

At a meeting of the Accomack County Board of Zoning Appeals held on the 7th day of September, 2022 in the Accomack County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

1. CALL TO ORDER

A. MEMBERS PRESENT AND ABSENT

Board of Zoning Appeals Members Present:

Mrs. Elizabeth Kerns, Chairman
Mr. Harvey A. Drewer, II, Vice Chairman
Mr. Lynn P. Gayle
Ms. Gracie Milbourne
Mr. W. Richard Bull, Jr.

Board of Zoning Appeals Members Absent:

Others Present:

Mr. Paul Seltzer, Deputy Director
Mr. Chris Daley, Code Enforcement Officer II
Mr. Michael Milburn, Code Enforcement Officer II
Ms. Shawnta McCain, Administrative Assistant II

B. DETERMINATION OF A QUORUM

There being a quorum, Chairman Kerns called the meeting to order at 10:01 a.m.

2. ADOPTION OF AGENDA

On a motion made by Mr. Gayle and seconded by Mr. Drewer, the Board of Zoning Appeals voted unanimously to approve the August 3, 2022 meeting agenda as presented.

3. MINUTES

On a motion made by Mr. Gayle and seconded by Mr. Drewer, the Board of Zoning Appeals voted unanimously to approve the September 7, 2022 meeting minutes with corrections.

4. OLD BUSINESS

A. SUSE-000324-2022 – Christopher McCabe – Tax Map #83B-2-D-3

A hearing initiated by Christopher McCabe to request a Special Use Permit (SUP) pursuant to Accomack County Code Section 106-78(11) which allows for travel trailers, located outside of travel trailer parks, which are to be occupied for habitation. Mr. McCabe is applying on behalf of his clients, the CiCioni's, who would like to live in their travel trailer while they build their home. The parcel is located on Russell Drive, in the East Point neighborhood, Tax Map # 83B-2-D-3 and is zoned Residential.

On a motion made by Mr. Drewer and seconded by Mr. Gayle, the Board of Zoning Appeals voted unanimously to postpone SUSE-000324-2022 until a later meeting date at the request of the applicant.

5. NEW BUSINESS (PUBLIC HEARINGS)

A. VAR-000393-2022 – Chris McCabe – Tax Map #83B-2-D-1&2

A hearing initiated by Chris McCabe to request a variance of 10 feet pursuant to Accomack County Code Section 106-81, which states structures on all public rights-of-way, shall be set back 50 feet or more from the edge of the right-of-way. Mr. McCabe is representing the owners of the parcel who are building a dwelling on these unimproved parcels. They are located in the development of East Point, Tax Map # 83B-2-D-1&2.

Mr. Daley gave an overview of the request presenting the case to the Board. Applicants are planning to construct a new home once the line between both parcels have been vacated. Mr. Chris McCabe of Coastal Compliance Solutions was invited up to speak, on behalf of Mr. and Mrs. Cicioni, and was sworn in. The Cicioni's have decided on a different home style that would fit better into the neighborhood. Mr. McCabe stated the home will be stick built and that grade in ground level would be raised 1 foot above existing grade with approval.

Mr. Prentice Moore of East Point, was invited up to speak and was sworn in. Mr. Moore is a neighbor from across the street and is requesting a month to speak with other neighbors regarding the water runoff from the new home with a setback only 10 feet from the road. The water runoff has been an extreme issue with the run off because the state is not maintaining the ditches or floodgates that were in place.

Ms. Susan Wilder of East Point, was invited up to speak and sworn in. Ms. Wilder is a neighbor directly across from the family that is requesting the 10 variance. Ms. Wilder stated her concern about the water runoff and requested that the case be tabled until the people in the East Point neighborhood have done the proper research.

Jack Krafick of East Point, was invited up to speak and sworn in. Mr. Krafick stated that he had nothing more to add, as his neighbors have done a good job with the concerns.

Mr. Chris McCabe was invited back up to respond to the concerns of the neighbors. Mr. McCabe clarified that the home would not be 10 feet from the road way but would instead be a 10 foot reduction which will be 40 feet from the right of way. He addressed the water runoff issues by stating they are going through the Environmental program regarding sediment control, stormwater management and RPA requirements for what needs to be planted to control which direction the water will go. Mr. McCabe also cleared the notion that it will be two lots being combined and not four lots. According to the Staff Report, the staff responded that the variance would not be of detriment to adjacent properties; the staff researched the surrounding areas and found six homes located near parcels had an average setback of 41.3 feet and they are asking for just 1.3 feet more than that.

On a motion made by Mr. Gayle and seconded by Mr. Drewer, the Board of Zoning Appeals voted unanimously to grant a variance for VAR-000393-2022 for a variance of 10 feet pursuant to Accomack County Code Section 106-81, which states structures on all public rights of way should be setback 50 or more from the edge of the right of way for Tax Map # 83B-2-D-1&2.

This variance is granted for the following reasons:

- 1. The parcel is a nonconforming lot that was created prior to the adoption of the ordinance.*
- 2. The applicants have applied for an administrative waiver that will allow them to encroach into the first 50 feet of the RPA.*
- 3. The average setback for the dwellings in the surrounding area is 41.3 feet.*

B. APPL-000390-2022 – Linda Hurley – Tax Map # 84-5-1,2 & 84B-A-16

A hearing initiated by Linda Hurley, for an application filed under Accomack County Code Section 106-254 to appeal a determination made under Accomack County Code Section 106-252(1) by the Administrator in a letter date August 5, 2022. Ms. Hurley’s zoning application (RE VW-000365-2022) regarding the survey dated January 13, 1989 to determine if the lots in questions are not “Non-Conforming Lots of Record”. These unimproved parcels are located outside of Onancock, Tax Map #84B-5-1&2 and 84B-A-16 and are dual zoned Agriculture and Residential.

Chris Daley gave an overview of the request presenting the case to the Board. Mr. Daley stated that in order for the lots to be considered nonconforming lots, the parcels would have needed to be legally platted when they were created; the lots in questions were created improperly due to the fact that they were not exempt from the subdivision ordinance and needed the County approval prior to the plat being recorded. There is a subdivision 150 feet further down the road called East Bay Farms; the lots in this subdivision are smaller than 3 acres in lot size, with the approved subdivision agents signature when this was recorded November 1, 1988, three months prior to this plat being recorded. The plat in question does not have any approval signatures from any county officials, subdivision agent or other signatures. Chris Daley stated that the decision was based on the wording of the plat which states “Subdivision of Property”, which is a subdivision of land.

Mr. Norman B. Pitt of CSE LLC, was invited up to speak and was sworn in. Mr. Pitt stated that the three lots in question, were not done as a subdivision but instead surveyed under the agricultural ruling, that 30,000 sq. ft. could form a lot. So there was no “subdividing” there was three individual parcels of land. Mr. Pitt stated that he had spoken with previous county officials, Mr. Fluhart, and that Mr. Fluhart stated that no sign-off was needed because of the surveyor basing the 30,000 sq. ft. survey and that during that time a lot of surveyors wouldn’t refer to them as “lots” or “subdivisions” but instead it was known as a, *Division of Land*.

Mrs. Burney Clark, on behalf of Charles Clinton Sisson, was invited up to speak and was sworn in. Ms. Clark was concerned about the scope of the meeting. was this clearly limited to whether the lots were nonconforming based on accessing what was the law in 1989 and whether it was followed correctly, or was it broader than that and do neighborhood concerns about what may happen with these properties have some relevance. It was stated by Ms. Kerns that the question at hand was if it is a nonconforming lot of record or is it not. Ms. Burney stated the parcels in question are in flood hazard areas and wetlands run along the borders and that parcels flood in heavy rains.

Mr. Richard Town sent in an email to voice his concerns about the narrow and worn road conditions, standing water due to ditches not draining, property flooding during high tide and bad weather, aging

boat ramps and docks with limited parking and derelict homes left behind by people who may have passed away or have moved on. The letter also voiced the concern about the changes to the property, property access and property elevation and how those changes could affect surrounding properties. It was stated in the letter, a concern that the appeal was being requested to allow Ms. Hurley or a future buyer to build or place three separate homes on the properties; which could open the door to possible use of these homes being transient residential units, tourist homes or Air BnB's.

Linda Hurly was invited up to speak and sworn in. Ms. Hurley stated that before purchasing the property, she had previously spoken to David Fluhart about putting 3 houses or mobile homes on the lots and spoke with a gentleman from wetlands that showed her where the RPA was located. And there have been improvements made to the lots.

On a motion made by Mr. Gayle and seconded by Mr. Drewer, the Board of Zoning Appeals moved unanimously to uphold the appeal for APPL-000390-2022 for the interim zoning administrator's decision for what would be termed as a nonconforming lot for Tax Map #84B-5-1,2 & 84B-A-16.

- ***For clarity the Board decided to grant the appeal and overturn the Interim Zoning Administrators decision on what would be classified as a nonconforming lot.***

C. SUPV-000391-2022 – Kirkpatrick – Tax Map #84-A-44

A hearing initiated by Anne Kirkpatrick to request a Special Use Permit pursuant to Accomack County Code Section 106-53(22) which permits an accessory dwelling and a variance of 113 sq. ft. pursuant to Accomack County Code Section 106-1 which states no accessory dwelling may exceed 1,200 square feet in floor area. Ms. Kirkpatrick would like to place a 1313 sq. ft. accessory dwelling on the parcel. The parcel is located at 18192 Robbins Ln., Onancock, Tax Map # 84-A-44 and is zoned Agriculture.

Mr. Chris Daley gave an overview of the request presenting the case to the Board. Ms. Anne Kirkpatrick was invited up to speak and sworn in. Ms. Kirkpatrick is requesting to place an accessory dwelling on the parcel so that she is closer to her mother to take care of her, as she gets older. She stated that she is currently staying with her mother since her father passed away August 2021 and is requesting to place the dwelling as; her husband will be moving down and their own space is needed. Ms. Kirkpatrick also stated the dwelling would be placed out of the RPA; she just wanted to make sure her request is approved to place the accessory dwelling.

On a motion made by Ms. Milbourne and seconded by Mr. Gayle, the Board of Zoning Appeals voted unanimously to grant a Special Use Permit and Variance for SUPV-000391-2022 for a special use permit and variance of 113 sq. ft. pursuant to Accomack County Code Section 106-1 which states no accessory dwelling may exceed 1,200 sq. ft. in floor area for Tax Map # 84-A-44.

This Special Use Permit and Variance is granted with the following conditions:

- 1. The applicant applies and obtain all required permits to allow for the construction of an accessory dwelling.***
- 2. Submit a new site plan showing the proposed accessory dwelling located out of the RPA.***

D. SUPV-000394-2022 – Garlock – Tax Map #93-10-D

A hearing initiated by Richard Garlock to request a Special Use Permit pursuant to Accomack County Code Section 106-53 which states a use of land not specifically listed as a use permitted by right or by special exception-special use in the agricultural district regulations, which is clearly similar and compatible with the uses listed therein and a 150 feet Variance pursuant to Accomack County Code Section 106-57 which states, The minimum frontage for permitted uses shall be 150 feet at the setback line. Mr. Garlock would like to construct an accessory structure on the unimproved parcel that does not have any frontage on a public street. The parcel is located outside of Onley, Tax Map #93-10-D and is zoned Agriculture.

Mr. Chris Daley gave an overview of the request presenting the case to the Board. Richard Garlock was invited up to speak and sworn in. Mr. Garlock stated he purchased the property because it would be better to tend to the property versus his previous property, which had a shed on it, that was too hard to maintain. Mr. Garlock mentioned he already had a home in Onley, so he did not plan on putting a home on this property in question. Mr. Garlock is requesting approval for the structure so that he can put his boats in and that he plans to restore the culvert on the back side of the property to restore that access and that he will not be using that access point because he will be using the access point to the front of the property.

On a motion made Mr. Gayle and seconded by Mr. Drewer, the Board of Zoning Appeals voted unanimously to grant a Special Use Permit and Variance for SUPV-000394-2022 for special use permit and variance pursuant to Accomack County Code Section 106-53(27) which states a use of land not specifically listed as a use permitted by right or by special exception-special use in the agricultural district regulations, which clearly is similar and compatible with the uses listed therein and a 150 feet Variance pursuant to Accomack County Code Section 106-57 which states, the minimum frontage for permitted uses shall be 150 feet at the setback line for Tax Map # 93-10-D.

This Special Use Permit and Variance is issued with the following conditions:

- 1. The applicant repair and maintain the original access shown on the plat that was recorded in 2004. This access is the 35 foot easement shown on the plat that connects to the Belote Farm Road.*
- 2. The applicant apply for and obtain a building permit to allow further construction of the accessory building and that building permit application must use the site plan that was submitted for the Special Use application.*

E. Revocation of April 15, 2015 SUP – RT. 13 Auto – Tax Map #79-A-17A

A hearing initiated by the Accomack County Board of Zoning Appeals pursuant to Accomack County Code Section 106-252(5) which states the Board of Zoning Appeals shall have the power to revoke a special use permit if the board determines that there has not been compliance with the terms and conditions of the permit. No special use permit may be revoked except after notice and hearing as provided in Code of Virginia, § 15.1-495. RT. 13 Auto Repair is in violation of the SUP it was awarded in April 2015 by operating permitted automobile graveyard at this location. It is located at 19045 Lankford Hwy, Parksley, Tax Map #79-A-17A and is zoned Agriculture.

Mr. Paul Seltzer gave an overview of the request presenting the case to the Board. Mr. Mike Milburn presented some pictures of the lot showing some progress has been made to comply with violation notices but not much as there are still more than 5 vehicles (about 40-50) cars sitting on the property and it appears that they are selling vehicles as well. The pictures showed a chain link fence that has been started but not finished and that there has not been a lot of change from July 19, 2022 to August 25, 2022. The SUP was issued in April 2015 and had no conditions but the SUP was specifically for auto repair. The original applicant is no longer using this SUP and is currently leasing out the property. The owner of the property stated that the SUP was approved for a a garage with two bays and as an auto repair. Mr. Milburn did state that it does appear to be auto repair work being completed but there is a number of untagged vehicles and vehicles that appear to be junked on the property. Paul Seltzer mentioned the options of:

- Letting them go on as they are
- Give the business owner specified amount of time to bring parcel into compliance and return to BZA to show efforts made of cleaning the property
- Proceed with revocation hearing and revoke the current SUP, which will mean the business owner will have to cease business right away.

Mr. Watson, co-operator of RT. 13 Auto, was invited up to speak and sworn in. Mr. Watson stated that the business was started in 2019 and that there was two cars all the way to the back of the property and that he had started putting cars there and having customers bring in cars also. Mr. Watson spoke with Mr. Daley who informed him that he could not have the cars in the back as it would look like junkyard and that he could move the cars closer to the shop if he (Mr. Watson) was working on them. In 2021, Mr. Daley conducted a follow-up visit and noticed that all cars being worked on was inside the building and informed the business owner he could continue to conduct business if he kept everything like it was. In July 2022, Mr. Milburn noticed many cars on the property that appeared to be junked or untagged. Mr. Watson stated that people are stealing other peoples license plates and they are having to replace those license plates and when they inform customers, customers are deciding to take their tags off to avoid them being stolen. Mr. Watson stated that they do engine repairs, mechanic specials and other small stuff like oil changes but that there is only two of them working on the cars so it may take some time to finish. In other situations, customers are not paying in full or paying payments on time, which is why some cars may be, sit on the property for an extended amount of time. Mr. Watson stated that he does do a lot of work for a car dealership, In and Out Auto, who drops off cars they get from auctions to fix up the motors or engines because the dealership does not have the mechanics to complete the work.

Ms. Eve Raquire, with the operators of RT. 13 Auto, was invited up to speak and sworn in. Ms. Eve mentioned that it is not a junkyard because the cars are movable. Ms. Eve showed concerns as to what conditions would be placed on the SUP if the business owners applied themselves.

Ms. Tonya Forlerville was invited up to speak and sworn in. Ms. Forlerville stated the SUP does not have conditions placed and now since they would be applying for a SUP for themselves that there would be conditions placed on them.

On a motion made Mr. Gayle and seconded by Mr. Bull, the Board of Zoning Appeals voted unanimously to postpone the revocation with public hearing still open until the November 2, 2022 meeting.

- *The current operators of Route 13 Auto are to apply for a Special Use Permit to continue operating, but in their own name.*

F. SUSE-000033-2020 – Revocation of May 2022 SUP – GT Tires – Tax Map #79-A-32A

A hearing initiated by the Accomack County Board of Zoning Appeals pursuant to Accomack County Code Section 106-252(5) which states the Board of Zoning Appeals shall have the power to revoke a special use permit if the board determines that there has not been compliance with the terms and conditions of the permit. No special use permit may be revoked except after notice and hearing as provided in Code of Virginia, § 15.1-495. GT Tires is in violation of several conditions of the SUP that was awarded in May 2020. It is located at 19336 Lankford Hwy, Parksley, Tax Map #79-A-32A and is zoned Agriculture.

Paul Seltzer gave an overview of the request presenting the case to the Board. Upon research conducted by Paul Seltzer, Chris Daley and Michael Milburn, there was never a Change of Use permit or Certificate of Occupancy issued. Mr. Seltzer stated that the business owners went to court once in September 2020; the business owner received a Stop Work Order August 3rd and was found guilty and had to pay a fine. A second stop work order was issued August 17th and another inspection was conducted September 23rd but the CO was never issued. The business owner has not obtained a business license and in his narrative at the time of granting the SUP, the applicant stated operating hours would be from 8 a.m. to 5 p.m.. Mr. Milburn has conducted several inspections and have witnessed the business being operated well after 5 p.m.. Mr. Milburn stated that he conducted visits to 9 other businesses and spoke with each business and gave them the opportunity to clean up the property before issuing any notices. Prior to Mr. Milburn inspecting the GT Tires location there was a case that was done by the Virginia State Police and Accomack County Sheriff's department as well.

Mr. Donald Young was invited up to speak and sworn in. Mr. Young is the owner of property around there and has mentioned that he cannot access the property through entrance because of the junk and has witnessed the business owners urinating outside of the business because there is no water or septic on the property. Mr. Young stated the business owners work on cars at night and it is usually the busiest during weekends.

Mr. Miguel Morano was invited up to speak and sworn in. Mr. Morano is the business owner who applied for the SUP and stated that the business is not open yet and that all the vehicles on the property belong to him and that he works on his own cars in the afternoon. Mr. Morano stated that the tires that are currently on the property are tires from his previous business when he moved the truck from one property to another. Mr. Morano stated that the property is cleaned up and the junk is no longer on the property.

On a motion made by Ms. Kern and seconded by Mr. Drewer, the Board of Zoning Appeals recognized that based on the applicants testimony he has never started business there and the Special Use Permit has expired, making it no longer applicable or valid.

6. OTHER MATTERS

A. Review of January 5, 2011 SUP-11001 – Glen Salmon

SUP # 11001, an SUP awarded to Glenn Salmon, on January 5, 2011, for a private airstrip, located in Painter VA, is due for its 5 year review in September.

- Mr. Daley received a letter from Mr. Salmon, indicating that he is still compliance with all the conditions that were issued for the permit that was granted in January 2011. So if the review is a satisfactory review, it will be attached to his file and scheduled for another compliance check in another 5 years.

7. NEXT MEETING

The next regular Board of Zoning Appeals meeting is scheduled for Wednesday, October 5, 2022 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac.

8. ADJOURNMENT

On a motion made by Mr. Bull and seconded by Mr. Gayle the Board of Zoning Appeals voted unanimously to adjourn the meeting.

Mrs. Elizabeth Kerns, Chairwoman

Prepared by Shawnta McCain
Planning & Zoning County of Accomack