

STAFF ANALYSIS

As noted in the application for appeal, at issue is the Zoning Administrator’s denial of an after-the-fact zoning permit for an addition which was built upon a deck that was also constructed without permits. The reason for denial is that the addition does not meet the minimum side yard setbacks required in the Single Family Detached Residential District (SF-1). See “Denial of Permit Application 26020039 and NOTICE OF VIOLATION” dated February 23, 2026. The property is located at 7111 Tandems Way in Hayes; it is more formally identified as TM# 50E-10-18, RPC 18807.

The applicant’s reason for appeal is that the deck was located on the property at the time of purchase and that the addition does not extend beyond the footprint of the original deck. The application states that “The enclosure of the deck occurred under the good faith misunderstanding, as both the property owner and tenant believed that the appropriate permits had been obtained at the time of construction.” However, had the applicant applied for the required permits in order to construct the enclosure, they would have been informed that it was built without permits and did not meet the required setbacks.

In reviewing the zoning permit to enclose the deck, staff discovered a shed and garage which were also constructed without permits. See “NOTICE OF VIOLATION” dated February 23, 2026. They have applied for after the fact permits for these structures as well.

In their appeal, they note that there have been no complaints and that the matter came to light during a recent tax assessment review. “Given the long standing existence of the structure, the absence of complaints, and the good faith effort to resolve the issue, we respectfully request equitable consideration and approval of this appeal.”

Laura Lutinski, Assistant Zoning Administrator, researched the history of the property using the County’s records and aerial photos from 2011 to 2024 (attached). The County contracted with a company to take aerial photos of the county every two years in order to help with assessment, and these photos are available on the County’s Geographical Information System (GIS) page. As a result, we have reliable, visual documentation of when structures were built or modified even when there are no permits. Here is the timeline for the property from the research Ms. Lutinski conducted:

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- Owners: Mr. and Ms. Long obtained a Pool Permit: 1996 (attached) – no deck shown
- Checked all old permitting software- no other permits obtained for decks
- Purchase history: Long, Robert C- 8/18/1993
 - Foster, John C – 5/07/2007
 - Federal Home Loan Mortgage Corporation- 7/9/2009
 - Foster, Frances- 2/12/2010
 - Ann Foster Living Trust- 2/14/2022
- Removed back portion of deck: Between 2014 and 2017
- Built shed and Garage with no permits: Between 2014 and 2017
- Enclosed side portion of deck w/out permitting between 2018 and 2022
- Real Estate Assessment notified Zoning and Building Departments: June 5, 2024
- Tracy Foster applied for the addition (did not have a scaled plot plan that included addition): 7/19/2024
- Tracy Foster withdrew application: 9/12/2024
- Bob Foster came into Planning and Zoning’s lobby to discuss situation between 12/2025 and January 2026
- Application received: 2/10/2026 – Denied 2/23/2026
- During research discovered front deck replaced sometime between 2007 and 2011 also done without permits.
- AFTER-THE-FACT Zoning Application for the shed and garage were received on 3/25/2026
- Application for appeal of denial received 3/25/26

Although Ms. Foster indicates on her application that she “inherited” the deck at the time of purchase in 2010 and assumed “on good faith” that the “appropriate permits had been obtained” she, herself, did not obtain any of the appropriate permits for any of the work conducted on the property from 2010 until the present, including the addition over the deck, the front deck, shed, and a garage. As a result, and until it was discovered by the Assessor’s office, she did not pay taxes on any of those improvements, whereas those property owners that did get the appropriate permits did pay taxes on their authorized improvements. In her appeal she requests “equitable consideration” and approval of this appeal. From staff’s perspective, it is not equitable if she is treated differently than those that comply with the County’s regulations.

Section 15-1 (1) of the Zoning Ordinance states: *“No building, structure, or other improvement necessitating confirmation of zoning compliance 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 zoning administrator.”*

Section 5-1 of the Zoning Ordinance, Compliance with district regulations, states:

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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.

Sec. 13-1. - Office of zoning administrator.

- (1) This ordinance shall be administered and enforced by a zoning administrator who shall be appointed by the county administrator. The zoning administrator may confer his/her responsibilities and duties to others as may be necessary and appropriate.
- (2) Upon finding that any of the provisions of this ordinance are being violated, the zoning administrator shall work to achieve compliance in any of the following manners:
 - a) Notify in writing the person responsible for such violation(s) indicating the nature of the violation(s) and ordering the action necessary to correct such violation(s);
 - b) Order discontinuance of illegal uses of land, buildings, or structures;
 - c) Order the removal of illegal buildings or structures or illegal additions, alterations, or structural changes;
 - d) Order discontinuance of any illegal work being done;
 - e) Ensure compliance with the ordinance by bringing legal action, including injunction, abatement, or other appropriate action or proceeding subject to appeal pursuant to Va. Code § 15.2-2311;f.In specific cases, make findings of fact and, with concurrence of the county attorney, conclusions of law regarding determinations of rights accruing under Va. Code § 15.2-2307 or 15.2-2311(C); and
 - f) Take any other action authorized by this ordinance to ensure compliance with or to prevent violations of this ordinance. This may include the issuance of and action on zoning permits and certificate of occupancy permits and such similar administrative duties as are permissible under the law.

Ms. Foster appealed the denial of the after-the-fact permit for the addition that did not meet setback requirements. Based on Section 13.1 above, the Zoning Administrator is

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required to pursue compliance. Had Ms. Foster applied for and obtained a zoning permit when she enclosed the deck, she would have been informed of the setback and complied. The Zoning Administrator had no choice but to deny the permit since it did not meet the requirements of the ordinance as outlined in the denial letter.

Section 14-6 of the Zoning Ordinance, Appeal of the zoning administrator decision, subsection 3, Action of the board of zoning appeals, states the following:

- a. *The board of zoning appeals shall fix a reasonable time for the hearing of an applicant's appeal, give public notice thereof as well as due notice to the parties in interest, and decide the same within sixty (60) days.*
- b. *The decision on such appeal shall be based on the board of zoning appeal'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 or her determination after which the appellant has the burden of proof to rebut such presumption of correctness by a preponderance of the evidence. The board of zoning appeals shall consider any applicable ordinances, laws, and regulations in making its decision.*
- c. *In exercising its powers, the board of zoning appeals may reverse or affirm, wholly or partly, or may modify, an order, requirement, decision, or determination appealed from. The concurring vote of a majority of the membership of the board of zoning appeals is necessary to reverse any order, requirement, decision, or determination of the administrator or to decide in favor of the applicant.*

The appeal also asks the BZA to consider the pre-existing deck as a “lawful” non-conforming structure. Ms. Lutinski’s research found a zoning permit for 1996 for a pool. No deck was shown on that permit and no permit was issued for a deck. The zoning ordinance defines a non-conforming structure as “An otherwise **legal** building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this ordinance, designed or intended for a use that does not conform to the use regulations of this ordinance, for the district in which it is located.” The deck was built without permits sometime after the pool was constructed and therefore, is not a legally non-conforming structure. In addition, had Ms. Foster applied for the appropriate permits to build an addition on her home, she would have been informed that the deck was built without permits and did not meet the required setbacks.

Finally, although Ms. Foster applied for an appeal of the zoning administrator’s decision to deny her after the fact application, she stated that she “seeks a variance or other appropriate relief from the setback requirement to allow the structure to remain.” Although she did not apply for a variance, it is clear that by not obtaining the necessary

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permits to enclose the deck, which would ensure compliance with the ordinance, that this is a self-created hardship. Had she applied for and obtained a zoning and building permit when the side portion of the deck was enclosed sometime between 2018 and 2022, she would have been told that the addition needed to be 15 feet from the side property line and the permit would not have been approved if it was not in compliance with the ordinance.

Attachments:

1. Application for Appeal
2. Denial of Permit Application 26020039 and NOTICE OF VIOLATION dated February 23, 2026
3. NOTICE OF VIOLATION dated February 23, 2026
4. Aerial Photos from 2011-2024
5. 1996 Pool Permit Plan – no deck shown on plan
6. Email Chain between Tracy Foster and Laura (Walton) Lutinski regarding original permit submitted without addition shown
7. Application 26020039 - Denied

The following are the sections of the County's updated Zoning Ordinance that relate to the Zoning Board of Appeals and their responsibilities.

Section 13-3. Board of Zoning Appeals.

- (1) Terms of Office and Appointments.
 - a. The board of zoning appeals shall consist of seven (7) residents of Gloucester County, who shall be appointed by the circuit court of Gloucester County. The terms of office shall be for five (5) years each, staggered in accordance with original appointments and Virginia law.
 - b. The secretary of the board of zoning appeals shall notify the circuit court at least thirty (30) days in advance of the expiration of any term of office and shall also notify the circuit court promptly if any vacancy occurs. A member whose term expires shall continue to serve until his successor is appointed and qualifies.
 - c. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.
 - d. Members of the board of zoning appeals shall hold no other public office in Gloucester County except that one may be a member of the local planning commission, and any member may be appointed to serve as an officer of election as defined in Va. Code § 24.2-101.
- (2) Election of Officers. With the exception of its secretary, the board of zoning appeals shall elect from its own membership its officers, who shall serve annual

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terms as such and may succeed themselves. The board of zoning appeals may elect as its secretary either one of its members or a qualified individual who is not a member of the board of zoning appeals. A secretary who is not a member of the board of zoning appeals shall not be entitled to vote on matters before the board of zoning appeals.

- (3) Rules of procedures; records; compensation; removal.
 - a. The board of zoning appeals may make, alter and rescind rules and forms of its procedures, consistent with ordinances of the county and general laws of the commonwealth.
 - b. The board of zoning appeals shall offer an equal amount of time in a hearing on the case to the applicant, appellant or other person aggrieved under Va. Code § 15.2-2314 and the staff of the county.
 - c. The board of zoning appeals shall keep a full public record of its proceeding and shall submit a report of its activities to the board of supervisors at least once each year.
 - d. Within the limits of funds appropriated by the board of supervisors, the board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services.
 - e. Members of the board may receive such compensation as may be authorized by the board of supervisors.
 - f. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed him, after a hearing held after at least fifteen (15) days' notice.
 - g. The board of zoning appeals 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 Va. Code § 15.2-2204 shall be conducted at the continued meeting and no further advertisement is required.
- (4) Proceedings of the Board of Zoning Appeals.
 - a. The board of zoning appeals shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this ordinance.
 - b. Meetings shall be held at the call of the chairman and at such other times as the board of zoning appeals may determine.

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- c. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.
 - d. All meetings shall be open to the public.
 - e. The board of zoning appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examination and other official actions, all of which shall be a public record and be filed in the office of the board of zoning appeals.
 - f. For the conduct of any hearing or the taking of any action, a quorum shall not be less than a majority of all the members of the board of zoning appeals.
- (5) Powers and duties of the board of zoning appeals.
- a. No provision of this code shall be construed as granting the board of zoning appeals 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 board of supervisors.
 - b. For the purpose of this ordinance, the board of zoning appeals has the following specific powers and duties.
 - i. Appeals.
 - (a) 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. For purposes of this section, determination means any order, requirement, decision or determination made by an administrative officer.
 - (b) 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 Va. Code § 15.2-2204.
 - (c) 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.
 - ii. Variances. 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

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observed and substantial justice done; following the provisions of article 14 section 14-5 et seq.

- iii. Interpretation of the district map. 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 following the guidance provided in section 3-5 Interpretation of district boundaries. After notice to the owners of the property affected by the question-and after public hearing with notice as required by Va. Code § 15-2-2204, the board of zoning appeals 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 of zoning appeals shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- iv. Special Exceptions.
 - (a) To hear and decide upon applications for special exceptions as may be authorized in the district regulations and use table. The board of zoning appeals 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 (SE) may be granted except after notice and public hearing as provided in Va. Code § 15.2-2204.
 - (b) To revoke a special exception previously granted by the board of zoning appeals if the board of zoning appeals 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 Va. Code § 15.2-2204.

Section 13-4. Matters of Appeal.

Duties of zoning administrator, board of zoning appeals, legislative authority and courts on matters of appeal.

- (1) All questions of interpretation and enforcement shall be first presented to the administrator, and such questions shall be presented to the board of zoning appeals only on appeal from the decision of the zoning administrator, and recourse from the decisions of the board of zoning appeals shall be to the courts as provided by law.

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- (2) The duties of the board of supervisors in connection with this ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise, except as authorized by state law and this ordinance.
- (3) Appeal procedures shall be as set forth in articles 14 and 15 of this ordinance.