



Nelson County Board of Zoning Appeals

MEETING AGENDA:

March 5, 2024

7:00 P.M.

**General District Courtroom
84 Courthouse Square, Lovingson, Virginia**

I. Call to Order

II. Approval of Minutes –

a. September 6, 2023

III. Officer Elections

- a. Chair
- b. Vice Chair
- c. Secretary

IV. Other Business

- a. **Variance #240031 – Request for Reduction of Front Setback at 695 Stagecoach Road (Afton) by Theresa Moore**

V. Next meeting TBD



Nelson County Board of Zoning Appeals Meeting Minutes September 6th, 2023



Present: Chair Mary Kathryn Allen and Board Members: Jerry Samford, Carole Saunders, and Shelby Bruguire

Staff Present: Dylan Bishop, Director. Emily Hjulstrom, Planner/Secretary. Phil Payne, County Attorney

Call to Order: Chair Allen called the meeting to order at 7:00 P. M. in the General District Courtroom, County Courthouse, Lovington.

Chair Allen presented the following:

Nelson County Board of Zoning Appeals Meeting procedure

Call to Order:

Welcome to the Board of Zoning Appeals meeting for (date): There are extra meeting agendas in the back row that detail what we will be discussing and in what order at tonight's meeting.

Because the BZA is appointed by the Circuit Court Judges of the 24th Judicial Circuit Court the BZA is considered an extension of that court and we will be following courtroom procedures. This meeting is also being recorded so it is important that only one person speak at a time and from the podium.

- Our purpose is to hear appeals by citizens of decisions made by the Zoning Administer.
- Everyone who has something to say will have a chance to present evidence in a manner that it can be clearly recorded and heard by everyone.
 - First we will hear the staff report, followed by questions from the BZA members.
 - Next the applicant will speak from the podium. Before they present the applicant must state their full name and take an oath. After presenting there are usually follow up questions by the board. The applicant may have representatives also present if they choose.
 - Next the public hearing portion of the meeting will be announced by the Chairman. Anyone who would like to present evidence is invited to approach the podium one at a time, state their full name, take the oath and speak. If you wish to speak we ask that you not interrupt the speaker but wait until it is your turn to speak formally.
 - After everyone that wishes to speak is through the public hearing is closed.
- The BZA then will discuss the case and request a motion to approve or deny the appeal. Followed by a vote or decision to extend or postpone a decision.

Oath:

Do you swear or affirm that the information you give before the Nelson County Board of Zoning Appeals shall be the truth, the whole truth, and nothing but the truth, So help you God?

If the appeal is denied the applicant is informed that they do have the right to formally appeal to the court and that the Zoning Administer can provide them with information on how that is done.



Review of meeting minutes:

October 5th, 2021

Mr. Samford made a motion to approve the October 5th, 2021 minutes. Ms. Saunders seconded the motion.

Yes:

Jerry Samford

Carole Saunders

Shelby Bruguire

Mary Kathryn Allen

March 7th, 2023

Mr. Samford made a motion to approve the March 7th, 2023 minutes. Ms. Saunders seconded the motion.

Yes:

Jerry Samford

Carole Saunders

Shelby Bruguire

Mary Kathryn Allen

Appeal #999

Ms. Bishop presented the following information:

**Nelson County
Planning & Zoning**

Memo

To: Board of Zoning Appeals
From: Dylan M. Bishop, Director of Planning & Zoning *DMB*
Date: September 6, 2023
Re: Appeal #999 – Notice of Violation for Shooting Range at TM# 13-12-4, 5

This property is currently zoned A-1 Agriculture. On May 2, 2023 the property owners were sent a Notice of Correction for complaints received regarding an alleged unpermitted outdoor firing range use. Upon inspection, staff observed items at the site that are commonly used for target shooting. As the owners confirmed the use and then continued as reported by Sheriff David Hill on June 16, 2023, they were subsequently issued a Notice of Violation on June 27, 2023. This Notice requested that the owners comply by discontinuing the outdoor firing range use, applying for a Special Use Permit if so desired, or file an appeal within 30 days. The owners' agent filed an appeal within the required 30-day timeframe.

Per Section 4-1-30a, an outdoor firing range in conjunction with the County noise control ordinance is a Special Use Permit in the A-1 District. Section 4-1-12 permits accessory uses as defined.

In the absence of a codified definition, I have applied the following administrative interpretation based on case law, precedent, and resources from the American Planning Association (APA):

An outdoor firing range is any area for the sport shooting of firearms which is either commercial, or is open to the public, or is the main use. Here it is determined that this outdoor firing range was a main use.

The Zoning Ordinance definitions provide that an "accessory use or structure" is "a subordinate use or building customarily incidental to and located upon the same lot occupied by the main use or building." Whether an activity is an accessory use is a question of fact.

On this property, the shooting and target practice is occurring on an unimproved tract of land. According to reports from complainants and the Sheriff's Department, the shooting is frequent and not occasional, it is repetitive, and it sometimes occurs at night. Those shooting are not the landowners.

Therefore, it is my determination that the use of the land for these activities comprise a private outdoor firing range which is not an accessory use, but the main use, which would require approval of a Special Use Permit.

Attachments:

1. Memo from County Attorney Phillip D. Payne IV
2. GIS Aerial with Zoning
3. Notice of Correction dated May 2, 2023
4. Response Letter to Ms. Hjulstrom dated June 2, 2023
5. Notice of Violation dated June 27, 2023
6. Letter to Ms. Hjulstrom dated July 3, 2023
7. Response Letter to Owners' Agent dated July 13, 2023
8. Adjoining Property Owner List and Notice
9. Applicant Letter
10. Legal Notice
11. Appeal #999 Cover Letter
12. Appeal #999 Application
13. Appeal #999 Additional Materials
14. Response to Memo from County Attorney August 29, 2023

Ms. Juliette Wagner of 772 Chin Quapin Dr in Lyndhurst, Virginia took the oath. Mr. Spencer Cross of 12 North New St in Staunton, Virginia was the attorney representing the applicant. Mr. Cross asked if he could ask the applicant questions to help move the meeting along. He asked Ms. Wagner how long she had owned the two parcels in question. She noted that she has owned them since 2001. He asked if there are any homes on the parcels. She explained that there are not. He asked if hay had been raised on the parcels. She confirmed that hay had been raised on the property. He asked if the parcels were in land use. She explained that they had been in land use since at least 1986. He asked how many cuttings of hay they had received that year. She explained that they had someone else cut it and it was usually two cuttings a year. He asked who raised the hay and cut it. She explained that her niece did it. He asked if her family hunts on the land. She explained that her son has hunted on the land since he was 13 and was now 56. He asked if she let her grandson target shoot on the property. She explained that he had and had been doing it for about two years. Mr. Cross asked if her grandson had his friends target shoot with him. She explained that he took one friend target shooting. She added that her grandson had been using the land for shooting with his father since he was about 5 and was 21 now. He asked if she had received any complaints about the shooting prior to contact from the county. She noted that she had not. He asked if she wanted her grandson and his friend to be able to continue target shooting on the property. She noted that she did. He asked if she let anyone pay to target shoot on the land or if she plans to allow that in the future. She noted that she did not and had no intentions of allowing it in the future.

Ms. Saunders explained that the reports indicated that there had been heavy gunfire both day and night, on weekends, and holidays. She asked if Ms. Wagner was aware that the shooting was occurring at all hours and on consecutive days. Ms. Wagner noted that she did not think this had occurred and that she did not think they ever shot seven days in a row. She explained that it was once or twice a week for a couple of hours at a time. Mr. Samford asked if that was every week. She noted that they might not come for 2-3 weeks at a time. Chair Allen asked if anyone aside from her grandson and her one son had permission to shoot on the property. Ms. Wagner noted that no one else had permission. Chair Allen asked if she had been aware of a time when anyone utilized the land for target shooting without her knowledge. Ms. Wagner stated no. Ms. Saunders asked where Ms. Wagner's grandson lived. Ms. Wagner noted that he lived in Waynesboro. Ms. Saunders asked what they were using as targets. Ms. Wagner explained that they shot into a large rock pile. Mr. Cross noted that there are photos in the application of the property. Mr. Cross explained that Mr. Wagner was also there to answer any questions that they had.

Chair Allen opened public hearing at 7:19 PM

Mr. Charlie Wineberg of 294 Ennis Mountain Rd explained that his home was directly across the road from the subject property. He explained that he was there to support Nelson County's opinion that the property was being utilized as a shooting range. He noted that he was a real estate agent that valued property rights. He explained that property rights are codified by zoning ordinances and that the Nelson County Zoning Ordinance provides the community with protections and permissions to enhance and preserve everyone's property rights. He stated that everyone in the county should be protected from

the disruption of having a shooting range developed willy-nilly by their neighbors. He added that there are many primary uses in the A-1 zones and that there are many A-1 properties that have multiple by right uses where none are considered above the other. He noted that a shooting range was not a by right use. He explained that the landowners' initial attorney stated that the complainant was a disgruntled family member and that no targets were being used. He noted that this was not true. He added that the current attorney suggested that the Zoning Administrator created a definition specifically for this matter. He explained that in 30 years as a licensed realtor and 40 years in Nelson County he had never heard of an instance where an absentee landowner travels into the county leading a group to develop, groom, and shoot their weaponry day after day and at night on small acreage in the heart of a community. He explained that the interpretation was triggered by a unique instance of behavior that was outside the norm. He explained that the landowners' attorney cited the Second Amendment. He noted that they did not care about the landowners' right to have guns but that this matter was about the discharge of firearms. He explained that the discharge of firearms was regulated by statute and ordinance throughout Virginia. He added that the commonwealth allows a locality to forbid the use of firearms. He noted that the commonwealth states that a shooting range was defined as an area or structure designed for the use of rifles, shotguns, pistols, silhouettes, skeet trap, black powder, or any other similar sports shooting. He noted that it made no distinction whether it was public or private. He noted that Amherst County defines it as the use of land for archery or the discharging of firearms for the purposes of target practice, skeet and trap shooting, mock war games, or temporary competitions such as turkey shoots. This definition does not encompass general hunting and unstructured and non-recurring discharging of firearms on private property with the property owner's permission. He explained that in this case the shooting was structured and recurring. He added that there are counties like Nelson County that don't define shooting range which allowed for staff interpretation. He noted that the appellants came to their 13 acres primarily to discharge firearms on a recurring basis of consecutive days and weeks, in multiple locations developed for shooting with target and shelter, from day into darkness, and in all weather. He added that they had disrupted the community and returned to the quiet enjoyment of their homes elsewhere. He noted that the county had correctly interpreted the landowners as having an outdoor firing range.

The grandson of Ms. Wagner, Alexander Elliot, lives at 587 Cattle Scales Rd in Waynesboro, Virginia. Mr. Cross asked Mr. Elliot how long he had been utilizing the property. Mr. Elliot explained that he and his father had gone to the property to shoot since he was a young child. He added that he and his friend had been going to the property to shoot for the last two years. Mr. Cross asked about the frequency of the shooting. Mr. Elliot explained that there was no set schedule for the shooting but that they had not shot for seven consecutive days. He stated that the max would be three consecutive days. He stated that he only invited close friends or people that his grandma approved of to come shoot. He added that he had never accepted money for people to shoot on the land or opened it to the public. Mr. Cross asked if any of the neighbors had approached him about the shooting. Mr. Elliot explained that he had received no complaints about the shooting but that he had a neighbor ask him to stop shooting for one specific day which was not a problem. Mr. Cross asked about the night shooting. Mr. Elliot explained that they had night vision devices that allowed them to shoot at night. He explained that they stopped shooting around 10 PM. He added that they have always shot in a safe direction and it was the biggest berm he had ever seen that they shot into. He explained that it was a natural backstop that they shot

into and that they had not made alterations to the land. Mr. Cross asked if he had used targets. Mr. Elliot explained that they had used a steel target on a hanger and cardboard targets on occasion.

The son of Ms. Wagner, Richard Elliot, lives at 587 Cattle Scales Rd in Waynesboro, Virginia. He explained that he had raised his son the right way and that Alexander was an Eagle Scout. He explained that he was cordial and abides by the law. He explained that since his son was a child they have been utilizing that land. He noted that there had been false allegations against them. He explained that they try to do the right thing. He noted that he has been a business owner for 13 years in Waynesboro and that his community would be in support of him.

Mr. Freedman Mowrer of 324 Ennis Mountain Rd. He explained that this was not casual target shooting but the operation of a firing range. Mr. Mowrer stated the following:

“An outdoor firing range does not have to be commercial or open to the public to be an outdoor firing range. And in Nelson County, the precedent of neighborly decency has allowed us to exist in peace without a definition of one. Having said that, it’s unrealistic to think that one cannot, with a little awareness of surrounding counties definitions and common sense, understand the essence of what an outdoor firing range is. Let’s be real, you know it when you see it, and in our community, we’ve been seeing an awful lot of it first hand. In this case, the excessiveness in demonstration of what an outdoor firing range is, has actually lended itself to the county doing their duty and establishing it as such. If there was any reality that reflects the definition of an outdoor firing range, it was what is happening in that field, illegally in A-1 zoning. Unfortunately, it’s a firing range of the worst kind. It’s a firing range without safety regulation, without noise regulation, without input from the surrounding community. But it’s still there, it’s still real. And it’s all in plain sight.

I’ve seen many permanent targets set up, trenches cut by bullets in front of the targets. Wooden target posts cut in half due to the amount of gunfire received. Shelters intermittently set up. Mowers on sight to maintain the area. Barrels on-site to handle the amount of refuse. Countless cardboard cutouts of the human figure riddled with holes. The establishment of multiple shooting stations, some of which required the effort to cut down trees and do landscaping in order to create longer and more challenging targets.

Most consistent hours of operation during peak usage (Winter and Spring): 10am to 10pm. 12 hours. 5-7 days a week. Sometimes 7 days a week. A nice break was 3 days a week. The firing range operates at night as well, multiple lights illuminate the woods as several shooters begin blasting at the target aglow. Other times blasting into complete darkness. A wide variety of weapons are fired, relentlessly, and without regard to the sound and safety impact of neighbors in all directions. Shooters oftentimes stand in a line, or in a triangular formation and fire simultaneously in the direction of a target or multiple targets. At other times, drills seem to be performed, with shooters running, ducking under shots, and physically acting out strategic maneuvers. And what I’ve just described was completely ringed by many residences in close proximity.

Anyone who stands up here and says this was not an outdoor firing range was either severely lacking in information, or was equally misinformed.

Imagine having Sunday dinner to the sound of automatic rifles blasting in the background. Imagine the sound of reading a book and putting your young children to bed (well after dark) to the same sound.

Imagine them waking up the next day and it's happening again. Imagine how it feels to lament the idea of going home because they'll probably be there again. Imagine never being approached or asked how you feel as a Nelson County resident, living in this beautiful, peaceful place, how it feels to be insulted with this level of disturbance and disrespect, created by others who don't even live here, driving from their homes elsewhere to the firing range, to so negatively impact ours. Complete and utter disrespect and disregard was an understatement.

Please support the precedent set by the county, that what these people are doing was not legal or ethical."

Ms. Mary Mowrer of 324 Ennis Mountain Rd. Ms. Mowrer stated the following:

"Good evening. My name is Mary Mowrer and I am here in support of Planning and Zoning's determination that the property in question was being used as an outdoor firing range, which requires a special use permit in A-1 zoning.

I can attest firsthand to the main use of the land as a firing range. Prior to the Notice of Correction that was sent to the landowners, aside from the haying twice a year, the only activity that occurred on the property was the continuous, relentless firing of weapons. Individuals who do not own the land or live in the area would come to the field to shoot day after day, from mid-morning and into the night. It was not uncommon for my family to have to endure the sounds of gunshots for the entirety of the day; the sound of rifles as I tried to put my children down for naps in the afternoon, the sounds of pistols as we tried to enjoy a family dinner, the sound of machine guns as we read bedtime stories. It became so common that it was a pleasant surprise when we didn't hear the shooting. These individuals came to the property to fire multiple types of weapons at different targets. If they were not firing, they were setting up different scenarios, targets, etc. However anyone wants to pick apart the definition of a firing range, there was no question that was how the property was being used.

I've lived at my home on Ennis Mountain Road for almost ten years. Prior to 2022, there was occasional and recreational shooting on that property. For whatever reason something changed, and a firing range was established and became the main use of the property. What was once a peaceful, rural mountain road, turned into what sounded like a war zone. How planning and zoning's determination was being challenged again today was beyond comprehension.

For additional neighbors who were not able to or chose not to speak here today, we have signed documents attesting to their observation of the use of the property as a firing range. If this was occasional, recreational, or an accessory use of the land, one has to wonder why all of us have spent the effort to come here and speak or sign these documents. The land was being used as a firing range, which was not permitted in A-1 zoning. "

Ms. Mowrer apologized to the landowner for having to go through this.

Mr. Tom Harvey of 1600 Ennis Mountain Rd. Mr. Harvey thanked the board for having the hearing and that he appreciated hearing both sides. He noted that he had been on Ennis Mountain for about 35

years and was about 3.5 miles from the property. He explained that he was a retired Army Colonel who spent 20 years in the army where part of his job was establishing firing ranges and training soldiers. He noted that this property was being utilized as a firing range. He explained that he could hear the indiscriminate and constant shooting from 3.5 miles away. He noted that he strongly supports the Second Amendment and that he went to appropriate firing ranges when he fired his weapons. He noted that he understood that this could be a contentious issue but that this was a firing range that had not been safely managed. He noted that he could hear indiscriminate firing and automatic weapons that were not appropriate for the residential area. He added that he supported Planning and Zoning's recommendation.

Chair Allen closed the public hearing at 7:37 PM

Mr. Phillip Payne, Nelson County Attorney noted that he was representing the Zoning Administrator. He explained that the U.S. Supreme Court case that Mr. Cross had put in his memorandum was not a land use case, that it was whether the state of New York could require a special need for self-defense in order to issue a carry license to a citizen. He added that the Supreme Court ruled it as unconstitutional in light of the right to keep and bear arms. He explained that the Zoning Ordinance does not touch upon the right to bear arms. He noted that from the land use context they had to think of the considerations that go into land use planning. He explained that he had the right to build and live in a home but that he did not have that right to do so in an industrial zone.

He added that the question did not depend solely on what was a main use. He explained that there can be several main uses with the most common in Nelson County being residential and agricultural.

He added that there was no question of the good character or integrity of the extended Wagner family.

He explained that the issue was whether the use was a main use or an accessory use. If it was a main use it would require a Special Use Permit. He noted that the Zoning Administrator must interpret terms daily and the simplest phrase can require consideration and interpretation. He gave the example of a yard sale, a term that was not defined in the Zoning Ordinance. He questioned what would happen if a yard sale were to occur every Saturday or with greater frequency. He explained that at some point the Zoning Administrator would have to make a determination and decide on a sensible limit of what a yard sale was. He added that this requires a case-by-case analysis with every zoning question being unique.

He explained that in determining whether a use was recognized as an accessory use or a main use, accessory uses are innumerable. For example, he explained that a residential landowner could have a large swimming pool. If the landowner were to open it to the public would it become a commercial use which was not permitted in a residential district or would it become a main use that requires a Special Use Permit? He explained that in the current instance, even if an outdoor firing range were not a stated use in the Zoning Ordinance, it would still need to be evaluated on whether or not it was an accessory use. He noted that accessory uses must be customarily associated with the main use as well as being subordinate in area, extent, and purpose to the primary use of the parcel. He explained that Ms. Mowrer testified that prior to 2022 there was occasional and incidental gunfire. He explained that naturally there would be some gunfire, hunting, and occasional target shooting. He noted that in this

instance the neighbors have explained that the shooting goes far beyond the hunting, incidental target practice, or trap shooting. He added that Mr. Harvey noted that he was a retired Army Colonel who had done it for a living and knew what it was. He explained that based on the time devoted or the extent of the use, a shooting range is not accessory to a haymaking operation. He added that if the evidence presented supported the Zoning Administrator's determination then her determination should be upheld.

Mr. Cross explained that the position of the landowner was largely contained in the written appeal that was filed. He noted that one of the big questions before the board was, "What are the roles of government here?" He noted that the code makes it pretty clear that the Board of Supervisors creates the ordinances, Zoning enforces it, and the Board of Zoning Appeals overlooks those decisions. He added that the BZA can draft the ordinances. He explained that the term 'Outdoor Firing Range' was not defined in Nelson County whereas it was in other counties. He asked whose job it was to make this definition. He explained that elected officials have to answer to everyone in the room as far as time, place, frequency, etc. if they find it important enough to create a definition. He explained that the Zoning Authority has been put in a position by these complaints to take this action. He noted that the definition of an Outdoor Firing Range first appears in a memo dated September 6th from Dylan Bishop, "An outdoor firing range was any area for the sport shooting of firearms which is either commercial, or is open to the public, or is the main use. Here it was determined that this outdoor firing range was a main use." He explained that the definition implies one main use which was haymaking. He argued that there was more time dedicated to growing hay than there was to shooting. He explained that the shooting range would need to be the only main use to meet this definition. He questioned what a Special Use Permit would entitle you to without a definition made by the proper county officials. He explained that if the owners were granted a Special Use Permit they would not know what they would be allowed to do. He questioned whether this definition was formulated to create a violation from the complaints of the neighbors. He noted that Mr. Payne cited a case out of Norfolk that involved the local authority dealing with a zoning issue where you were permitted to have a certain use if it was adjacent to the property. He explained that for decades the housing authority there had used the definition for adjoining and the applicant knew that. He noted that the applicant attempted to use a definition from another source to be able to do what they wanted. Mr. Cross explained that the court said no because he was forewarned, everyone was informed, and this was not the administrator inventing code on the spot. He noted that this case was different from the one at hand. He added that this should be a decision made by the Board of Supervisors. He noted that the decision of the Planning and Zoning Authority was improper because it was arbitrary and not what the law contemplates as far as rule making.

Mr. Samford asked Mr. Payne about the difference between "the main use" and "a main use". Mr. Payne explained that there can be multiple main uses of a property as well as instances where there was only one main use. He explained that there might be a campground where it was the only main use on the property. He added that in other cases, agricultural and residential zoning go hand in hand with the example of a dwelling and a farm on the same property.

Ms. Bruguere noted that there was not a definition in the ordinance and as Mr. Payne stated the Zoning Administrator needs to make determinations on a case-by-case basis. She explained that while they did not have a definition, they have a resolution from the Board of Supervisors in support of Second

Amendment rights. She explained that the Board of Supervisors wanted to make it clear that their intent was that the public funds of Nelson County would not be used to restrict Second Amendment rights. She noted that while they did not have a definition, they did have a guide.

Mr. Samford asked Mr. Wineberg if he could provide more information regarding the continuous nature of the shooting. Mr. Wineberg explained that he did not begin to record the frequency until it began to be bothersome and at that point he still did not write it down. He noted that other people had better records of the shooting. He added that there are also photos of the circumstances on the property. He added that on the 5 out of the 13 acres that were growing grass he couldn't say exactly how many days it was happening. He added that the Sheriff's Department also has a record of their calls.

Mr. Mowrer noted that he did have recordings both day and night of the firing range and operation. He added that another neighbor had printed photographs and journal entries. He stated confidently under oath that from October through to when the violation notice was sent out, the shooting was, at times, 7 days a week, continuous throughout the day, and a surprise when you came home and it was not happening. He explained that the records are only a shadow of what the reality was. He added that there are 5 acres where grass was growing part of the year. He explained that the physical shooting range has existed every second of every day. He stated that he had never personally witnessed the owners cutting or moving hay.

Ms. Saunders noted that it sounded like there was a big change prior to 2022 when there was an increase in the shooting beyond what was reasonable. She explained that she did not know if this was due to the grandson getting older or some other reason. Chair Allen noted that she specifically asked the land owner if she knew of anyone aside from her grandson and his one friend that were shooting but she said no, but then they had asked the grandson and he stated it was himself and some other friends. She noted that it was obvious that it was more than just the grandson and his friend.

Mr. Samford asked Mr. Harvey if, based on his experience, he had any opinion on how many people were shooting at a time. Mr. Harvey noted that it was certainly more than two due to it being indiscriminate and uncontrolled rapid fire. He explained that he has a hunting group on his property of 350 acres and that they hunt all the time during hunting season. He explained that they are accustomed to what's normal. He noted that you would hear occasional firing from the subject property before 2022 and it was not bothersome. He explained that it was now more than two people, rapid-fire, and often.

Ms. Allen referenced the 2005 case of Orion's Sporting Group v. Nelson County Board of Supervisors from Mr. Payne's memo and asked Mr. Payne about a shooting range once being a Conditional Use Permit. Mr. Payne explained that at some point in the past, Nelson County eliminated Conditional Use Permits because they were just Special Use Permits as opposed to a quasi-rezoning that a traditional Conditional Use Permit would be.

Mr. Samford made a motion to uphold the determination made by the Zoning Administrator. Ms. Saunders seconded the motion.

Yes:

Mary Kathryn Allen

Carole Saunders

Jerry Samford

No:

Shelby Bruguiera

Ms. Saunders made a motion to adjourn. Mr. Samford seconded the motion. Chair Allen adjourned the meeting at 8:03 PM.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Emily Hjultrom". The signature is written in a cursive, flowing style.

Emily Hjultrom

Planner/Secretary, Planning & Zoning

Nelson County Board of Zoning Appeals

To: Board of Zoning Appeals

From: Dylan M. Bishop, Director of Planning & Zoning *DMB*

Date: March 5, 2024

Re: Variance Application #24-0031 – Request for Reduction of Front Setback

APPLICANT: Matt Baker (TEAL Construction LLC, Project Manager / 757-274-7739 / matt@tealconstruction.net)

OWNER: Theresa Moore (1911 Floyd Ave, Richmond, VA)

SUBJECT PROPERTY: Tax Map # 3-A-8 / 695 Stagecoach Road, Afton, VA

ACREAGE: 0.93 acres

ZONING: A-1 Agricultural

VARIANCE REQUESTED: Reduction in minimum required front setback of 75 feet from the center of the road, to 38 feet from the center of the road.

PURPOSE OF REQUEST: Construction of a single-family dwelling

LEGISLATION: Article 14, Board of Zoning Appeals, Nelson County Zoning Ordinance

“No such variance shall be authorized by the board unless it finds:

- (a) That the strict application of the ordinance would produce undue hardship;
- (b) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (c) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance;
- (d) That no rise will be created in the water level during flood conditions in a floodway, as defined in Article 10, as a result of issuing a variance.”



Nelson County Board of Zoning Appeals

APPLICATION *for* VARIANCE *or* APPEAL

This document describes the process for filing a case before the Board of Zoning Appeals (BZA). The County's Zoning Ordinance, forms, and additional information are available in the Planning & Zoning office and online: <http://www.nelsoncounty-va.gov/departments/planning-zoning/>

The BZA is a quasi-judicial body, comprised of five (5) members and one (1) alternate member appointed by the Nelson County Circuit Court Judges of the 24th Judicial Circuit Court to hear certain petitions and applications. Specifically, the BZA has the powers and duties to hear and decide cases as noted below:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
2. To hear and decide requests for a variance from any requirement of the Zoning Ordinance.
3. To hear and decide appeals from the decision of the Zoning Administrator.
4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary.
5. To hear and decide applications for Special Use Permits where authorized in the Zoning Ordinance or Subdivision Ordinance, including but not necessarily limited to:
 - i. To hear and decide applications for Special Use Permits to erect an accessory building prior to the construction of the primary building on the same lot or parcel, pursuant to Zoning Ordinance Article 14-2-1a.
 - ii. To hear and decide applications for Floodplain Development Special Use Permits, pursuant to Zoning Ordinance Articles 10.13-A and 10.22.
6. To revoke a special exception previously granted by the Board of Zoning Appeals if the board determines that there has not been compliance with the terms or conditions of the permit.

Application Requirements:

An application to the BZA involving a variance or other appeal must be accompanied by the following information to be considered complete:

1. A completed BZA application form;
2. A filing fee, in accordance with the fee schedule, to cover the costs of legal advertisements in the newspaper, mailing of letters to adjacent property owners, and review by County staff;
3. A plat drawn to scale (maximum paper size: tabloid or 11"x17") showing the parcel or property described in the application, location of existing and proposed buildings, alterations, or additions, all setback lines, and the specific dimensions and limits of any variance requested;
4. A location sketch of any property involved showing nearest road intersection(s), and a list of adjoining property owners.
5. Any applicable forms and/or documents, such as an Elevation Certificate.

The above information must be submitted and fee paid to the Zoning Administrator before the required legal advertisements, meeting of the Board, and public hearing can be scheduled.

BOARD *of* ZONING APPEALS: REVIEW PROCESS

Definitions:

What is an *appeal*? An appeal is a request to overturn any order, requirement, decision, or determination made in the administration or enforcement of the Zoning Ordinance. The appeal must be filed within thirty (30) days after the action being appealed was made.

What is a *variance*? Variance means, in the application of a zoning ordinance, a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property; and such need for a variance would not be shared generally by other properties; and provided such variance is not contrary to the purpose of the ordinance. A variance shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional rezoning.

Standard for BZA Review of Variances:

The BZA will make a decision to approve or deny a variance application based on specific criteria set out in Section 15.2-2309 (Code of Virginia) as described below. When preparing a variance application, it is important to demonstrate that all of the items listed below have been satisfied:

1. The strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements.
2. The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.
3. The granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.
4. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.
5. The granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.
6. The relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of Section 15.2-2309 (Code of Virginia) or the process for modification of a zoning ordinance pursuant to subdivision A4 of Section 15.2-2286 (Code of Virginia) at the time of the filing of the variance application.

BZA Meetings:

The BZA meets only when a petition is filed with the Zoning Administrator. When necessary, BZA meetings are held at 7:00pm on the first Monday of each month in the General District Courtroom on the third floor of the Nelson County Courthouse located at 84 Courthouse Square in Lovingson. For months having a legal holiday on the first Monday of the month, BZA meetings will be held on the following Tuesday.

Prior to the hearing for each petition, a notice of public hearing is published once a week for two successive weeks in a newspaper published or having general circulation in the locality, pursuant to Section 15.2-2204 (Code of Virginia). Staff will mail notices of public hearing to adjoining property owners.

At the public hearing, County staff will present each agenda item to the BZA; the applicant or petitioner shall address the BZA; the BZA will conduct the hearing to receive public comments; and the BZA will then discuss the request and take action to approve, deny, approve with conditions, or postpone the agenda item.

Any decision of the BZA is final; however, any person or persons jointly or separately aggrieved by any decision of the BZA may file an appeal with the Clerk of the Circuit Court within thirty (30) days after the final decision of the BZA.

Attachments:

1. Application Checklist (below)
2. Application
3. Code of Virginia Excerpt

BOARD *of* ZONING APPEALS: APPLICATION CHECKLIST

Forms and Fees

☒ Completed Application

☒ Application Fee

Appeal Request

☐ For an appeal of an action by an administrative officer, include a complete justification statement describing the property or site (if applicable), background information, and the rationale for the appeal.

☐ For an appeal of a notice of violation, include a description of the alleged violation, appropriate drawings showing applicable setbacks and other dimensions associated with the structure or use that is the subject of the violation, and the rationale for the appeal.

Variance Request

☒ Drawing showing all existing and proposed improvements on the property, with dimensions and distances to property lines, all abutting streets, and any special conditions of the property that may justify the request.

☒ Justification statement describing how the request satisfies the criteria set forth in Code of Virginia - Section 15.2-2309 (provided in the Instruction Packet).

BOARD of ZONING APPEALS: APPLICATION

Instructions: Please answer the following questions clearly. If additional space is needed to answer the questions, you may list "see attached" and attach the answers on a separate sheet of paper.

1. Please explain, in detail, why the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements.

Due to topography, without the approval of the variance request, the extreme slope would be too severe for pedestrian access to home & vehicle - as well as outside living.

2. Please explain, in detail, why the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.

Owner desires to construct a single family home under the current zoning and the current front yard setback prohibits this effort.

3. Please explain, in detail, why the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.

The variance would not result in any detriment, much less a substantial one, to adjacent or nearby properties. (The proposed home would have a similar setback as an adjacent property / same distance from Stagecoach Rd.)

4. Please explain, in detail, why the condition or situation of the property for which you are seeking a variance would not be more reasonably addressed by an amendment to the Zoning Ordinance or Subdivision Ordinance (due to the condition or situation either being so general in nature, or of such a recurring frequency).

Due to setback restrictions, this is the only option for approval. Any amendment to the zoning ordinance or subdivision ordinance would need to be handled by Nelson County.

5. Please explain, in detail, why the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.

Home to be built is the same zoning classification already in place. Therefore the front yard variance does not affect the zoning classification.

6. Please explain, in detail, why the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of Section 15.2-2309 (Code of Virginia) or the process for modification of a zoning ordinance pursuant to subdivision A4 of Section 15.2-2286 (Code of Virginia) at the time of the filing of the variance application.

Due to setback restrictions on the parcel, the
only option is to construct a single family home.

7. Affidavit: The undersigned applicant(s) and/or property owner(s) certifies that this application and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the applicant(s) and/or property owner(s) gives permission for members of the Board of Zoning Appeals and County Staff to visit and view the subject property(s).

Signature: Theresa D. Moore Printed Name: Theresa D. Moore

Signature: _____ Printed Name: _____

(Please attach additional sheet if more space is needed for applicant(s) / property owner(s) signatures.)

8. Additional information: (Please attach separate sheet for additional details, explanations, etc.)

Justification statement is attached.

9. Please note: In the event of cancellation or postponement at your request after the initial newspaper advertisement for this application, an additional fee will apply for re-advertisement (determined by the actual cost of the ad). This fee will not apply in cases of Board of Zoning Appeals deferment.

TO BE COMPLETED BY PLANNING & ZONING STAFF

0 Completed application and fee (\$ 150) received on: 2/9/24

0 Legal Notice of Public Hearing published on: 2/22/24 & 2/29/24

0 Date of BZA Hearing: 3/5/24

BZA Action: _____

Nelson County Planning & Zoning Department

80 Front Street, Lovingson, Virginia | (Mailing Address) P.O. Box 558, Lovingson, Virginia 22949
(Telephone Number) 434 263-7090 or Toll Free 888 662-9400, selections 4 & 1 | (Fax Number) 434 263-7086
<http://www.nelsoncounty-va.gov/departments/planning-zoning/board-of-zoning-appeals/>

§ 15.2-2309. Powers and duties of boards of zoning appeals

Boards of zoning appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto. The decision on such appeal shall be based on the board's judgment of whether the administrative officer was correct. The determination of the administrative officer shall be presumed to be correct. At a hearing on an appeal, the administrative officer shall explain the basis for his determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board shall consider any applicable ordinances, laws, and regulations in making its decision. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer. Any appeal of a determination to the board shall be in compliance with this section, notwithstanding any other provision of law, general or special.

2. Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section.

Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public

interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.

3. To hear and decide appeals from the decision of the zoning administrator after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

4. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by the question, and after public hearing with notice as required by § 15.2-2204, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

5. No provision of this section shall be construed as granting any board the power to rezone property or to base board decisions on the merits of the purpose and intent of local ordinances duly adopted by the governing body.

6. To hear and decide applications for special exceptions as may be authorized in the ordinance. The board may impose such conditions relating to the use for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

No special exception may be granted except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

7. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail. If a governing body reserves unto itself the right to issue special exceptions pursuant to § 15.2-2286, and, if the governing body determines that there has not been compliance with the terms and conditions of the permit, then it may also revoke special exceptions in the manner provided by this subdivision.

8. The board by resolution may fix a schedule of regular meetings, and may also fix the day or days to which any meeting shall be continued if the chairman, or vice-chairman if the chairman is unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting in accordance with § 15.2-2312 shall be conducted at the continued meeting and no further advertisement is required.

Code 1950, §§ 15-831, 15-850, 15-968.9; 1950, p. 176; 1962, c. 407, § 15.1-495; 1964, c. 535; 1972, c. 695; 1975, cc. 521, 641; 1987, c. 8; 1991, c. 513; 1996, c. 555; 1997, c. 587; 2000, c. 1050; 2002, c. 546; 2003, c. 403; 2006, c. 264; 2008, c. 318; 2009, c. 206; 2015, c. 597.

12/26/23

JUSTIFICATION STATEMENT

TO: Nelson County Board of Appeals

Property Address: 695 Stagecoach Rd.

Owner: Theresa Moore

Contractor: TEAL Construction, LLC

Architect: Rick Funk

On 9/19/2022, Theresa Moore purchased the property (along with improvements) at 695 Stagecoach Rd. This property is located at the end of Stagecoach Rd, in the cul-de-sac. Her plan was to remove the current structures on the property (including a residential home, with related decks, a gazebo, and an old 2 story building bordering the edge of Stagecoach Road. All of these structures were non-compliant with the current 75' Front Yard Setback requirement. A demo permit was applied for and approved and the structures have been removed and site inspected by Nelson County.

Her plan was to add a concrete slab, where she could park an Airstream for weekend travel. After determining the slope was not conducive to parking the travel trailer, she quickly desired to move forward with building a residential home. This new home is desired to be in the same (approximate) location as the original residential home.

Our reason for requesting a zoning variance, is only for the front yard setback. The current A-1 zoning requires a 75' front yard setback, from the centerline of Stagecoach Rd. We are proposing a 38' setback. The original home was in the same general location as the proposed

new location. The property is less than one acre (.936) in size. There is a current (original well) and septic on site. We are proposing to install a new septic and the paperwork for the new septic has been completed by Old Dominion Engineering and if variance is approved, a permit for septic and for new home will be applied for to Nelson County.

The topography for this lot appears to be similar for most, if not all properties on Stagecoach Rd. This slope is not feasible to provide access from a vehicle to a house that is set 75' back. The slope is too severe and is not conducive to pedestrian access from a vehicle to the residence. With the variance request of a 38' setback, the homeowner can't safely get to and from their home and vehicle, not to mention having some yard for outdoor living.

The owner is only asking for this front yard setback variance and plans to build (if approved), her new home, to enjoy the magnificent views that Nelson County has to offer.

Thank you for your consideration,

A. Troy Yancey (Owner TEAL Construction, LLC)

434-996-5999

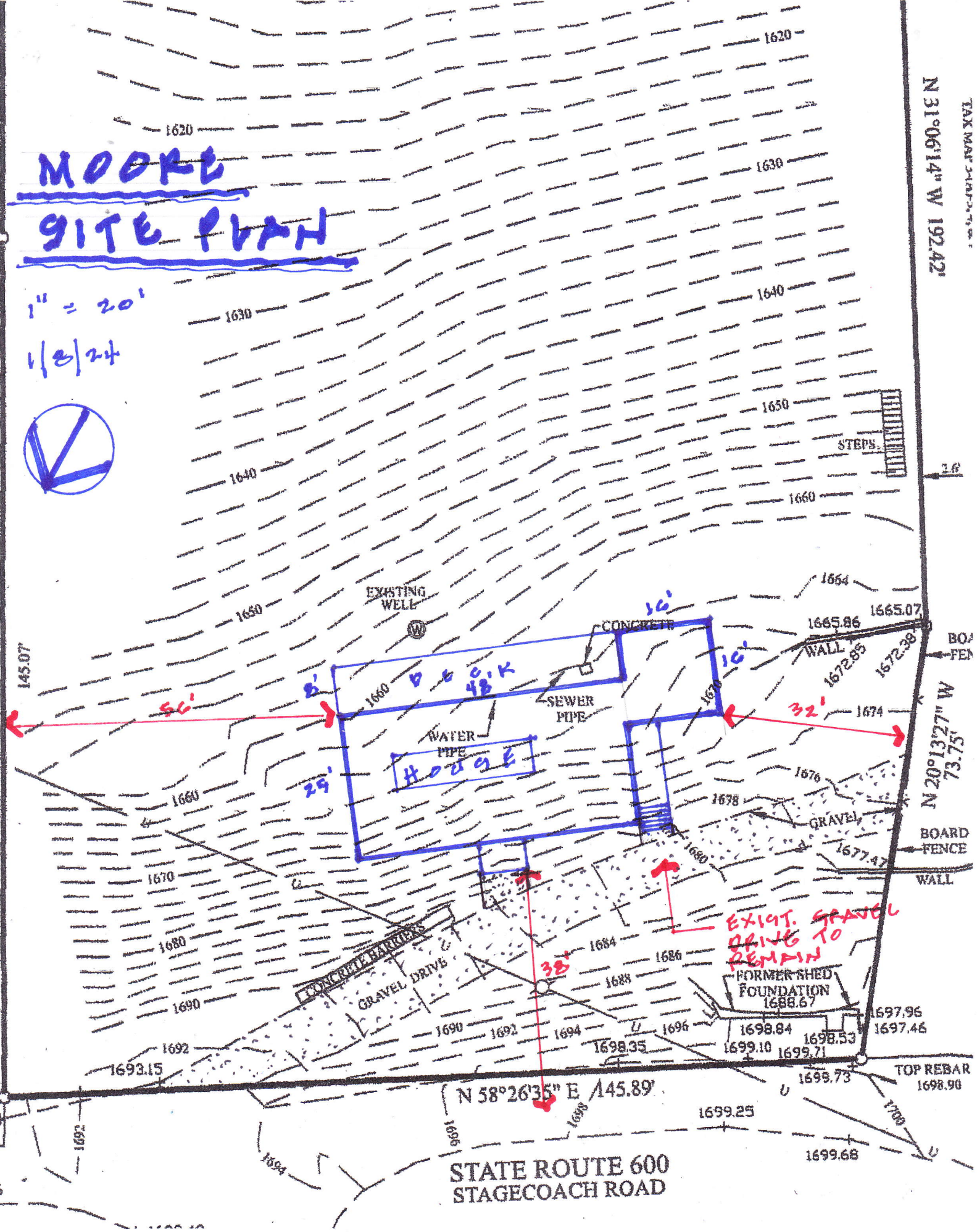
troy@tealconstruction.net

N 31°06'14" W 192.42'

MOORE SITE PLAN

1" = 20'

1/8/24



F. THOMAS CARTER, II, et al
CWF INSTRUMENT No.12000011300
TAX MAP 3-(A)-3, 4, & 7

S 59°54'43" W 150.00'

0.937 ACRES
INSTRUMENT No. 202202412
TAX MAP 3-(A)-8

F. THOMAS CARTER, II, et al
CWF INSTRUMENT No.12000011300
TAX MAP 3-(A)-3, 4, & 7

ANNE-MARIE McCARTAN
INSTRUMENT No.160002642
TAX MAP 3-(A)-9

F. THOMAS CARTER, II, et al
CWF INSTRUMENT No.12000011300
TAX MAP 3-(A)-3, 4, & 7

N 31°06'14" W 192.42'

2.6'

W 42°51'02" N 127.57'

TOP REBAR =
1698.90

N 58°26'35" E 145.89'
STATE ROUTE 600
STAGECOACH ROAD

LEGEND

○ IRON PIN FOUND

⊗ UTILITY POLE

—U— OVERHEAD UTILITY LINES

▣ MAG NAIL FOUND IN TOP OF POST

PARTIAL TOPOGRAPHIC SURVEY OF 0.937 ACRES OF LAND PRESENTLY IN THE NAME OF THERESA D. MOORE

ROCKFISH DISTRICT, NELSON COUNTY, VIRGINIA

SCALE 1" = 20'

NOVEMBER 3, 2022

REVISED: JULY 6, 2023



THIS TOPOGRAPHIC SURVEY WAS COMPLETED UNDER THE DIRECT AND RESPONSIBLE CHARGE OF, BRANDON TRUMP FROM AN ACTUAL GROUND SURVEY MADE UNDER MY SUPERVISION; THAT THE IMAGERY AND/OR ORIGINAL DATA WAS OBTAINED ON JUNE 28, 2023; AND THAT THIS PLAT, MAP, OR DIGITAL GEOSPATIAL DATA INCLUDING METADATA MEETS MINIMUM STANDARDS UNLESS OTHERWISE NOTED.

NOTES:

1. DATUM AS SHOWN HEREON IS ACCORDING TO RECORDED INFORMATION AND A CURRENT FIELD SURVEY.

2. ADDRESS: 695 STAGECOACH ROAD
AFTON, VIRGINIA 22920.

3. BEARINGS ARE ROTATED TO STATE PLANE COORDINATES (VIRGINIA SOUTH).

4. THE SURVEY PREMISES IS LOCATED WITHIN ZONE X (AREA DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) ACCORDING TO FLOOD INSURANCE RATE MAP FOR THE COUNTY OF NELSON, VIRGINIA AND INCORPORATED AREAS. COMMUNITY NUMBER/PANEL: 510102/0040B - MAP NUMBER: 5125C0040B - EFFECTIVE DATE: JUNE 18, 2010.

5. ANY EASEMENT SHOWN HEREON IS BASED ON RECORDED INFORMATION. THIS PROPERTY MAY BE EXPRESSLY SUBJECT TO EASEMENTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS CONTAINED IN DULY RECORDED DEEDS, PLATS AND OTHER INSTRUMENTS CONSTITUTING CONSTRUCTIVE NOTICE IN THE CHAIN OF TITLE TO THE PROPERTY HEREBY SURVEYED THAT ARE NOT SHOWN. THIS PROPERTY MAY BE SUBJECT TO OTHER EASEMENTS NOT OF PUBLIC RECORD.

6. NO TITLE REPORT HAS BEEN FURNISHED.



Afton Mountain
Scenic View

Rockfish Gap Turnpike

Rockfish Gap Turnpike

Scenic overlook

Stagecoach Rd

Stagecoach Rd

Blue Ridge Tunnel Trail

Blue Ridge Tunnel Trail

Blue Ridge Tunnel

