applicant is doing a good service but he does not think this is the right area.

Mr. Coyner stated that they have had a lot of dog kennels in the County and he understands why the neighbors are wondering about the fence. He stated that the neighborhood is not exactly in support of this kennel. He moved that the request be denied.

Ms. Brown seconded the motion, which carried unanimously.



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**GLADYS A. COEYMAN OR ROGER LOWERY - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Gladys A. Coeyman or Roger Lowery, for a Special Use Permit to have a kennel for personal dogs on property they own, located on the south side of Windy Acres Lane, approximately .5 of a mile west of the intersection of Windy Acres Lane and Mt. Torrey Road (Route 664) in the South River District.

Mr. Roger Lowery stated that they would like to have hunting dogs as pets.

Chairman Swortzel stated that the applicant has a nice facility.

Mr. Coyner stated that the Board was impressed with the facility. He stated that it was clean, neat, and orderly.

Chairman Swortzel stated that the site was fenced in properly.

Mr. Lowery stated that he brought in a letter from his neighbor and veterinarian.

Mr. Coyner asked if the dogs were the applicant's own coon hunting dogs?

Mr. Lowery stated yes. He asked if the Board would increase the number of dogs to twelve (12) just in case he needs more dogs in the future.

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

There being none, Chairman Swortzel declared the public hearing closed. He stated that the Board visited the site today and there is a tremendous difference in the two operations.

Mr. Coyner stated that to his knowledge they have not heard of any complaints for the applicant. He stated that the site is well maintained. He moved that the request be approved with the following conditions:

**Pre-Conditions:**

None

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**Operating Conditions:**

1. All dogs be confined within the designated area on the site plan or under control of the applicants at all times.
2. Maximum of twelve (12) adult dogs kept at this site at any time.
3. Site be kept neat and orderly.
4. Dogs be kept inside from 10:00 p.m. until 6:00 a.m.

Vice Chairman Callison seconded the motion, which carried unanimously.

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**WAYNE AND TRISHA BREEDEN - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Wayne and Trisha Breeden, for a Special Use Permit to expand the existing building for the florist business on property owned by River Hill Properties, Inc., located in the northern quadrant of the intersection of Eagle Rock Lane (Route 721) and Churchville Avenue (Route 250) in the Pastures District.

Mr. Wayne Breeden stated that they would like to put an 8' x 20' room on the backside of the building. He stated that they would like to take down the greenhouse which they used for storage. He stated that they are looking to put a small room up for storage.

Chairman Swortzel stated that there has been a flower shop at this site for a long time.

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

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

Vice Chairman Callison moved that the request be approved with the following condition:

**Pre-Conditions:**

None

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**Operating Condition:**

1. Site be kept neat and orderly.

Mr. Coyner seconded the motion, which carried unanimously.

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**JOHN C. LEAVELL - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by John C. Leavell, for a Special Use Permit to construct a building for a machine shop on property he owns, located on the south side of Sanger's Lane (Route 794), just east of the intersection of Sanger's Lane (Route 794) and Balsley Road (Route 792) in the Beverley Manor District.

Mr. John Leavell stated that he is asking to build a new building for his shop. He stated that he has been in business in an attached garage in his house since 2003. He stated that his business has grown to the point where he needs more room. He stated that he has had no complaints from his neighbors so far. He stated that he has two (2) letters from neighbors who could not attend the hearing.

Ms. Brown asked what type of business is the applicant operating?

Mr. Leavell stated that he makes parts from metal and some plastic. He stated that he does some welding.

Chairman Swortzel asked if he makes mostly small parts and not large ones?

Mr. Leavell stated that he makes anywhere from an 1/8" diameter to maybe a foot in diameter. He stated that anything he makes could be carried by hand.

Mr. Coyner asked if he has the public coming to the site?

Mr. Leavell stated that he does not have the public coming to the site. He stated that he bids on jobs. He stated that the material is delivered to him. He stated that material delivery is once every two (2) to three (3) weeks. He stated that UPS may come several times a week. He stated that he would like to ask that the request be tabled for a month. He stated that VDOT would not approve the entrance that he has now. He stated that he has an area at the end of the property for an entrance that he would like to discuss with them.

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Ms. Brown asked if the driveway is used by another neighbor?

Mr. Leavell stated the one neighbor wrote a letter and the other one he could not get in touch with.

Ms. Brown stated that three (3) families use the same driveway.

Mr. Leavell stated that Mr. Desper has no problem with this business. He stated that there will not be any additional traffic than what is happening now at the site. He stated that he will put the building behind the shed.

Chairman Swortzel asked how tall of a building would be built?

Mr. Leavell stated about fourteen (14') to sixteen (16') feet.

Mr. Coyner asked if the applicant works alone?

Mr. Leavell stated that he works alone for the most part. He stated that occasionally his brother helps him.

Vice Chairman Callison asked if the applicant had any employees?

Mr. Leavell stated no.

Mr. Coyner stated that the applicant is operating out of his garage presently. He stated that from the garage to the proposed building would be a pretty big jump. He asked if the applicant planned on increasing the business?

Mr. Leavell stated that he has a customer that wants him to do some work and he needs another machine to do the work. He stated that his customer is willing to invest in the machine. He stated that he needs more space for this machine.

Mr. Coyner asked if the deliveries of raw materials are large trucks?

Mr. Leavell stated that the delivery truck is a flatbed truck.

Chairman Swortzel asked how long is the truck?

Mr. Leavell stated that the bed on the truck is sixteen (16') to twenty (20') feet long.

Chairman Swortzel stated that the delivery truck is not a semi truck.

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Mr. Leavell stated no.

Ms. Brown asked how often does the truck come to the property?

Mr. Leavell stated once a week at the most but usually once a month.

Ms. Brown stated that the applicant wants to talk with VDOT about the entrance.

Mr. Coyner asked if the applicant would need employees in the future?

Mr. Leavell stated that it could get to the point where his brother could work with him full-time.

Chairman Swortzel stated that the Health Department comments state that the applicant not be allowed employees other than family members.

Mr. Leavell stated that he contacted the Health Department on that and he would also like to have the opportunity to speak with them on that issue. He handed the Board several pictures of similar buildings in the area. He stated that he considered placing a pole barn or a steel building at the site. He stated that the request asks for a 40' x 60' building. He stated that he does not think he necessarily needs that large of a building. He stated that a 30' x 50' building would be fine also.

Chairman Swortzel asked if there was anyone wishing to speak in favor to the request?

Ms. Sherea Hallberg, 314 Sanger's Lane, stated that she lives across the street. She stated that the business has been there for four (4) years and they have never had any problems with the applicant. She stated that the site is kept clean. She stated that they have seen the trucks come in. She stated that she does not see anything wrong with this request.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

There being none, Chairman Swortzel asked if there was anyone wishing to speak in opposition to the request?

Mr. Berkley Gray, 707 Sanger's Lane, stated that they are less than a mile from this site. He stated that the entire area is zoned agriculture but all of it is being used as residential. He stated that a residential community is planned behind this property of some giant size wrapping around to his property. He stated that it would be more than one thousand houses on the site. He stated that the road has a terrible site distance.

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He stated that this would not be a proper use of residential property. He stated that there are a number of businesses in that area that are not permitted and are operating illegal. He stated that he does not think this is an appropriate business for that community. He asked if the business is permitted currently?

Mr. Wilkinson stated that the applicant does have a Home Occupation Permit and the business has to be within the home and no more than 25% of the home used for the business.

Chairman Swortzel asked if there was anyone else wishing to speak in opposition to the request?

There being none, Chairman Swortzel asked if Mr. Leavell would like to speak in rebuttal?

Mr. Leavell stated that there are other buildings of similar size and type that are in the area. He stated that he does not create a nuisance for the area now. He stated that with the new building he would be further away from the neighbors than he is now. He stated that he does not think his building would be easily visible from the road. He stated that the noise would be contained inside the building.

Ms. Brown asked if there was noise involved with this business?

Mr. Leavell stated that there could be but all of the work is inside the building. He stated that the garage now has windows in it. He stated that he does not think the building would be out of place for the area. He stated that he does not use any harsh chemicals.

Mr. Coyner stated that if the Board were to approve the permit, expanding at this site would not be an option. He stated that the Board may put a limitation on the permit if it is granted.

Mr. Leavell stated that this would serve his purpose for a number of years. He stated that he looked into business property and at this point it is out of his budget.

Chairman Swortzel declared the public hearing closed. He asked the applicant if he would like the request tabled?

Mr. Leavell stated that he would like the Board to table the request.

Mr. Coyner stated that he understands what Mr. Gray is talking about but he also thinks it is commendable that young people want to get ahead and make a living.

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Mr. Shreckhise moved that the request be tabled to the October 4, 2007 meeting.

Vice Chairman Callison seconded the motion, which carried unanimously.

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**BRIAN SHIFFLETT AND R. SCOTT MILLER - AGENTS FOR B & S ENTERPRISES & CODE RED - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Brian Shifflett and R. Scott Miller, agents for B & S Enterprises & Code Red, for a Special Use Permit to have motor vehicle repair operation and a hazmat and asbestos clean up business on property owned by James W. Sizemore Family, L.P., located in the northern quadrant of the intersection of Lee Jackson Highway (Route 11) and Rosebud Lane in the Riverheads District.

Mr. Brian Shifflett stated that they would ask to move a bullpen over to the other side over to the dead space of the building.

Mr. Wilkinson stated that there would be a thirty-five (35') foot setback to Rosebud Lane.

Mr. Coyner asked if vehicles are towed to the site?

Mr. Shifflett stated yes. He stated that if anything is untitled or unlicensed they need to be in the bullpen. He stated that a lot of people will not tag vehicles until the restoration is completed.

Mr. R. Scott Miller stated that he has a Special Use Permit now at 3364 Poor Creek Lane which he has outgrown. He stated that he is renting this site with Mr. Shifflett. He stated that he is going to use it to store his trailers on. He stated that he has three (3) employees. He stated that the two (2) cars that the Board saw today was his employees. He stated that this is basically a meeting place and to park his equipment.

Ms. Brown asked what type of work is being done?

Mr. Miller stated that he does hazmat clean, asbestos abatement, installs stuff for Lowe's, and builds fences.

Ms. Brown asked if the three (3) hazmat trucks are kept at the site?

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Mr. Miller stated yes. He stated that he does not bring any hazardous materials and he does not bring any asbestos to the site. He stated that everything is brought to the landfill.

Chairman Swortzel asked if there was anyone wishing to speak in favor to the request?

Mr. Dave Brooks stated that he lives on Rosebud Lane. He stated that ever since the applicants have been there they have done everything to improve the shop. He stated that it looks completely different. He stated that he lives back there and he has no problems at all.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

Mr. Joseph Williams, 2776 Lee Jackson Highway, stated that he co-occupies the piece of property with the applicant as well. He stated that they have improved the property and cleaned up all of the junk.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

Mr. Wayne Swisher, 16 Swisher Truck Lane, stated that he is representing Don Swisher Trucking. He stated that he does not have any problems with them having a business at this location. He stated that there has always been a business at that site. He stated that they really cleaned the property up. He stated that the inside of the building looks really nice and he does not see any problems with them having a business.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

Mr. Allen Quick, 140 Rosebud Lane, stated he has no problem with the applicants getting the Special Use Permit. He questioned the site sketch that was submitted to the Board because there is not a blacktop driveway.

Mr. Wilkinson stated that the site sketch was from the old permit. He stated that the highway department stated that the only entrance to the lot that they are going to approve is the two (2) entrances out front and no entrances off of Rosebud Lane.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?



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There being none, Chairman Swortzel asked if there was anyone wishing to speak in opposition to the request?

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

Chairman Swortzel stated that it is quite obvious that the applicants have done a tremendous job. He stated that the neighbors have been appreciative of everything that has been done to the site.

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

**Pre-Condition:**

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

**Operating Conditions:**

1. Site be kept neat and orderly.
2. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
3. The 20' x 40' vehicle storage area be screened by an eight (8') foot high opaque vinyl privacy fence. The fence gates to remain closed at all times except when vehicles are being moved in or out of the storage area.
4. The opaque privacy fence must be maintained at all times.
5. Hours of operation be 7:00 a.m. to 8:00 p.m. Monday thru Saturday.
6. No Sunday work.
7. Be limited to two (2) company vehicles and four (4) trailers for "Code Red" at the site.
8. No hazardous materials to be brought to this site.
9. The only sign to be permitted for this business is two (2) on premise business signs (one for each business) and each sign not to exceed twelve (12) square feet.

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Mr. Coyner seconded the motion, which carried unanimously.

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### **WILLIAMS BROTHERS, INC. - SPECIAL USE PERMIT**

This being the date and time advertised to consider a request by Williams Brothers, Inc., for a Special Use Permit to use the existing building for equipment storage, to use the fenced lot for a portable sawmill, and to have outside storage of landscaping materials and one semi-trailer on property owned by James W. Sizemore Family L.P., located in the northern quadrant of the intersection of Lee Jackson Highway (Route 11) and Rosebud Lane in the Riverheads District.

Mr. Chapman Williams stated that he and his brother, Joseph, operate this business under a Special Use Permit. He stated that they started to occupy this property about three (3) years ago as far as equipment storage inside and have used it as mulch storage for the past year and a half. He stated that when they took over the property it was in bad shape. He stated that they have improved the appearance of the neighborhood. He stated that they do not actually operate the business out of this location. He stated that he does not have any more than two (2) to three (3) trucks coming in a day's time. He stated that the trucks come in the morning and are back in the afternoon. He stated that all of the equipment is small. He stated that they are in the process of building a new shop and office in Grassmere. He stated that they provide a lot of jobs for people. He stated that they are not asking to be on the property for a long time. He stated that they do not have a timeframe as to when they are going to complete their shop. He stated that eventually they will no longer operate from this site. He stated that they hope to have the buildings completed within the next couple of years. He stated that they had a discussion with VDOT this morning. He stated that the entrances that they normally go in and out of the property is the upper entrance. He stated that he is well aware of the sight distance problem at the lower entrance and the only reason that has been used temporarily was when they were moving dirt in and they are building a better way to get into the lower part of the entrance from where they leveled out behind the shop. He stated that they do not want his employees using the lower entrance. He stated that he is concerned with VDOT's recommendations as far as the curb and gutter. He stated that he does not know what their comments were after they met.

Mr. Wilkinson stated that because the entrances have been there for many years, VDOT will grandfather those in. He stated that they still want an entrance permit in the applicant's name. He stated that once the applicant gets the entrance permit they should give a copy of the entrance permit to the Community Development Department.

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Mr. Chapman Williams stated that the portable sawmill that is there is more or less a hobby. He stated that they are not at the site sawing logs everyday.

Mr. Coyner asked how long do you anticipate using this piece of property?

Mr. Chapman Williams stated that he hopes no more than the next two (2) years to three (3) years. He stated that everything is going to be at Grassmere when that building is complete.

Chairman Swortzel asked if there was anyone wishing to speak in favor to the request?

Mr. Dave Brooks, 106 Rosebud Lane, stated that the applicants have done nothing but clean the site up. He stated that he has no problems with this request.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

Mr. Allen Quick, 140 Rosebud Lane, stated that he owns the property on the northeast side. He stated that they have no problems with the way that the Williams Brothers run their business.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

Mr. Brian Shifflett, 2499 Lee Jackson Highway, stated that the effort of cleaning the property up is combined with all of them. He stated that he would like to see Williams Brothers remain at the site.

Chairman Swortzel asked if there was anyone else wishing to speak in favor to the request?

There being none, Chairman Swortzel asked if there was anyone wishing to speak in opposition to the request.

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

Mr. Coyner stated that they have put together a good business. He stated that the Board is familiar with this piece of property. He stated that they are interested in getting everything in one spot in Grassmere. He stated that the applicants have a plan to make that happen. He moved that the request be approved with the following conditions:

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**Pre-Condition:**

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

**Operating Conditions:**

- 1. Site be kept neat and orderly.
- 2. No junk or inoperable vehicles, equipment, or parts of vehicles or equipment be kept outside.
- 3. All equipment or machinery and materials for the business be kept inside the six (6) bay storage building or the fenced lot shown on the BZA plan.
- 4. All outdoor storage of landscaping materials be kept in the designated areas shown on the site plan or in the one (1) straw trailer.
- 5. No equipment, machinery, or materials to be kept within twenty-five (25') feet of the rear property line.
- 6. Hours of operation be 7:00 a.m. to 9:00 p.m. Monday thru Saturday.
- 7. The only sign to be permitted for this business is one (1) on premise business sign not to exceed twelve (12) square feet.
- 8. No Sunday work.
- 9. Permit be issued for five (5) years.

Ms. Brown seconded the motion, which carried unanimously.

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**SALLIE A. CHAPMAN - VARIANCE**

This being the date and time advertised to consider a request by Sallie A. Chapman, for a Variance from the front setback requirement in order to reconstruct a dwelling destroyed by flood on property she owns, located on the south side of Hundley Distillery Road (Route 728), approximately .7 of a mile west of the intersection of Hundley Distillery Road (Route 728) and Union Church Road (Route 736) in the North River District.

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Ms. Sallie Chapman stated that the requirement is fifty (50') feet back from the road but the foundation is 13.5' and she needs to request a Variance that the new dwelling would be placed on the old foundation if possible.

Chairman Swortzel stated that the Board walked down the driveway but did not see the foundation.

Ms. Chapman stated that the property has grown up a bit. She stated that if she placed the dwelling fifty (50') feet back, she would be closer to the river.

Mr. Coyner asked if the applicant needed to have a flood study done regardless of where the dwelling is built?

Mr. Wilkinson stated yes that is an ordinance requirement. He stated that the applicant is in an AE zone. He stated that in order to get approval the engineer would have to show that there is not more than one (1') foot increase in the flooding due to the dwelling. He stated that they would design flood proofing and elevations to get the dwelling out of the flood zone. He stated that they will design the foundation to the greatest extent possible according to the building codes. He stated that they will submit the calculations to the engineering department who will review them for accuracy. He stated that the flood ordinance is designed to try to protect life and property. He stated that it will be designed by all of the proper codes setup by FEMA and the building code.

Mr. Shreckhise asked if the applicant realizes all of these regulations that she will have to go by?

Ms. Chapman stated yes.

Ms. Brown asked if the applicant can have a basement and a living space up top?

Chairman Swortzel stated that would be determined by whoever does the study.

Ms. Chapman stated that the basement would not be usable space. She stated that it has been eleven years today that the flood came. She stated that she cannot afford anything else. She stated that every house that she has looked at in the last three or four years has been too expensive. She stated that her financial situation now is better than it was when the flood happened.

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

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Mr. Larry James, 327 Morningside Drive, Mount Sidney, stated that he owns the adjacent property. He stated that he is working on taking out the camp. He stated that the entire area got washed out when the flood came through. He stated that would put her off of the pad.

Mr. Wilkinson stated that she is 13.5' off of the right of way. He stated that they are supposed to be fifty (50') foot from the right of way.

Mr. James stated that he would be glad to see her build at the site. He stated that they have to be a foot above the floodplain which is basically the road. He stated that he is concerned that the decision today would set a precedent for the other property owners.

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

There being none, Chairman Swortzel declared the public hearing closed. He stated that the Board visited the site.

Mr. Shreckhise stated that he feels that the applicant should not build in the floodplain. He stated that he feels that this request qualifies for a Variance. He moved that the request be approved.

Mr. Coyner seconded the motion, which carried unanimously.

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**VIVIAN LYNN KILLINGSWORTH - VARIANCE**

This being the date and time advertised to consider a request by Vivian Lynn Killingsworth, for a Variance from the lot width requirement in order to separate two existing dwellings on property she owns, located on the south side of Berry-Moore Road (Route 693), approximately 1.2 miles west of the intersection of Berry-Moore Road (Route 693) and Howardsville Road (Route 701) in the Riverheads District.

Mr. Barry Lotts stated that he is representing Ms. Killingsworth. He stated that the older house along the road is in the middle of the property. He stated that she needs to get this property split and they do not have the required road frontage. He stated that they only have one hundred (100') feet.

Mr. Coyner asked if the applicant could do a family member exception?

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Mr. Lotts stated that the applicant does not have a family member exception rule that would apply because they need to hold the lot for three (3) years. He stated that she wants to sell the lot to her sister and that would hurt her as far as selling the property.

Mr. Coyner stated that is certainly an option.

Chairman Swortzel stated this has been created by an ordinance change.

Mr. Wilkinson stated that in 1995 the ordinance changed the minimum from one hundred (100') feet to one hundred fifty (150') foot minimum lot width. He stated that if the division was done before 1995 then it could have been done.

Vice Chairman Callison asked what that road frontage is on the property?

Mr. Lotts stated a little bit over three hundred (300') feet. He stated that the house sits right in the middle.

Mr. Wilkinson stated that the laws apply to all property owners.

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

There being none, Chairman Swortzel declared the public hearing closed. He stated that the Board viewed the site today.

Mr. Coyner stated that if there is another way to create this lot, why apply for a Variance.

Mr. Lotts stated that the person that receives the lot has to hold the lot for three (3) years.

Mr. Wilkinson stated that the applicant has family members. He asked if they had a spouse or child?

Mr. Lotts stated that she does not have a spouse. He stated that she would have to give it to her son.

Ms. Vivian Killingsworth stated that her son is thinking about going into the Marines. She stated that her sister would like to buy the property. She stated that she does not want her to be penalized and have to hold the property for three (3) years. She stated that she cannot expect her to do that.

Mr. Lotts stated that the other option is that she would have to put her son on her property. He stated that any liens or loans that she has would get tacked to his personal

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information because he would be on the same deed. He stated that would tie him up personally.

Mr. Coyner stated that this would be a convenience for the applicant.

Chairman Swortzel stated that he does not think this is a convenience for the applicant. He stated that the code change was done in 1995.

Mr. Wilkinson stated that the applicant is asking for a special exception from the current ordinance. He asked if her parents were deceased?

Ms. Killingsworth stated that her father died. She stated that her mother is alive and lives in Albemarle County.

Mr. Lotts stated the applicant does not want to do that. He stated that if something happens to her mom there could be legal issues because she has a number of brothers and sisters.

Mr. Coyner stated that the applicant wants to sell the old house in the front and the purchaser just happens to be the applicant's sister.

Mr. Wilkinson asked if the applicant approached the neighbors about buying additional property?

Mr. Lotts stated that is not an option.

Chairman Swortzel asked if the one hundred fifty (150') foot lot width is a state law or County law?

Mr. Wilkinson stated a County law. He stated that if there were some kind of family crisis they would have an option to apply for a waiver from the Board of Supervisors for the remainder of the three (3) years. He stated that is built into the ordinance should something were to happen.

Chairman Swortzel stated that the acreage here is not a problem. He stated that they have a lot of land but not enough road frontage.

Mr. Lotts stated the family member exception goes to the back half. He stated that the applicant would have to give that to her son and that is the piece the applicant wants to keep. He stated that they would have to own it with a 50% interest.

Mr. Coyner stated that the old dwelling happens to already be on the land.



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Mr. Lotts stated that if the house was not there already they could meet the one hundred fifty (150') feet.

Mr. Shreckhise stated that this is a situation where these problems were not foreseen when the ordinance was created. He moved that the request be approved.

Mr. Coyner seconded the motion, which carried with a 4-1 vote with Ms. Brown being in opposition to the motion.

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#### **HAZEL M. CLINEDINST OR VIRGINIA C. MAYS - VARIANCE**

This being the date and time advertised to consider a request by Hazel M. Clinedinst or Virginia C. Mays, for a Variance from the lot area requirements in order to separate two existing dwellings on property they own, located in the southwest quadrant of the intersection of North River Road (Route 730) and George Walton's Road (Route 758) in the North River District.

Ms. Hazel Clinedinst stated that there are two (2) buildings at the site currently. She stated that her dwelling has been there since 1948 and her daughter has a house trailer which has been at the site for thirty (30) years. She stated that she never thought about separating the dwellings until the churches in the community started building her daughter a house. She stated that she felt the property should be separated to protect her interests.

Mr. Wilkinson stated that the applicant can meet the road frontage requirements but cannot meet the lot area requirements which are one (1) acre for each lot according to the survey.

Mr. Coyner stated that the new house will go close to where the trailer currently is.

Ms. Clinedinst stated that they moved it a little to get it out of the floodplain.

Mr. Coyner stated that the well serves both properties and will continue to do that.

Ms. Clinedinst stated yes.

Mr. Wilkinson stated that without a Variance there are no other options for this request.

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

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

Vice Chairman Callison moved to approve the request.

Mr. Coyner stated that staff's comments stated that approving the Variance would be in keeping with the spirit of the ordinance.

Mr. Coyner seconded the motion, which carried unanimously.

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**STAFF REPORT**

06-60	Biser, Joshua A. or Sipe, Laurie A.
06-61	Turn Key Properties, LC
06-62	Gorra, John M. and Rebecca

Mr. Wilkinson stated that the pre-conditions for SUP#06-60 have not been met. He stated that the applicant received the letter from staff and they have stated that the applicant is pursuing moving the business to a business location in Stuarts Draft. He stated that SUP#06-61 and SUP#06-62 are both in compliance.

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Mr. Rosenberg distributed his report on zoning cases. He stated that last month when the Board met he recently filed five (5) complaints in the circuit court and four (4) of those cases there was no answer filed and they are moving forward to obtain default judgments. He stated that in the fifth case the property has been sold and they are in an effort to get the property into compliance. He stated that tomorrow is the hearing on the Gochenour case.

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

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Chairman

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Secretary