

**AT A REGULAR MEETING OF THE GLOUCESTER COUNTY BOARD OF ZONING APPEALS
HELD TUESDAY, October 24, 2023, AT 7:00 P.M. LOCATED IN THE COLONIAL COURTHOUSE
IN THE COURT CIRCLE, GLOUCESTER, VIRGINIA**

THERE WERE PRESENT: Mark J. Gandolfo
J. Wayne Horsley, Chairman
Mark Holthaus
Thomas Hostenske
James S. Leigh, Vice-Chairman
James Newton
Robert N. Ottarson

THOSE ABSENT:

ALSO IN ATTENDANCE: Anne Ducey-Ortiz, Director of Planning, Zoning & Environmental Programs
Tripp Little, Planner III, Board of Zoning Appeals Staff Liaison

Laura Walton, Board of Zoning Appeals Secretary

IN RE: CALL TO ORDER AND ROLL CALL / ESTABLISHMENT OF QUORUM

J. Wayne Horsley, Chairman, called the October 24, 2023, meeting of the Gloucester County Board of Zoning Appeals to order. Roll call established a quorum was present.

IN RE: APPROVAL AUGUST 22, 2023, MINUTES

Mr. Horsley: Okay, seeing as everyone hadn't had the opportunity to go over the August 22, 2023, minutes we will look at those at the next month to do the approval of those.

IN RE: PUBLIC HEARING FORMAT

Mr. Horsley: Okay tonight there was supposed to be three, two public hearings and one appeal. The two public hearings SE-23-04 and the variance V-23-02 will not be heard due to an advertising problem. So, if you're here for those. If you wish to leave that's up to you but we will be hearing application I mean, appeal 23-01 and that being, not being a public hearing, the only people speaking will be the staff and the applicant if the applicant is here. So, Mr. Little, whoever wants to present whichever one y'all want to do that.

IN RE: PUBLIC MEETING

Mr. Little: Anne is going to be presenting but thank you for acknowledging me and thanks for being here. Sorry about the mix up with the minutes we only have one case this evening. The other two were not properly advertised in the Gazette so it will have to be postponed until next month. The only case we do have tonight is Appeal 23-01 Richard Bryant and Anne's going to handle that one.

Ms. Ducey-Ortiz: Thanks Tripp. Good evening, everyone. I always get to be here when there's not fun cases.

Mr. Horsley: Anne, can you pull the mic a little closer to you, please?

Ms. Ducey-Ortiz: Is that better?

Mr. Horsley: Yes, yes, that's a lot better. Thank you.

Ms. Ducey-Ortiz: So, this is an appeal. So, I'm going to go through the staff report, then the applicant's response. I don't believe he's, he said he probably couldn't be here tonight. So, he probably won't be here if you have any questions and then you can make your decision. So, this is appeal by Richard Brian applicant on behalf of Marvin Reynolds, the property owner to the Board of Zoning Appeals under Article 14 section on appeals and it pertains to the assistant zoning administrator's issuance of a notice of violation under 5-1 compliance of district regulations. Section 14.21. This is not provided for in any district where the use is not specifically listed, it shall not be allowed. And so based on, then you'll see in the report on all the work that Denise Canada did she's our assistant zoning administrator that does enforcement, she classified it as a contractor's office and storage facility, which is not a permitted use in the single-family zoning district. So, I'm going to provide a summary of the staff report through the PowerPoint, but I would like to include the entire staff report in the minutes.

Ms. Ducey-Ortiz gave her PowerPoint presentation at this time.

Ms. Ducey-Ortiz: So, it's not the best picture, but it's the subject property located at 7778 Water's Edge Lane and as for the text map, parcels, 51 F (1)-6, it's the subdivision that's located behind the colonial point apartments back there. I'm not sure if you're familiar, it's kind of funny, how you can click it's like behind the carwash and you go back in a little better picture here. It's the subdivision on the water and so that's the property circled. In the staff report Denise provided you a timeline, again, she's been the one working her case, but essentially started last year in January 2022, she received a complaint, she visited the site, and one of the issues with it is the equipment wasn't always there. Often it was on job sites. And so again, I'm not going to read all this, it's in your packet. But she ended up Greg Gentry who also helps us on some of our inspections and code compliance, you know, would visit the site frequently and check on the site. And then this year, we've started getting more and more complaints on the property. And she went out there several times, she reopened the case, she also talked to the property owner, somebody who answered the door. And you know, they, they admitted that they were using the site, there's equipment there, more and more equipment and the neighbors, you know, constantly complaining that people are bringing, bringing things back and forth, that the employees need there in the morning. Again, we can only rely on the neighbors mostly, and then the site visits. So, in your packet are the pictures that Denise took on the site when she went out there. And you know, depending on what was occurring where they were working, the equipment was either on the site or not. She also spent some time going on Facebook and other sites to see and so obviously, there definitely is a business he is advertising. And again, all this is in your packet. And so, she usually does that before she kind of contacts the people because it makes him for, they take down their information. So, you know, we definitely have information that they're running a business. And then she also contacted our conditional revenue, and there was no record of a business license for cluttered up cheese service. This property had business licenses for landscaping, again, they were included. And you know, they said no equipment outside and stored on the site. So again, they those all had expired, and were in in different companies' names and none of them were Cut it Up Tree service. So based on that, Denise went to the site and made the determination that it was a contract with the office and storage facilities. She did hand deliver and sent a notice of violation, both the property owner and the owner of the business got a copy of the of the notice of violation. And after that after the notice of violation was read, he sent the invoice saying that he was actually doing work on the site, and that the company, he was there on the site working on the property. But again, no, there was no complaints have been going on for a year and a half. There is no business license that he could be working. And his property is a P.O. Box so that you know the

business is to a P.O. Box. So, you know we ask them if you have any business where are you running it? So, follow up. He came into the office, so I guess all of us bugging the Commissioner of Revenue. She, Peggy Pitts with the Commissioner of Revenues office contacted him say hey, your business license, you don't have an up-to-date business license. So, he came in to get his business license and of course he came up to zoning and he wanted a home occupation and he actually checked off heavy equipment on the site, and we're like, you can't have heavy equipment with a home occupation. So, you know, we explained to him, you're going to have to remove the equipment, if you get a home occupation, if you have met the ordinance and you can, you know, have 20% of the area's storage is supposed to be inside, so heavy equipment is not compatible with single family zoning. So, he was going to look for a place to put his equipment and come back. But as of today, he has not come back in the office. But he pretty much admitted that he has this equipment on site. That is where he keeps it so. So again, I'm not going to read all these definitions. So, these are the definitions that we use, you know, a contractor and contractor office and storage facility, he definitely is a contractor, you saw the pictures of heavy equipment that he has on there, he's seen sites clearing his advertisements talk about that, so that, you know, it fits under there, and he is storing it on that property. These are the this would if he was a home occupation, he would have to comply with this. And again, if he had employees, he would have to come to you for a special exception for type two home occupation. He says he has no employees, that is everyone that works with him lives in that house. The neighbors have said that's not true. But again, that stuff is really hard to prove. So, this is home occupation. And then this is you know, again, the compatibility with the district, the single family, the intent of the single-family district is to preserve residential areas and provide for future areas of similar character. So typically, when we look at home occupations and the type of equipment, you know, that's very industrial, heavy equipment, so we do a lot of pickup trucks and small box trucks and stuff, but nothing, you know, not as many easy, I'm actually in our new zoning ordinance update, we are specifying how many vehicles you can have associated with the home business. So again, based on that zoning staff, you know, made the determination and, you know, cited that section in the notice of violation that it was a use not provided for that a contractor's office and storage facility is not allowed in the single family. And the use was established without any zoning approval. And again, we couldn't approve it, because it's not a use listed within the ordinance. And, and again, he has been operating without a business license for this particular business. So, again, you know we always try to work with applicants and be fair. And so, Denise did talk to him about how he can get in compliance, essentially, he has to get the equipment off the site, find another spot for it. And then if he wanted to do a home occupation, he can have his home office there, and maybe one pickup truck or something. So, So, again, we worked, we tried to work with them, but that's how we decided to go ahead and move forward with a notice. So, these are just the sections of the ordinance that we relied on the district regulations the use is not provided for and then zoning permits required. So, it's up to you tonight to (inaudible) to either reverse or affirm wholly or partly or you can modify the notice based on what you heard tonight, and you needed a vote of at least four affirmative votes to uphold the decision.

A-23-01

STAFF REPORT

APPLICATION NO. (BZA) A-23-01 – An appeal upon application by Richard Bryant, applicant, on behalf of Marvin Reynolds, property owner, to the Gloucester County Board of Zoning Appeals under Article 14 of the Zoning Ordinance, Administrative Procedures, §14-11, Appeals. The appeal pertains to the Assistant Zoning Administrator's issuance of a Notice of Violation under Sections 5-1, Compliance with district regulations, Section 14-21. Uses not provided for. Section 14-21 provides in part: "In any district, uses not specifically permitted shall not be allowed." "Contractors' offices and storage facility" is not a permitted use in the SF-1 zoning district. Official schedule of district regulations¹ and Section 15-1. Zoning permits required. The Notice of Violation

¹ See Table of Permitted Uses: Single Family

(NOV)² states that, based on complaints received and investigated, a tree cutting service business named “Cut it Up Tree Service” has been established on the property along with the storage of heavy equipment associated with the business. A contractor’s office and storage facility is defined in Sec. 2-2 of the Zoning Ordinance as “The necessary office/administrative space as well as storage space for equipment associated with contractors.” A contractor is defined as “General service provider engaged in on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, material or addition thereto, including but not limited to, clearing of land, earth moving, and landscaping.” The property is zoned Single Family detached residential district (SF-1). The subject property is located at 7778 Waters Edge Ln, and is further identified as Tax Map parcel 51F(1)-6; RPC 26725. The property lies in the Gloucester Point Magisterial District.

Mr. Bryant’s appeal pertains to the determination that the property owners are in violation of the County Code as cited in the NOV dated August 15, 2023³. The NOV is based on the Assistant Zoning Administrator’s (AZA) investigation of a complaint (CE2220100010) regarding activity at the subject property. A summary of the events regarding the complaint is attached.⁴ In investigating the complaint, the AZA was able to document the activity based on information from the adjoining property owner about business being conducted the site and being advertised on Facebook (see attached email chain and screen shots from the Facebook)⁵. Storage of the equipment were also documented through pictures by the AZA during site visits – the photographs are from October 2022, June 2023 and August 15, 2023, when the NOV was sent and posted on the site⁶.

Advertisements on Facebook clearly indicate that Mr. Richard Bryant Jr. is operating “Cut It Up Tree Service.” The image below is from a NextDoorWeb Ad dated August 15, 2023. However, neither zoning nor the Commissioner of Revenue have record of a business license for this business. There are records of previous zoning permits for lawn businesses at this location⁷ and a business license for Richard Bryant Sr. from 2019, but no current permits for this or any other location for “Cut it Up Tree Service.”

The AZA spoke to Mr. Bryant on July 18, 2023, about the equipment and what was and wasn’t permitted based on a home occupation. They also discussed the lack of a business license. Mr. Bryant indicated he would come into the office to discuss the potential for a home occupation and what could and could not be stored on the site. A home occupation is limited in areas for storage and no outside storage of equipment is currently permitted.⁸ Mr. Bryant did not visit the office provide additional documentation.

² See Notice of Violation dated August 15, 2023

³ See Letter of Appeal dated August 15, 2023

⁴ See Summary of CE22010010

⁵ See Email Chain and Facebook Screenshots

⁶ See Site Photos – 10-2-22; 6-29-23; and 8-15-23 with Notice

⁷ See prior zoning permits Z16040196, Z15030126 and Z12090171

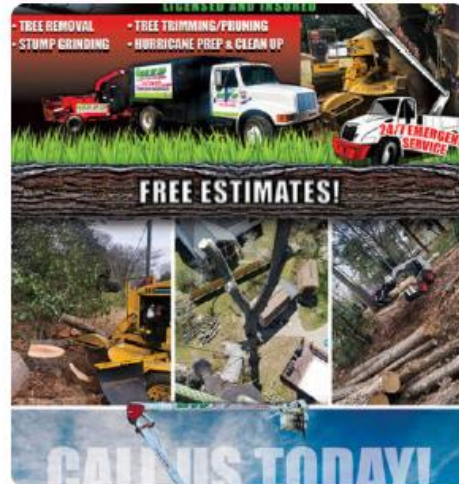
⁸ HOP Sec. 9-9. - Home occupations.

Home occupations are permitted in any residence subject to the following use limitations:

- (1) A home occupation must be conducted within a structure which is the bona fide residence of the principal practitioner or in an accessory building thereto which is normally associated with a residential use.

Our story

My name is Richard Bryant Jr, I am the proud owner of Cut It Up Tree Service. We're a second generation Tree Service fully licensed, insured, and accredited with the Better Business Bureau! My dad is our main climber who's been climbing since 1992. You'll also see my brother Austin along our side. In addition to us you'll get an arsenal of other well experienced staff we take pride working with.



SUMMARY:

Based on the receiving multiple complaints and subsequent investigation of the complaint through site visits, discussions and documentation provided on Facebook and NextDoor Advertising as well discussions with the complainant, a Notice of Violation (NOV) was sent to the complainant and the property owner indicating that a use was established on the site that was not permitted in the SF-1 zoning district in which it is located.

Subsequent to receiving the NOV, the complainant sent an email with attached letter and invoice stating that the equipment on the site is for work on the property⁹. However, the invoice is dated 6/10/23 and the complaints started on January 31, 2022. In addition, there is still no Business License and associated location, for “Cut it Up Tree Service¹⁰” so regardless of whether you believe that they are working on this site or not, they appear to be operating a business out of Gloucester Point without a Gloucester County zoning permit or business license. Based on the information

- (2) No alteration to the exterior of the principal residential building and accessory building shall be made which substantially changes the character thereof as a dwelling.
- (3) Home occupations shall be reasonably compatible with the district in which they are located.
- (4) The maximum floor area permitted for a home occupation shall be twenty-five (25) percent of the finished floor area of the residence. Storage of goods or products shall not exceed ten (10) percent of the finished floor area.
- (5) An accessory structure may be used with the home occupation, provided that the combined total floor area devoted to the home occupation in the accessory structure and residence does not exceed twenty-five (25) percent of the finished floor area of the residence.
- (6) No sign may be placed on the property advertising the home occupation.

⁹ See copy of Letter dated 8-31-23 and invoice dated 6-10-23.

¹⁰ Email Chain – 10-16-23 – No Business License for “Cut It Up Tree Service”

provided and investigated as described herein, the Zoning Office determined that the business was being operated at this location and that it was best described as a “contractor’s office and storage facility” which is not a permitted use in the SF-1 Zoning District. Therefore, after attempts to work with the occupant of the home and the business owner to correct the situation, a Notice of Violation was sent to the property owner and the business owner which was appealed by the business owner.

ZONING DETERMINATION:

Based on the information available to Zoning Staff from an adjoining property owner, visits to the site, information on Facebook and NextDoor, discussions with the complainant and using the definitions provided in the Zoning Ordinance under Section 2-2, staff classified the use of the property as a “contractor’s office and storage facility” which is a use not provided for in the SF-1 District.

The use was established without zoning approval and without compliance with the SF-1 zoning district regulations and therefore is in violation of the Gloucester County Zoning Ordinance. The property owner has not sought to clarify or correct the use by removing the equipment from the site and obtaining zoning approval at an appropriate location. Although not within the BZA’s or zoning staff’s authority, it appears that there is no business license for this business anywhere in the county.

BASIS FOR THE DETERMINATION:

It is the Zoning Administrator’s duty to enforce the Zoning Ordinance fairly and consistently. While the Department of Planning and Zoning always strives to enforce the ordinance in favor of the applicant, when possible, we must also enforce the ordinance consistently. Through complaints and information received from an adjacent property owner and subsequent follow-up with information on Facebook and in discussions with the complainant, the Assistant Zoning Administrator determined that the complainant had established a contractors office and storage facility, which is a use not provided for within the SF-1 district and therefore was in violation of the Zoning Ordinance. After several attempts to work with the complainant to achieve compliance, a Notice of Violation was sent to the property owner and the complainant/occupant. The decision was based on the following requirements of the Zoning Ordinance:

ARTICLE 2. – DEFINITIONS

Sec. 2-1. – Interpretation of terms or words.

For the purpose of this ordinance, certain terms or words used herein shall be interpreted as follows:

- (1) The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.
- (2) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- (3) The word "shall" is a mandatory requirement, the word "may" is a permissive requirement, and the word "should" is a preferred requirement.

- (4) The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."
- (5) The word "lot" includes the words "plot" or "parcel."

ARTICLE 5. - DISTRICT REGULATIONS

Section 5-1. - Compliance with district regulations.

The regulations for each district set forth by this ordinance shall be minimum regulations, except as otherwise specifically provided, and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided:

(1) No building, structure, or **land shall be used or occupied** and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, or structurally altered **except in conformity with all of the regulations herein specified for the district in which it is located;**

(2) Except as otherwise permitted, no yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements set forth herein.

ARTICLE 14- ADMINISTRATIVE PROCEDURES

Sec. 14-21. - Uses not provided for.

In any district, **uses not specifically permitted shall not be allowed.** Persons desiring inclusion in the zoning ordinance of a use not specifically permitted may apply for an amendment to the ordinance, in accordance with the procedures set forth herein.

ARTICLE 15. – ENFORCEMENT

Sec. 15-1. - Zoning permits required.

No building or other structure which requires a building permit shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefor issued by the administrator. In the RC-1 and RC-2 districts, buildings or other structures associated with the production of agricultural or forestal products are exempt from obtaining a zoning permit.

On and after the effective date of this ordinance, no manufactured home which does not meet the standards promulgated in the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, the Federal Manufactured Home Construction and Safety Standards, or which contains a "defect" as defined by section 36-85.3 of the Code of Virginia, 1950, as amended, shall be the subject of a permit issued pursuant to this ordinance, regardless of proposed location.

Sec. 15-10. Violation and penalty.

All departments, officials and public employees of this jurisdiction which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void.

RELEVANT DEFINITIONS FROM THE ZONING ORDINANCE - SECTION 2-2. - DEFINITIONS:

The following definitions were reviewed in making the determination regarding the potential uses of the property based on the information described above:

Contractor: General service provider engaged in on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, material or addition thereto, including but not limited to, clearing of land, earth moving, and landscaping.

Contractors offices and storage facility: The necessary office/administrative space as well as storage space for equipment associated with contractors.

Dwelling, single-family: A building consisting of one (1) dwelling unit.

Dwelling unit: A single unit providing complete independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, but not including a tent, cabin, travel trailer, manufactured home, or room in a hotel or motel.

Home occupation, Type I: An accessory use of a dwelling unit for gainful employment involving the provision of goods and/or services in accordance with section 9-9 of this ordinance, and which does not generate any employee or customer traffic.

Home occupation, Type II: An accessory use of a dwelling unit for gainful employment involving the provision of goods and/or services in accordance with section 9-9 of this ordinance, and which generates employee and/or customer traffic.

DUTIES OF THE BOARD OF ZONING APPEALS:

Sec. 13-6. - Duties of the board of zoning appeals.

In exercising its duties, the board of zoning appeals may, as long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made. For the purpose of this ordinance, the board of zoning appeals has the following specific responsibilities:

- (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 ordinance.**
- (2) To authorize upon appeal or original application in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done; following the provisions of section 14-12 et seq.
- (3) To hear and decide upon applications for such special exceptions as may be authorized in the official schedule of district regulations. The board may interpret the map in such way as

to carry out the intent of this ordinance as it deems necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are complied with. No special exception may be granted except after notice and public hearing as provided in section 15.1-431 of the Code of Virginia.

- (4) To hear and decide applications for interpretation of the district map where there is an uncertainty as to the location of a district boundary. After notice to the owners of the property affected and all property owners within five hundred (500) feet of the affected property, by such question, and after public hearing with notice as required by section 15.1-431 of the Code of Virginia, 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. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- (5) No provision of section 15.1-495 of the Code of Virginia shall be construed as granting the board the power to rezone property.
- (6) **To hear and decide appeals from the decision of the zoning administrator. However, no such appeal shall be heard except after notice and hearing as provided by section 15.1-431 of the Code of Virginia.**

Sec. 13-7. - Duties of zoning administrator, board of zoning appeals, legislative authority and courts on matters of appeal.

It is the intent of this ordinance that all questions of interpretation and enforcement shall be first presented to the administrator, and that such questions shall be presented to the board only on appeal from the decision of the administrator, and that recourse from the decisions of the board shall be to the courts as provided by law. It is further the intent of this ordinance that the duties of the governing body in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this ordinance.

Ms. Ducey-Ortiz: And that's the end of my presentation again, Mr. Bryant's not here tonight, there are some neighbors from the neighborhood if you did have any questions for them. But that's my link to the staff report which is pretty much more detailed.

Mr. Horsley: Okay, seeing as the applicant I not here, is there questions for the staff?

Mr. Newton: I have one. The contractor is not the homeowner, is that right?

Ms. Ducey-Ortiz: He does not, No, he's not the homeowner. And I believe the owner does not live in the area. And but it's his grandfather is what he told us in the office. So, his grandfather owns the house. Supposedly his father, brother and he all live there, is what he said.

Mr. Horsley: Any other questions?

Mr. Gandolfo: So, Anne he's been into see the staff? He knows what he needs to do to come into compliance. Has he indicated if he's even trying to come into compliance?

Ms. Ducey-Ortiz: When he came last week, he was really upset about not getting his business license, which is pretty important. And so, he seemed earnest about trying to resolve the situation. But it isn't easy to find a place like you know, you can have to assume there's not a lot of places for people to rent to store

as much equipment as he has, so it might just be taking the time to find it. He did say that the reason why I did do the appeal is to try to get more time. So, when he came in the office, I said, you know, you pretty much admitting you're doing what we've sent you the notice for it, though, but he, I guess, was advised that that was the best thing for him to do to get more time. But

Mr. Gandolfo: I know we can't "what if" but assume the appeal is denied tonight. What's next for him? So, he's looking for time. From the county's point of view, does he get time? Or what would your office do to allow him? Yeah, so if we said, look, the appeal you know, that was a legitimate violation before, right. But he comes and says, I still need a little bit more time, Is that doable? What happens next?

Ms. Ducey-Ortiz: So, we always work with the applicant, and even though a judge would, so if he didn't appeal, it would, we would continue to say you need to clean up the site, you know, probably give them you know, 30 days, and then if you didn't we'd go get a summons, and then go to court, often the judge. Often, you know zoning is not very easy. The judge often gives more time, because it's a whole, you know, just like you present the case to the judge, he Oh, I'd need more time. So, and it's hard to say we don't bring many cases to court, which are the problems, that's kind of what we're trying to do. So, you know, the other thing we told them, you know, I didn't really put in the staff report, but, you know, yeah, like, his neighbors are watching him. So, you know, we've had we've gotten multiple calls today, you know, they were worried that we were rezoning the property. But, you know, it's a pretty nice neighborhood, if you go down there and his house, he is using it for storage of heavy equipment.

Mr. Gandolfo: In the reality for him, because it's clearly not acting within the zoning requirements is it could become a legal issue for him.

Ms. Ducey-Ortiz: Oh, yeah and the judge, you know, when you go to court, and he doesn't do it, you know, sometimes it's, if the judge says, give me more time, you know, you come back, and if you haven't done it, and you start getting fined, and so, and right now he is, he's operating without a business license, that's a whole other violation, not zoning, but you know, he can get into trouble with DPOR, you know, not just zoning. That's his problem right now.

Mr. Newton: Well, according to the ordinance, he can't come into compliance in that location there.

Ms. Ducey-Ortiz: No, he, the only thing he could do would be a home occupation, he would not be able to have his equipment there. But he, so he can get into how he got it, how he would get into compliance would be to remove all the equipment, find a legitimate place to put it. So that's going to be hard, you know, there's not a lot of places in the county or he can, you know, go put his business somewhere else at the commercial district.

Mr. Newton: And get his business license.

Ms. Ducey-Ortiz: Yes

Mr. Hostenske: So how long has he had with all the dates and the emails and things?

Ms. Ducey-Ortiz: He appealed on the 30th day, that so literally the day so he's, and I do believe in the correspondence. I mean Denise has been out there multiple times Denise has told them, the only way to get into compliance is to remove the, the equipment, so and then he was like, how much equipment and she's like, you can have your pickup truck. You know, everyone has pickup trucks, but he has a dump truck. He has quite a few pieces of equipment. So, the last thing he said was that he's working on the property. And again, that was because of the history and, you know, we knew that he'd been working on the property for a year and a half. That's really not...

Mr. Hostenske: So, from the from the, remove the first communication; telling him to remove equipment. How long has that been to this date?

Ms. Ducey-Ortiz: Let's see... Denise...

Mr. Little: It's been over a year; I believe it was June of last.

Ms. Ducey-Ortiz: I think Denise, she said that. She spoke to him on July 18, 2023. She discussed his heavy equipment not being permissible for the zoning ordinance. So, since July, she has been trying to get him to remove it.

Mr. Leigh: I've got a question. What about the business license? I mean, shouldn't you be operating systems?

Ms. Ducey-Ortiz: He shouldn't. I mean, we've contacted...

Mr. Leigh: Is that part of what we're working on tonight?

Ms. Ducey-Ortiz: No

Mr. Leigh: Okay.

Ms. Ducey-Ortiz: This is just zoning, so the Commissioner, I don't know what appeal process they have, but they had their own way of you know, that's another code.

Mr. Gandolfo: I think Tripp really wanted to answer something I asked.

Mr. Little: Yes. Regarding a question of time. If the appellate loses the appeal this evening. He does have the option of appealing to the Circuit Court and just like the Zoning Administrator has presumption of correctness. Tonight, the BZA would have the presumption of correctness if it were taken to circuit court but that would buy him some extra time.

Mr. Horsley: Any other questions?

Mr. Gandolfo: One more question, Anne. In one of the things, he basically told you guys is that his equipment was there because he was working on clearing some of his own property.

Ms. Ducey-Ortiz: So, in your packet, there's a notice, an invoice. So, the invoice has the name of his business with a P.O. box, but it says up in Gloucester Point or Hayes. So, I'm like okay, if that's your business, where do you operate out of, there's no answer. So, you know, he almost by doing that, it's like, okay, here's an invoice for a company that has no business license. Now, there is a business license for a lawn service company, but it's clearly a tree company. So, it's kind of backfired on him on that, but he that I think was his attempt to buy more time. A very nice young entrepreneur, but you know, {inaudible} he needs to figure out what to do.

Mr. Holthaus: How long is this business been operating at that site? At the subject property.

Ms. Ducey-Ortiz: We don't really know; I did talk to him about that when he came in because I said you don't have a business license. And he had a business license for the lawn company, and we have the zoning permit for that. And it clearly says no outside storage of equipment on that. But again, the last one we had was from 2019. So those are all included in your packet too. The three zoning permits for that property. So, he did say he switched like as he stopped doing lawn care and start doing tree care, but he never changed his license. So, he just started doing it.

Mr. Horsley: Okay, any discussion?

Mr. Gandolfo: It's clear to me he is in violation of the zoning ordinance as regarding the contracting portion of him having industrial equipment on the property.

Mr. Horsley: I don't blame the neighbors for being upset because it's a real nice neighborhood and somebody has to keep that road up and I don't know who's doing it, but that equipment going in and out is hard on the road and I agree that this is not in accordance with our ordinance. If there's no other discussion, we have a motion to either approve or disapprove this application, appeal A-23-01.

Mr. Leigh: Mr. Chairman, I move that we disapprove, is that the right verb?

Mr. Horsley: Deny.

Mr. Leigh: We deny?

Mr. Little: When you make your motion, I would suggest that you move to deny the application and affirm if that's what you're wanting to convey, that you deny the appeal and affirm the administrator's decision. And also, if you would for the record, please state your rationale for that.

Mr. Leigh: Alright, now you got me.

Mr. Little: The reason I, the reason I say that is if it does go to the Circuit Court for appeal, our minutes are going to be part of the records that the judge looks at and so it needs to be worded correctly and carefully.

Mr. Horsley: assure the T's are crossed and the all the T's are dotted, I's are crossed

Mr. Gandolfo: I make a motion that we deny the application A 23-01 and affirm the notice of violation dated August 15, 2023, based on the fact that the use of the property is in violation of Gloucester County code, Appendix B Zoning Section 5-1 in compliance with district regulations and Section 14- 21: uses are not provided for.

Mr. Holthaus: I second.

Mr. Horsley: Okay I have a motion and a second. All in favor say aye.

Board Members: Aye.

Mr. Horsley: All oppose? Okay application A-23-01 is denied.

Ms. Ducey-Ortiz: Thank you.

IN RE: APPLICATIONS AND BUSINESS BEFORE THE BOARD IN NOVEMBER

Mr. Horsley: We do have at least two applications for next month.

Mr. Little: Yes, Sir.

Mr. Horsley: At least.

Mr. Little: I spoke with the applicant for the gunsmithing business this afternoon as soon as I got the news about the mix up at the Gazette. He will not be here or probably will not be here at the end of next month. So, he asked about the possibility of having another meeting earlier. The Board does have the option of calling a special meeting. If you do that you need five days written notice to the other members, and I told

him the earliest that we will be able to do it based on advertising requirements would be the second week of November. Being that we've already got a case scheduled for the end of November. I don't know if I told him I didn't know if that would be palatable to you all or not, but that I would at least ask the question.

Mr. Gandolfo: Personally, I'm available to do that. We've done a number of these before it seems relatively straightforward. I'd like to give him an opportunity to come before us. It wasn't his fault. I guess that the paper didn't get it in otherwise we'd been hearing it right now. I'm available if the board wants to do it.

Mr. Leigh: What would be available?

Mr. Horsley: What date are we looking at?

Mr. Little: We're looking at I believe it's the 13th.

Mr. Horsley: 13th is a Monday,

Mr. Little: It would be the 14th.

Mr. Horsley: 14th?

Mr. Little: It would be that Tuesday.

Mr. Leigh: Yep.

Mr. Little: Tuesday after, I haven't checked yet to see if the rooms available, so that.

Mr. Horsley: It should be the Board of Supervisors are meets here on the 7th.

Mr. Little: They are meeting on the 8th, because of election day.

Mr. Horsley: Oh yeah, that's right they are meeting on eighth so yeah.

Mr. Little: It should, the room should be available, but we need to confirm that.

Ms. Walton: There isn't anything on the County Calendar, but I can confirm that tomorrow

Mr. Horsley: Planning Commission meets on the 1st.

Ms. Walton: Thursday.

Mr. Horsley: Thursday, don't they?

Mr. Little: First Thursday, yes. They meet on the second.

Mr. Horsley: I don't have any problem.

Mr. Newton: What was the reason he couldn't be here?

Mr. Little: He is a major in the army and will be deployed to the West Coast. He does some secret stuff.

Mr. Newton: I can do it.

Ms. Walton: So, confirm the 14th?

Mr. Horsley: As far as I'm concerned its

Mr. Gandolfo: I'm good.

Mr. Hostenske: I'm good too.

Mr. Leigh: I can do it.

Mr. Ottarson: I should be good. I'm not 100 percent sure.

{inaudible}

Mr. Little: Would you like to also do the variance the same night?

Mr. Horsley: The which one?

Mr. Little: The Variance for Mattress Warehouse.

Mr. Horsley: Oh yeah ok. Yeah, fine.

Mr. Gandolfo: Will that cancel out the

Mr. Little: No, we'll still have a meeting. But I talked to Anne about it a few minutes ago my thinking behind that was if you are unable to make a decision on either case at the special meeting. Then you could decide it at the already scheduled meeting right after Thanksgiving and fingers crossed. We wouldn't have a meeting in December.

Mr. Gandolfo: They would've been here anyway so we might as well do it anyway.

Mr. Leigh: Might as well do it.

Mr. Horsley: Yeah. Do you need a motion.

Mr. Little: Yes, and then we'll send out written notice to all the members.

Mr. Little: We have to give you five days' notice, or you have to give five days' notice written notice.

Mr. Horsley: Okay do I hear a motion?

Mr. Leigh: I want to make sure I understand that so we're doing a meeting on the 14th and the 28th.

Mr. Little: Yes, that's...

Mr. Leigh: Okay. We already have something scheduled for the 28th?

Mr. Little: We have another variance request.

Mr. Leigh: Well, I make a motion that we change. Well, not change the meeting but have a special meeting on November 14, 2023, for SE 23-04 and V-23-02

Mr. Hostenske: I'll second that.

Mr. Horsley: Okay I hear a motion and a second. All in favor say aye.

Board Members: Aye.

Mr. Horsley: Okay, now, you said we do have, we will have another application for the 28th.

Mr. Little: We do have one variance application. It's for property that you all have previously. I don't want to prejudice you too much. But the BZA has previously denied a variance for the same piece of property and the applicant is aware of it.

Mr. Newton: How many years ago

Ms. Walton: It was 2005 so 18 years ago.

IN RE: OLD BUSINESS

Mr. Horsley: All right. Do we have any, any old business? Okay no old business.

IN RE: NEW BUSINESS

Mr. Horsley: All right. Do we have any new business? Okay no new business. Well, we only got one more thing to do. Motion to adjourn.

IN RE: NEXT MEETING AND ADJOURNMENT

The next possible regularly scheduled meeting of the Gloucester County Board of Zoning Appeals will be a special meeting being held on Tuesday, November 14, 2023, at 7:00 p.m. in the Colonial Courthouse located in the Court Circle, Gloucester, Virginia.

Being no further business at this time, the Chairman adjourned the meeting, on motion by Mr. Gandolfo, seconded by Mr. Leigh, and carried unanimously by voice vote.

J. Wayne Horsley, Chairman

Laura Walton, Secretary