

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY

Zoning Board of Adjustment

MEETING: October 28, 2020

SUBJECT: Wright, Fleischer, Jolly & Davidson Appeal A-20-05

PRESENTER: Matt Champion

ATTACHMENTS: Staff Report

SUMMARY OF REQUEST: Appeal of Chapter 42 Land Development Code

Suggested Motion:

I move to uphold/overturn the Appeal of a Zoning Determination at PIN: 0611-35-7115 and requests the staff and the County Attorney to draft an order consistent with such a ruling, including proposed findings of fact, for the Board's consideration at its next meeting.



Henderson County, North Carolina Code Enforcement Services

1. Committee Request

- 1.1. **Applicant:** Whitney Wright, Barry Fleisher, James Jolly, and Joseph & Maureen Davidson
- 1.2. **Request:** Appeal of Chapter 42 Land Development Code
- 1.3. **PIN:** 0611-35-7115
- 1.4. **Size:** 9.74 acres +/-
- 1.5. **Location:** Off Red Tail Drive

Timeline:

- 12/10/19 Complain Received of Outdoor Shooting
- 9/22/20 Notice of Determination Mailed
- 9/24/20 Attorney Gulden Requests Appeal
- 9/24/20 Appeal Filed

Definition in LDC

Shooting Range. A facility designed or used for archery and/or the discharging of firearms for the purposes of target practice or temporary competitions. A shooting range may be indoors (completely enclosed within a *building/structure*) or outdoors.

SR 4.18. Shooting Ranges, Outdoor

- (1) Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
- (2) Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
- (3) Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse affects to adjacent properties.
- (4) Separation. An outdoor *shooting range* shall not be constructed or newly located within:
 - a. One-half (½) mile of an existing *school, library, day care facility, healthcare facility* and/or *religious institution*; and
 - b. One thousand (1,000) feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
- (5) Security. The operations of an outdoor *shooting range* shall be totally enclosed by: (1) a security fence at least eight (8) feet in height; or (2) a wall at least eight (8) feet in height. Entrances and exits should be secured and locked during non-operating hours.
- (6) Perimeter Setback. Two hundred (200) feet. (Storage of debris, equipment and other materials shall not be permitted in the *perimeter setback*).
- (7) Perimeter Buffer. Fifty (50) feet.
- (8) Structure. Outdoor *shooting ranges* must be designed to contain all projectiles fired on-site.
- (9) Hours of Operation. 9:00 a.m. to 8:00 p.m.

§42-379. Appeals

Questions arising in connection with the enforcement of this Chapter shall be presented first to the approving official or agency and shall be presented to the appellate agency only on *appeal* from the approving official or agency (See Table 12.1). *Appeals* must be filed 30 days from the date of the decision with the approving official or agency. Where the appellate agency is the Zoning Board of Adjustment (ZBA), the ZBA shall hold a public hearing on the *appeal* in accordance with §42-371 (Quasi-Judicial Process Standards).

Map A: Aerial Photo



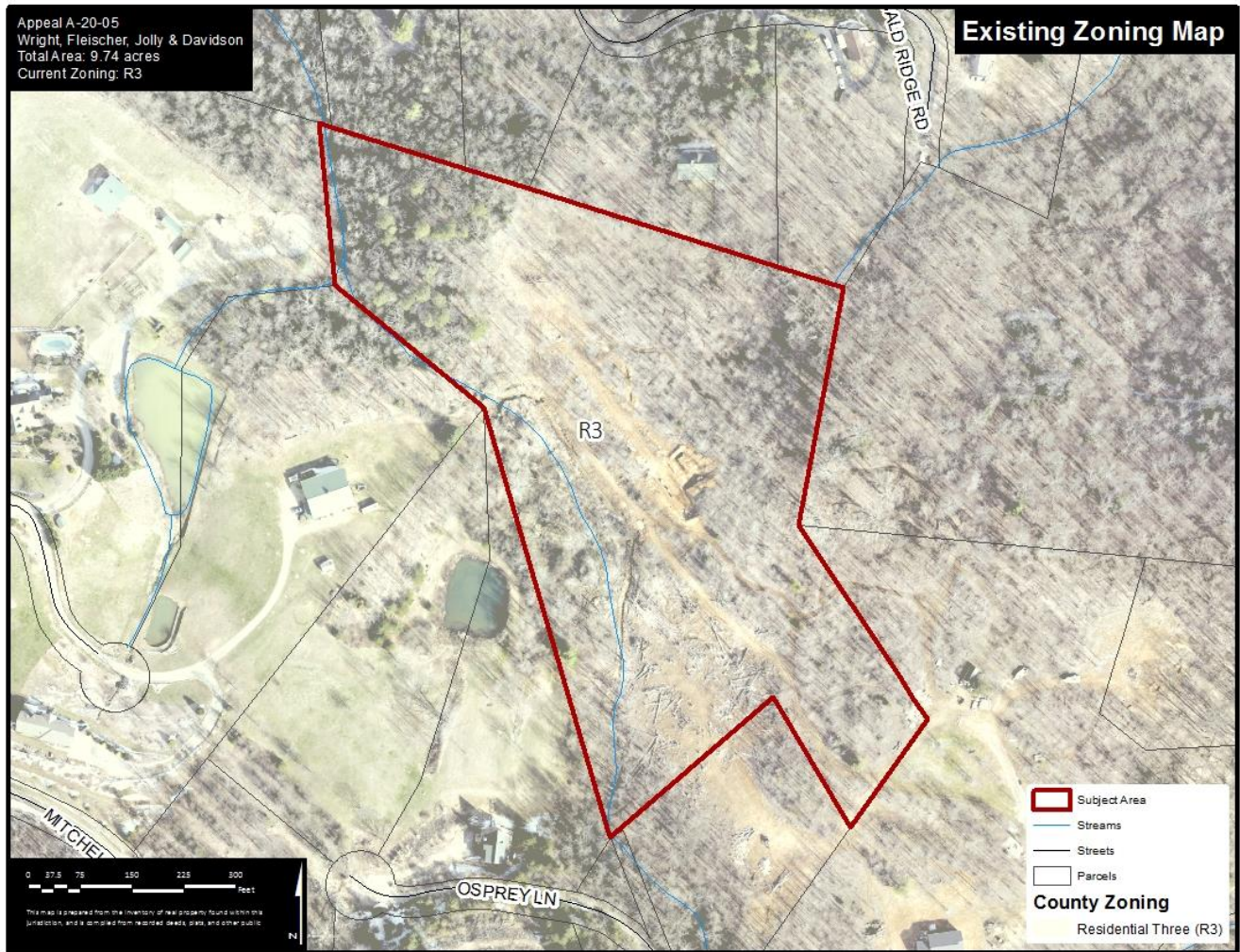
2. Current Conditions

2.1 Current Use: This parcel is currently vacant.

2.2 Adjacent Area Uses: The surrounding properties are residential.

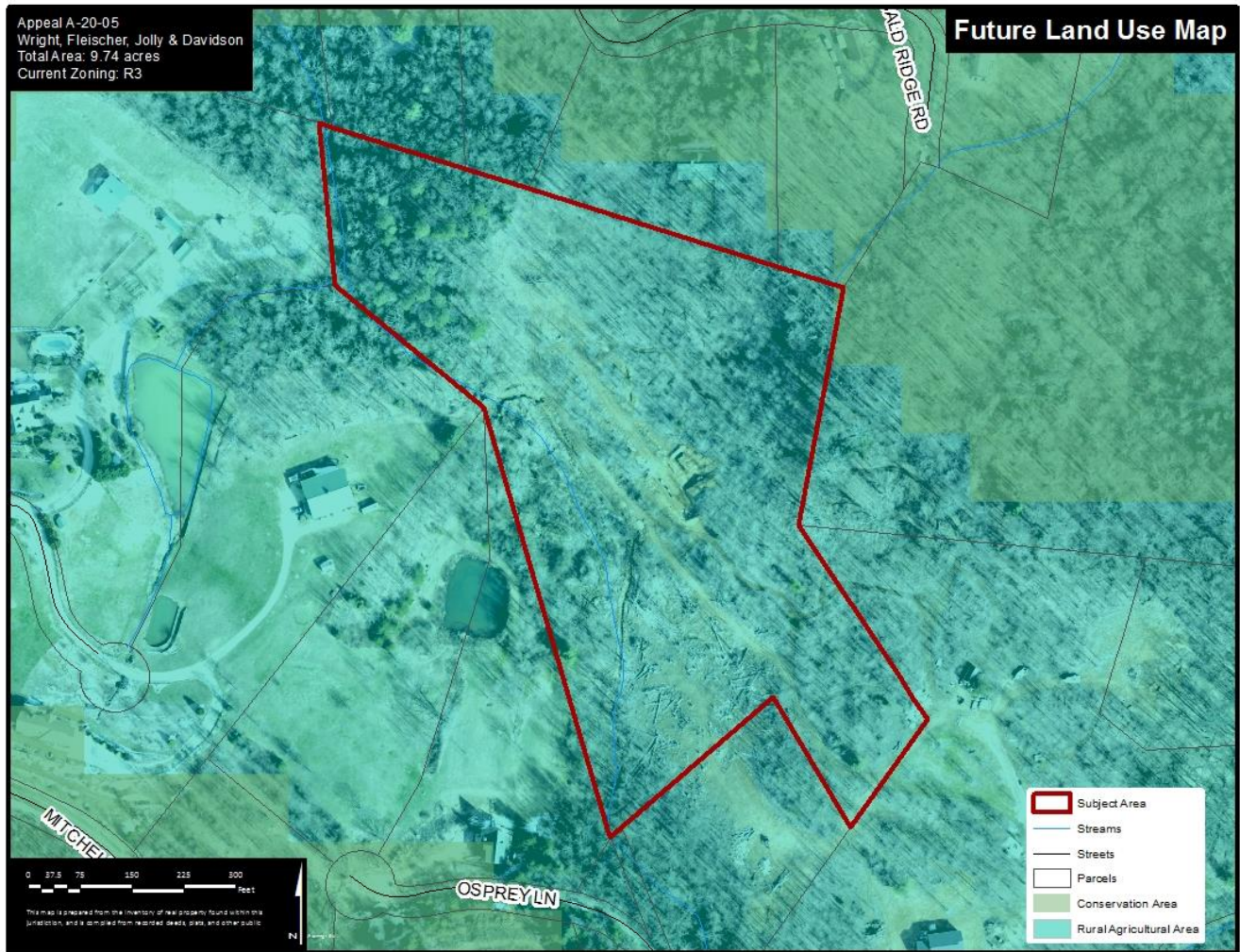
2.3 Zoning: The subject and surrounding properties are Residential Three (R3).

Map B: Current Zoning



- 3. **Floodplain /Watershed Protection** The property is not located in a Special Flood Hazard Area. The property is not in a Water Supply Watershed district.
- 4. **Water and Sewer** Private well and private septic system serve this property.
 - 4.1. **Public Water:** Public water is not available.
 - 4.2. **Public Sewer:** Public sewer is not available.

Map C: CCP Future Land Use Map



5. Staff Comments

Henderson County CCP: The CCP Future Land Use Map places the Subject Area in the Rural Agricultural Area (RAA). The text and map of the CCP suggest that the Subject Area would be more suitable for the following:

- A. The Rural Agricultural Area covers those portions of the county that are predominantly rural, and area characterized by low-density residential development with substantial land areas devoted to agriculture and undeveloped lands. Land use policies will seek to retain that character.
- B. Densities should be considerably lower than that of the USA or RTA. The suitability of land within these regions of the county should be a principal consideration in determining developmental densities and segregation of incompatible land uses.
- C. Extraordinary care should be taken in these areas to preserve their rural character and to protect valuable farmlands as well as environmental and cultural resources.

6. Staff Recommendations

Staff's Position, under the guidelines of current plans, policies and studies, is to overrule the appeal and uphold Henderson County's decision to enforce the Public Health Nuisance Ordinance and require removal of all junked motor vehicles, and outdoor storage of solid waste.



Henderson County, North Carolina Code Enforcement Services

September 14, 2020

RE: Rector Property

I received complaints about outdoor shooting on the Travis and Virginia Rector property in December 2019. I investigated the complaint and found the property to contain an outdoor shooting range for private use. The Land Development Code (LDC) defines a shooting range below.

Shooting Range. A facility designed or used for archery and/or the discharging of firearms for the purposes of target practice or temporary competitions. A shooting range may be indoors (completely enclosed within a *building/structure*) or outdoors.

The LDC does not differentiate between public and private ranges for the purposes of permitting. The County must make determinations between what is a business and what is personal use in order to allow individuals to enjoy the use of their property. It is the County's determination that this range is not a public business use and therefore does not require a special use permit.

Please see answers to your questions below:

1) What factors are considered when determining whether one's property is being used as an outdoor Shooting Range;

Henderson County identifies a business use shooting range from the existence of advertising, structures, parking, access, amount of use and hours of operation.

2) Whether the current use of the Property is that of an outdoor Shooting Range as the same is defined in the LDC;

The LDC definition of a shooting range is a FACILITY designed for the purposes of target practice or temporary competitions. When a term is not defined in the LDC we use the Merriam Webster definition for interpretations. A Facility is defined as "something (such as a hospital) that is built, installed, or established to serve a particular purpose". Henderson County does not feel that this use constitutes a facility designed as a shooting range. There is an earthen backstop berm and a small storage building for targets and chairs on the property. There is not driveway access nor designated parking on the property.

3) Why the Property is not considered a facility designed or used for the discharging of firearms for the purposes of target practice; and

Toby Linville
Director, Code Enforcement Services
100 N King St.
Hendersonville, North Carolina 28792
tlinville@hendersoncountync.org
www.hendersoncountync.org
828-694-6627

The use does not constitute a facility as defined. The property is used for target practice but not for temporary competitions.

4) Whether the current use of the Property, involving the discharging of firearms, requires a Special Use Permit and is subject to the supplemental requirements outlined in SR 4.18.

This use does not require a special use permit. Although the definition of a shooting range is vague in the LDC, it is not Henderson County's position to regulate small backyard shooting ranges as if they were public businesses.

Please advise if you have any further questions. If your clients wish to appeal my decision, please complete the Code Enforcement Services appeal form attached.

Thank you,

Toby Linville

Toby Linville
Director, Code Enforcement Services
100 N King St.
Hendersonville, North Carolina 28792
tlinville@hendersoncountync.org
www.hendersoncountync.org
828-694-6627

**HENDERSON COUNTY
CODE ENFORCEMENT DEPARTMENT
ZONING ADMINISTRATION**

APPEAL NOTIFICATION FORM

Name: Whitney Wright, Barry Fleisher, James Jolly and Joseph & Maureen Davidson

Address: c/o Brian Gulden, 11 North Market Street

City: Asheville **State:** North Carolina **Zip:** 28801

Under what Ordinance are you requesting an appeal:

- Flood Damage Prevention Ordinance- Board of Adjustment*
 - Zoning Ordinance*
 - Erosion and Sedimentation Control Ordinance*
 - Watershed Ordinance *
 - Nuisance Ordinance [HCC §126-9]
 - Animal Control Ordinance [H.C.C. §66A-10D]
 - Manufactured Home Park Ordinance*
 - Solid Waste Ordinance- Board of Commissioners [H.C.C. §165-33]
 - Communication Facility Permit*
 - Map Amendment*
 - Text Amendment*
 - Technical Review Committee*
 - Planning Board*
- * Under 200A-273 and 200A-346 Henderson County ZBA will hear these appeals

Date of Violation or Order you are appealing if applicable: September 22, 2020

What are the reasons for your appeal?

Appellants disagree with Toby Linville's interpretation of what constitutes a "Shooting Range" as defined and used in Henderson County's Land Development Code. Further, Appellants disagree with the County's position related to the four (4) questions presented in the attached correspondence which is the determination/order being appealed.

PLEASE NOTE: Please Attach the Notice of Violation or Order being appealed when applicable.

There is no fee to appeal these ordinances

Signature of Appellant(s) Brian Gulden Date 9/24/2020
BRIAN GULDEN ATTORNEY FOR APPELLANTS

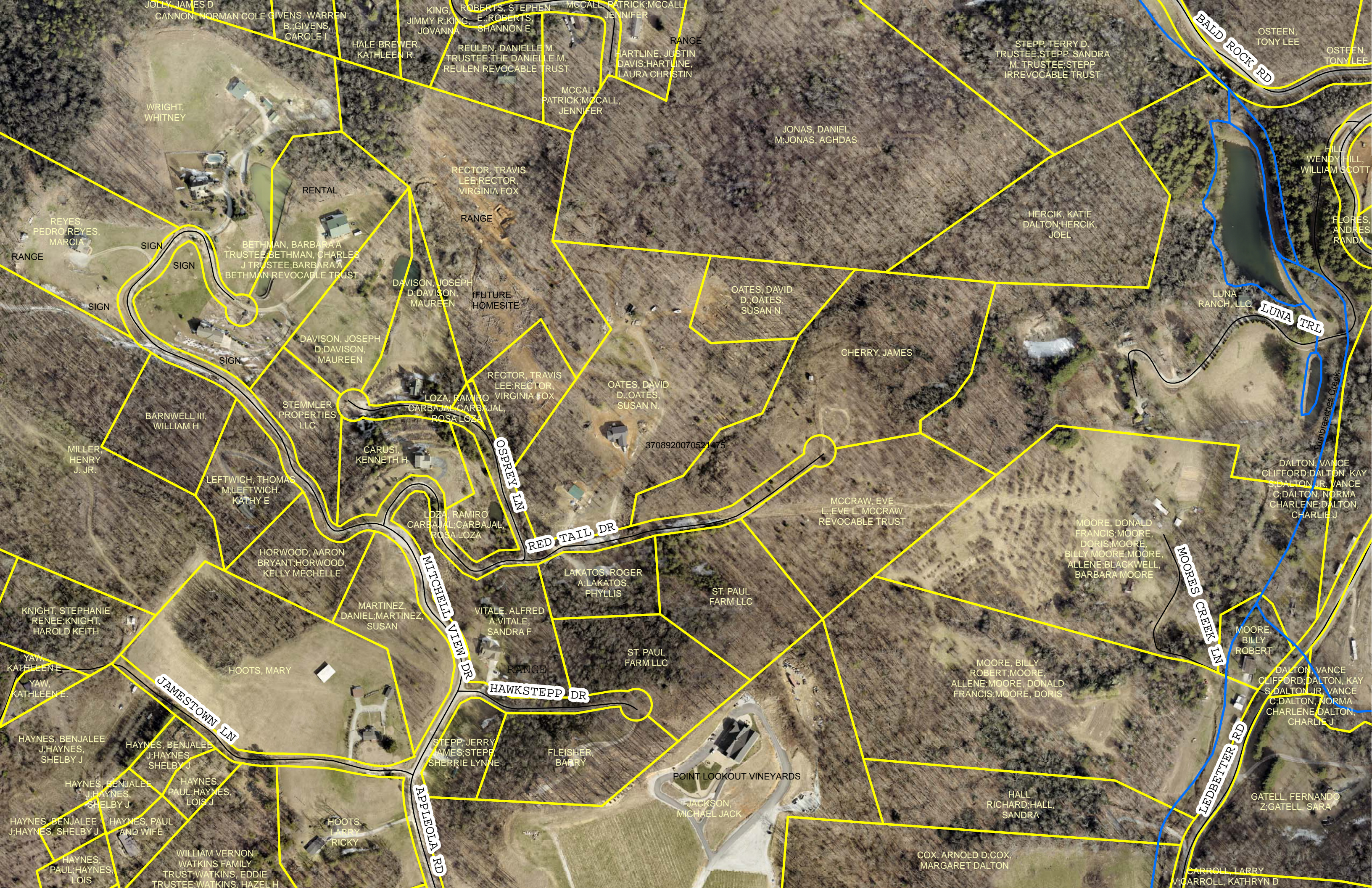
FOR DEPARTMENT USE ONLY:

Date Appeal Received: _____

Which Board hears the appeal? _____ Board of Adjustment; _____ Planning Board;
_____ Board of Commissioners; _____ Animal Services Appellate Board

Date of Meeting Appeal will be heard: _____

Signature of Authorized Personnel _____



JOLLY, JAMES D
CANNON, NORMAN COLE GIVENS, WARREN B. GIVENS, CAROLE I.

HALE-BREWER, KATHLEEN R.
KING, ROBERTS, STEPHEN E. ROBERTS, SHANNON E.
JIMMY R. KING, JOVANNA

MCCALL, PATRICK; MCCALL, JENNIFER
REULEN, DANIELLE M. TRUSTEE; THE DANIELLE M. REULEN REVOCABLE TRUST
HARTLINE, JUSTIN DAVIS; HARTLINE, LAURA CHRISTIN

STEPP, TERRY D. TRUSTEE; STEPP, SANDRA M. TRUSTEE; STEPP IRREVOCABLE TRUST

BALD ROCK RD
OSTEEN, TONY LEE

WRIGHT, WHITNEY

RECTOR, TRAVIS LEE; RECTOR, VIRGINIA FOX

MCCALL, PATRICK; MCCALL, JENNIFER

JONAS, DANIEL M.; JONAS, AGHDAS

HERCIK, KATIE DALTON; HERCIK, JOEL

HILL, WENDY HILL; WILLIAM SCOTT

REYES, PEDRO; REYES, MARCIA

BETHMAN, BARBARA A TRUSTEE; BETHMAN, CHARLES J TRUSTEE; BARBARA A BETHMAN REVOCABLE TRUST

DAVISON, JOSEPH D.; DAVISON, MAUREEN

OATES, DAVID D.; OATES, SUSAN N.

LUNA RANCH, LLC

FLORES, ANDRES RANDAL

SIGN

RECTOR, TRAVIS LEE; RECTOR, VIRGINIA FOX

DAVISON, JOSEPH D.; DAVISON, MAUREEN

CHERRY, JAMES

LUNA TRL

Lumbraeches Creek

SIGN

DAVISON, JOSEPH D.; DAVISON, MAUREEN

RECTOR, TRAVIS LEE; RECTOR, VIRGINIA FOX

OATES, DAVID D.; OATES, SUSAN N.

MOORE, DONALD FRANCIS; MOORE, DORIS; MOORE, BILLY MOORE; MOORE, ALLENE; BLACKWELL, BARBARA MOORE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

SIGN

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

RECTOR, TRAVIS LEE; RECTOR, VIRGINIA FOX

3708920070521475

MCCRAW, EVE L.; EVE L. MCCRAW REVOCABLE TRUST

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

BARNWELL III, WILLIAM H

STEMMLER PROPERTIES LLC

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

OSPREY LN

MOORE, DONALD FRANCIS; MOORE, DORIS; MOORE, BILLY MOORE; MOORE, ALLENE; BLACKWELL, BARBARA MOORE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

MILLER HENRY J. JR.

CARUSI, KENNETH H

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

RED TAIL DR

MOORE, DONALD FRANCIS; MOORE, DORIS; MOORE, BILLY MOORE; MOORE, ALLENE; BLACKWELL, BARBARA MOORE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

LEFTWICH, THOMAS M.; LEFTWICH, KATHY E

HORWOOD, AARON BRYANT; HORWOOD, KELLY MECHELLE

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

RECTOR, TRAVIS LEE; RECTOR, VIRGINIA FOX

MOORE, DONALD FRANCIS; MOORE, DORIS; MOORE, BILLY MOORE; MOORE, ALLENE; BLACKWELL, BARBARA MOORE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

KNIGHT, STEPHANIE RENEE; KNIGHT, HAROLD KEITH

MARTINEZ, DANIEL; MARTINEZ, SUSAN

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

LAKATOS, ROGER A.; LAKATOS, PHYLLIS

MOORE, DONALD FRANCIS; MOORE, DORIS; MOORE, BILLY MOORE; MOORE, ALLENE; BLACKWELL, BARBARA MOORE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

YAW, KATHLEEN E

HOOBS, MARY

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

VITALE, ALFRED A.; VITALE, SANDRA F

MOORE, DONALD FRANCIS; MOORE, DORIS; MOORE, BILLY MOORE; MOORE, ALLENE; BLACKWELL, BARBARA MOORE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

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ST. PAUL FARM LLC

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HAYNES, BENJALEE J.; HAYNES, SHELBY J

HAYNES, PAUL; HAYNES, LOIS J

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HAYNES, BENJALEE J.; HAYNES, SHELBY J

HAYNES, PAUL AND WIFE

LOZA, RAMIRO CARBAJAL; CARBAJAL, ROSA LOZA

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DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

WILLIAM VERNON WATKINS FAMILY TRUST; WATKINS, EDDIE TRUSTEE; WATKINS, HAZEL H

POINT LOOKOUT VINEYARDS
JACKSON, MICHAEL JACK

HALL, RICHARD; HALL, SANDRA

COX, ARNOLD D.; COX, MARGARET DALTON

CARROLL, LARRY V.; CARROLL, KATHRYN D

GATELL, FERNANDO Z.; GATELL, SARA

MOORE, BILLY ROBERT

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

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OSTEEN, TONY LEE

DALTON, VANCE CLIFFORD; DALTON, KAY S.; DALTON, JR., VANCE C.; DALTON, NORMA CHARLENE; DALTON, CHARLIE J

7. **Photographs**





07.28.2020 11:01



07.28.2020 11:18









A-20-05 Wright, Fleischer, Jolly & Davidson Zoning Appeal

