

AT A MEETING OF THE MONTGOMERY COUNTY BOARD OF ZONING APPEALS HELD ON SEPTEMBER 4, 2018, AT 5:00 P.M. IN THE MULTIPURPOSE ROOM, SECOND FLOOR, MONTGOMERY COUNTY GOVERNMENT CENTER, CHRISTIANSBURG, VIRGINIA:

CALL TO ORDER

Mr. DiSalvo called the meeting to order at 5:00 p.m.

Present: Richard DiSalvo, Chair
Michael Reilly, Vice Chair
Zach Milton, Member
Charles (Chuck) Shorter, Member
David Moore, Member
Bob Miller, Alternate Member
Dari Jenkins, Planning & Zoning Administrator
Emily Gibson, Director of Planning
Marty McMahan, County Attorney
Leann Nester, Program Assistant

Mr. Reilly established the presence of a quorum.

A motion was made by Mr. Shorter, seconded by Mr. Milton and unanimously carried to move the Election of Officers to New Business after the Public Hearing.

APPROVAL OF MINUTES

On a motion by Mr. Reilly, seconded by Mr. Shorter and unanimously carried, the minutes of the July 5, 2016 meeting were approved.

PUBLIC HEARINGS

An appeal filed with the Montgomery County Board of Zoning Appeals dated July 5, 2018 by **Little River Road LLC -- VAR-2018-16433** (Agent: Gay and Neel, Inc.) appealing the zoning administrator's decision dated June 4, 2018 issuing a Notice of Violation VIO-2018-00341 to Little River Road, LLC to enforce compliance with 1) conditions of a Special Use Permit to allow a recreational park on 1.95 acres of 2.432 acres; 2) a site plan entitled "Sportsman's Stop Site Development Plan", revised November 08, 2001 and approved January 16, 2002; 3) requirements of Sec. 10-37, Art. III, Sec 3.3(e) Specific Standards, of the Flood Damage Prevention Overlay regarding requirements for recreational vehicles; and 4) requirements of Sec. 10-44, Off street parking and loading, on property located at **2947 and 2959 Little River Rd.** The property is identified as **Tax Map Parcel 102-A 1 (Parcel ID: 020258)**, 2.432 acres, zoned Agricultural (A-1) / Community Business (CB) and **Tax Map Parcel 102-A 3 (Parcel ID: 012422)** 0.718 acre, zoned Community Business (CB) and lies in the Riner Magisterial District of Montgomery County, Virginia.

Mr. DiSalvo introduced the appeal.

Ms. Jenkins presented maps, photos and the staff report to clarify the ten violations issued (six site plan violations, two special use permit violations and two additional zoning ordinance violations).

Site Plan Violations

1. An area containing four (4) parking spaces (including one handicap accessible space) located immediately adjacent to the south end of the store has been expanded by relocating the retaining wall closer to the New River and filling the encroachment within the floodway in violation of the site plan and without a permit. During the last site visit, I observed this area now being used for picnic tables and not the intended parking spaces as indicated on the approved plan.
2. The additional parking located on the south end of the store has been completely reconfigured and paved.
3. Two recreational vehicle parking spaces have been illegally installed in a Community business (CB) district. Unpermitted and uninspected electrical, water and septic supply lines have been extended to the illegal RV parking spaces.
4. An unpermitted parking area has been installed in the floodway just south of the boat ramp access drive by building retaining walls and filling with soil and stone.
5. Retaining walls have been installed adjacent to Little River Road (St. Rt. 605) without a permit and the retaining walls appear to be located within the VDOT right of way in some places. While there is an understanding that you have requested a consideration for available right of way to resolve the matter, until the boundary line is adjusted, the item remains in violation.
6. Encroachment has occurred onto VDOT property located adjacent to the north side of the RV Park adjoining Interstate I-81. While there is an understanding that you have requested a consideration for available right of way to resolve the matter, until the boundary line is adjusted, the item remains in violation.

Special Use Permit Violations

7. Condition No. 2 requires that *"no recreational vehicle shall remain on the property for more than 180 days per year. Recreational vehicles shall be setback a minimum of 10 feet between units and 15 feet from all property lines"*. Staff has observed some RV units located on the property for more than 180 days.
8. Condition No. 4 requires that *"a gate shall be installed at the entrance to RV campground for the protection and security of the campers. This gate shall be installed prior to the issuance of electric or plumbing permits"*. Staff has not observed the gate.

Other Zoning Ordinance Violations

9. Sec. 10-37, Art. III, Sec. 3.3(e), Specific Standards, of the Flood Damage Prevention Overlay specifies the following requirements for Recreational Vehicles located in all special flood hazard areas:
"Recreational vehicles. All recreational vehicles placed on sites must either be on the site for fewer than one hundred eighty (180) consecutive days; be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or meet all the requirements of manufactured homes in Article III, Section 3.3(d)".

Staff has observed recreational vehicles located within the RV Park with expired DMV plates and inspection decals; therefore, the vehicles are not ready for highway use as required above.

10. Section 10-44, Off Street Parking and Loading, requires that "at the time of erection of any building or use, or at the time any building or use is enlarged, minimum parking and loading space in the amount specified in the requirements of this section. Such parking and loading requirements shall apply only to new construction or expansion of an existing use". All off-street parking shall be located on the same lot as the structure or building to which they are accessory.

There are customers parking in front of the store within the right-of-way of Little River Rd. (St. Rt. 605) and this unapproved parking is creating a safety hazard for customers attempting to leave the store and the RV Park. Several citizens have requested "no parking signs" along this location; however, until those signs are installed, it remains the owner's responsibility to provide and maintain an adequate sight distance for entering and exiting the property.

Ms. Jenkins provided a timeline of events and photos from before the Notice of Violation(s) was issued.

- 08.22.2016 – A stop work order was issued by the Building Department for 1) construction of the block retaining wall with no permit and 2) filling to create a parking area adjacent to the boat ramp in the floodway.
- 02.03.2017 – Ms. Jenkins spoke with Mr. Mosser regarding 1) the stop work order, 2) the purchase of the property from Wally Huff, 3) Ron Fink (Engineer) had evaluated the block retaining wall, 4) retaining Gay and Neel, Inc. to prepare the documents necessary to expand the structure in the floodway.
- 03.07.2017 – Ms. Jenkins, Scott Woodrum, County Engineer and Paul Brown (VDOT) met with Gay and Neel, Inc. (Tim Guthrie & Tom Sproul) to discuss ideas about how to proceed since FEMA has no modeling data for this area. The data was lost.
- 10.24.2017 – Ms. Jenkins had a phone discussion with Tim Guthrie regarding setting up a conference call with Kathryn Lipiecki, Risk Analysis Branch Chief at the FEMA Region III Office, concerning the 2 unpermitted retaining walls. Mr. Guthrie proposed to 1) remove the fill from the south end of the store, but he indicated the need to relocate the parking and 2) remove the fill; or fill and level the site for parking if the septic lines did not interfere with the area adjacent to the boat ramp.
- 02.20.2018 – The county Development Review Team met to discuss the violation issues with the owner/agents. The following issues were addressed at great length: 1) 2 fill sites, and 2 unpermitted camp sites in the Community Business (CB) zoning district; 2) Mr. Guthrie described a boundary line dispute with VDOT adjacent to I-81; 3) Mr. Mosser proposed the addition of a deck to the western side of the store; 4) Future rezoning and SUP amendment when violations are corrected.

When no violations were corrected, the Notice of Violation was issued on June 4, 2018 listing ten items for correction. The correction items were reviewed with the County Attorney prior to issuance of the Notice of Violation.

Ms. Jenkins provided a timeline of events for after the Notice of Violation(s) was issued.

- 07.05.2018 – An appeal to the BZA was filed with the Zoning Administrator.
- 08.03.2018 – Another stop work order was issued by the Building Department for an unpermitted structure in the floodway.

- 08.07.2018 – The Development Review Team met with Mr. Mosser and his agents, Michael Gay, P.E. and Tim Gutherie, P.E., of Gay and Neel, Inc. to discuss possible solutions for the violations. The 10 violations were discussed one by one to determine the options available to Mr. Mosser for compliance with the codes and related documents.
- 08.10.2018 – Mr. Mosser advised his desire to pursue his appeal of the Zoning Administrator’s decision to issue the Notice of Violation.

Ms. Jenkins asked the Board to review the August 7, 2018 Plan Review Summary Notes provided in their packet. She reminded the Board that the location is two separate parcels and is located in two different zoning districts, Agricultural (A-1) and Community Business (CB). The parcel lines and zoning lines are different. Parcel ID 020258 (2.432 acres) is split-zoned as A-1 for the approved recreational vehicle park and CB for the store and fuel sales. The property is located in the floodway with the exception of a very small portion in the northeastern area of the property. This parcel has two special use permits with conditions, one is for the RV campground and one is for the motor fuel sales.

Ms. Jenkins clarified for the Board that Mr. Mosser’s application submitted for review by the BZA is not a variance request, but an appeal of the Zoning Administrator’s decision that the property is in violation of the Code requirements. She confirmed that the question before the BZA is whether or not the Board agrees with the Zoning Administrator’s determination that the site is in violation. Ms. Jenkins shared that the BZA is authorized to hear appeals taken by any person aggrieved by any decision of the Zoning Administrator in the enforcement of the County zoning ordinance. The BZA may reverse or affirm, wholly or partly, or may modify the decision of the Zoning Administrator. No inquiries were received from the public regarding this appeal.

Ms. Jenkins asked the Board if they had any questions.

Mr. DiSalvo asked for clarification on Violation #10. He inquired whether there was enough parking or the correct number of parking spaces provided? Ms. Jenkins stated there were the same number of parking spaces as before the changes; however, the spaces have been relocated without a site plan revision.

Mr. DiSalvo asked for explanation regarding the off-site parking violation. Ms. Jenkins explained that there were two (2) recreational vehicles currently parked illegally and installed on the parcel zoned Community Business (CB). The residents of the recreational vehicles appear to be using up to four parking spaces which intended for the fuel sales/store.

Mr. DiSalvo asked the Board for any additional questions.

Mr. Reilly questioned whether the Board would go through all ten violation and address them individually.

Ms. Gibson clarified that the Board could address the individual violations or as a whole.

Mr. DiSalvo opened the public hearing, noting Ms. Jenkins took about 30 minutes to present the County’s case; he asked that Mr. Mosser keep his presentation to about 30 minutes as well. Mr. Mosser indicated that would not be enough time.

Mr. Mosser began by saying the County should provide him with some sort of comprehensive plan to help him. He then shared with Board that Federal Emergency Management Agency (FEMA) has lost the flood data for the portion of the New River where his property is located.

In regards to his floodplain violation, Mr. Mosser referenced County Code, Section 10.37 Article 4 (Variances; Factors to Be Considered) and stated that the things they’ve done to the property are

"nothing". He shared that he bought the parcels and then installed the two RV sites that are in violation; however, the electricity and septic were already there. He felt it best to move the two recreational vehicles there instead of a mobile home.

Mr. Mosser asked how he could determine what exactly he could do with the property. He inquired once again about receiving an overall comprehensive plan for his property.

Mr. Mosser acknowledged that Montgomery County showed the property in a floodway, but on the opposite side of the river, Pulaski County does not. He shared that he spoke with Congressman Morgan Griffith and that Mr. Griffith told him that appeared to be ten loads of dirt, which was nothing.

Mr. Mosser then gave the Board members a copy of a map of the New River running through Pembroke, Virginia indicated it was accurate modeling and indicating it was similar to his property, yet not in the floodway. He stated that it would take \$30,000 to reproduce the FEMA records for the New River section where his two (2) parcels are located. He would like for the County to have the County Engineer issue a No-rise Certificate with technical data.

Mr. Mosser reached out to Morgan Griffith and his office contacted FEMA. Mr. Mosser stated that FEMA agreed to get involved, then they stated they could not be involved because it was up to the community. He interpreted the Community to be the Board of Zoning Appeals.

According to Mr. Mosser, he learned that the work on the New River Bridge at mile marker 105 on Interstate 81 has a No-rise Certificate. They shared that you can excavate, but you could not fill – like bridge piers.

Mr. Mosser addressed Violation #5 pertaining to the retaining walls. He stated that Virginia Department of Transportation (VDOT) said the Sportsman fence was in the wrong place. He attributed his retaining wall being in the wrong place to the VDOT fence being in the wrong place.

Mr. Mosser stated he would address the ten violations individually.

Mr. Mosser wanted the BZA to provide a waiver of a No-rise Certificate or to discuss a method of a No-rise Certificate or to allow the removal of the wall. Mr. DiSalvo explained that BZA could not override FEMA requirements. Mr. Mosser said he had documentation saying the BZA (community) could override FEMA. Mr. DiSalvo explained that it appears Mr. Mosser was asking for a variance.

Mr. McMahon explained that Mr. Mosser's appeal was not a request for a variance. That was not what was before the Board nor what had been advertised for this evening's hearing. The BZA was meeting to determine if the Zoning Administrator's decision was valid.

Mr. DiSalvo explained the difference between a variance versus an appeal. He clarified that Mr. Mosser needed to address the appeal he filed.

Mr. Mosser addressed Violation #1, a site plan violation, stating the four parking spaces were not removed. He claimed that he could not get a permit.

Regarding Violation #3, a site plan violation, Mr. Mosser repeated that he did not add the electricity and septic. They were approved in 2006. Ms. Jenkins shared the electricity and septic were installed in 2006 for a singlewide, not two recreational vehicles. Mr. Mosser went on to clarify that behind the bath house, there are underground drain lines and they were installed when the RV park was built.

The discussion turned to Violation #7, a SUP violation that "no recreational vehicle shall remain on the property for more than 180 days per year." As stated in the Notice of Violation, staff has observed some RV units located on the property for more than 180 days and the two RV units hooked up to electricity and septic won't be able to move quickly in case of flooding. Some of the RV units have expired DMV plates and inspection decals.

Ms. Jenkins reminded the Board that the location the two new RV units are parked in the wrong zoning district for recreational vehicles. Mr. Mosser added he would like to elevate that area and build 2 apartments. Mr. McMahon and Ms. Jenkins both stated he could not build apartments in the floodway. Ms. Jenkins stated Mr. Mosser has a history of not obtaining permits. Mr. Mosser said he is always told no and he is never given an option. Ms. Jenkins reminded him that rezoning has been mentioned; however, the amount of land is an issue especially to maintain the gas station. Ms. Jenkins explained that a variance could be applied for, but the violations have to be resolved first. Mr. Mosser stated he does not feel the County wants to work with him. He referred to the deck and elevation of the units, but the County again stated they could not entertain building homes in a floodplain. Ms. Jenkins explained that the recreational vehicle park was established with a SUP and emphasized the RVs are limited to 180 days a year by Code; adding that recreational vehicles can be moved in case of flooding; houses cannot. The County ordinance will not allow a single family home, duplex, or manufactured home to be in the floodway. She added that recreational vehicles are not allowed in Commercial Business (CB) district.

Mr. Mosser addressed the installation of a gate noted in Violation #8, a SUP violation. He would like to only install the gate once. He indicated he did not know why the previous owner did not install the gate and he does not understand why he is being held responsible for the 18-year-old site plan.

In regards to the parking, Violation #10, Mr. Mosser felt there is enough parking at the gas station and he does not feel he has the authority to do anything about it. He noted there have been no accidents and that VDOT is supposed to put in "no parking" signs in front of the store, along the road. Ms. Jenkins shared that by adding the two illegal RV spaces on the parcel zoned Commercial Business (CB), a portion of the customer parking for the store is now utilized by the RV occupants.

Mr. DiSalvo asked Mr. Mosser if he could move the two RVs from the Commercial Business (CB) lot over to the Agriculture (A-1) lot where the RV Park is located. Mr. Mosser indicated that would be difficult for the occupants.

Mr. DiSalvo explained to Mr. Mosser that the County cannot do anything assist from a zoning or variance perspective until the violations are resolved.

With no further information from Mr. Mosser, Mr. DiSalvo closed the public hearing.

Mr. Reilly moved that Ms. Jenkins and Mr. Mosser resolve the violations and set a date to readdress the appeal with BZA. Mr. DiSalvo explained to Mr. Mosser that he bought property that was already in violation; therefore, the violations became his responsibility. Ms. Jenkins expressed that she has shown in her staff report that the County has repeatedly tried to work with Mr. Mosser for the past two years.

Mr. Shorter indicated that he was going to abstain from discussion but then shared with the Board that he has known Mr. Mosser for some time. They played football together at Ferrum College. Mr. Shorter indicated he felt Mr. Mosser wants to do it right, but he does not want to spend a fortune to do it.

Mr. DiSalvo asked if the County staff could provide Mr. Mosser with a list of how to resolve the violations.

Mrs. Gibson responded that the County's Development Review team meet with Mr. Mosser on August 7, 2018 and a detailed list of how to correct the violations was provided to Mr. Mosser. A copy of that meeting summary was also provide to the BZA in the meeting information for this meeting.

Mr. Mosser reiterated that he wanted some type of comprehensive plan to assist him.

Mr. Shorter asked for clarification of where the two RVs are located.

Mr. DiSalvo referenced the list the Plan Review team provided Mr. Mosser and repeated that the violations must be resolved before a "roadmap" to move forward can be provide to him. Ms. Jenkins explained that we must uphold the zoning ordinance adopted by the Board of Supervisors for the County. She restated to Mr. Mosser that he could apply for a variance for setbacks in some situations to improve to property, but that he could not expand any more at this time without making the situation worse.

Mrs. Gibson reminded the Board that the options for the BZA is to uphold the Zoning Administrator's decision, modify or overturn her decision. Mr. DiSalvo encouraged Mr. Mosser to address the violations so he could move forward.

Mr. Moore asked if the Board could split the violation. Violations 1, 2, 3, 4, 7, 8 and 9 are the issues to correct for the County and Violations 5, 6 and 10 should be addressed with VDOT.

Mr. Shorter added that Mr. Mosser does not want to do anything until he knows it is worth it. For example, the installation of the gate was due to the SUP and he felt the County should work with Mr. Mosser to resolve the issues. The gate was for the safety of the occupants.

Ms. Jenkins indicated that several of the violations could be resolved with relative ease, with two only needing a site plan correction, but some of the violations were problematic. The parcel with the store must be zoned Commercial Business (CB) for the onsite fuel sales. The lack of acreage would be an issue if the parcel was being considered for rezoning to another district for the two additional RV spaces.

Mr. Reilly stated that he agrees with the Zoning Administrator's decision regarding Violations 1, 2, 3, 4, 7, 8 and 9, but disagrees with the decision regarding Violations 5, 6 and 10 because these violations need to be addressed with VDOT.

Upon a motion by Mr. Reilly, seconded by Mr. Milton and carried by a 5-0 vote, the meeting was continued to November 13, 2018 at 5:00 p.m. and the staff was directed to work with Mr. Mosser on resolving the violations. The Board will receive progress information during the November 13, 2018 meeting before making the final determination regarding the appeal.

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| Ayes: | DiSalvo, Reilly, Miller, Shorter, Moore |
| Nayes: | None |
| Abstain: | None |

NEW BUSINESS

An update on legislative changes to State Code requiring revision of the zoning ordinance approved by the Board of Supervisors on October 11, 2016 was provided by the County Attorney.

ELECTION OF OFFICERS

Upon a motion by Mr. Moore, seconded by Mr. Shorter and unanimously carried, the existing officers shall remain in their respective positions; therefore Mr. DiSalvo and Mr. Reilly will continue to serve as Chair and Vice Chair respectively.

ADJOURNMENT

Upon a motion by Mr. Moore, seconded by Mr. Shorter and unanimously carried, the meeting was adjourned at 7:14 P.M.