

Botetourt County Board of Zoning Appeals Agenda

57 S. Center Drive, Daleville, Virginia
Auditorium
August 29, 2023, 9:00 AM

*Anyone interested in addressing the Board of Zoning Appeals regarding a public hearing on this agenda, must complete a "Request to Speak" form and give it to the secretary before the meeting begins. Forms are located with the agendas and at the secretary's table. When your name is called, please go to the podium and **state your name and address** before making your comments. Comments made to or from the audience during testimony or commission deliberation are not permitted. Recognized speakers and the audience must be courteous at all times. A time limit of three minutes per speaker (unless otherwise provided for by a majority of the Board of Zoning Appeals members present) will be observed.*

1. Public Hearing

- A. Fincastle District: Wesley A. Hodges is appealing a determination included in a May 26, 2023 notice of violation that certain development and uses are prohibited in the floodway sub-district. The appeal is made in accordance with Section 25-552.- Appeals of administrative officers and § 15.2-2311 of the Code of Virginia. The notice of violation was issued in association with property located at 191 Bridge Street, Eagle Rock and identified on the Real Property Identification Maps as Section 4A, Parcel 46.

2. Other Business

- A. Review and approval of the July 11, 2023 minutes.

3. Adjourn

It is the intention of Botetourt County to comply with the Americans with Disabilities Act (ADA) in all respects. If an attendee or participant at this meeting needs special assistance beyond what is normally provided, Botetourt County will attempt to accommodate you in a reasonable manner. Please contact Laura Goad (540.928.2080) at least 72 hours prior to the meeting to inform us of your particular needs and advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.



JORDAN K. SHARPES, ESQUIRE

111 EAST CLAY STREET
SALEM, VIRGINIA 24153
TEL: (540) 721-5110
FAX: (540) 721-5112

JSHARPES@BSRLEGALGROUP.COM

June 23, 2023

VIA HAND DELIVERY

Drew Pearson, Zoning Administrator
Botetourt County Planning & Zoning Division
57 S. Center Drive
Danville, VA 24083

Botetourt County Board of Zoning Appeals
c/o Steve Kidd, Chairman
57 S. Center Drive
Danville, VA 24083

Re: Appeal of Notice of Violation Dated May 26, 2023
Case No. CE-23-00075

Dear Sir or Madam:

This letter is to confirm that I have been retained to represent Wesley Hodges in the Appeal of the Notice of Violation dated May 26, 2023.

Please find enclosed the following documents:

1. Application to Appeal Zoning Administrator's Decision (original and 12 copies), with Notice and Statement of Appeal attached;
2. Flash drive enclosing a digital copy of the completed Application to appeal Zoning Administrator's Decision;
3. Check in the amount of \$11.00 to cover the cost of the certified mail fee to the adjacent owners. By our count, there are eleven adjacent property owners, erring on the side of caution; and
4. Check in the amount of \$500.00 to cover the cost of the filing fee and certified mail fee.

Thank you for your assistance and if you should have any questions, please do not hesitate to contact me.

YOUR LIFE. YOUR LAWYERS.

Sincerely,

Jordan K. Sharpes

A handwritten signature in blue ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

JKS/lam
Enclosures

Application to appeal a decision of the Zoning Administrator

Community Development | Planning & Zoning Division
57 S. Center Drive, Daleville, VA 24083
P: 540.928.2080
E: planning@botetourtva.gov



Appeal of Zoning Administrator Decision

Applications. Applications to the board of zoning appeals may be made by any person aggrieved, or any officer, department or agency of the county affected, by an order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the provision of this chapter.

Appeals from administrative ruling. The board of zoning appeals shall hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this chapter. In case of an appeal from decisions by the zoning administrator to the board of zoning appeals, procedures to be followed shall be in strict accordance with section 15.2-2310 et seq. Of the Code of Virginia.

When appeals may be taken. Appeals to the BZA may be taken by any person aggrieved by an officer, department, board or agency of the county or affected by a decision of the zoning administrator. Appeals shall be taken within thirty (30) days after the decision has been rendered.

Appeal Information

The appellant is required to submit the following:

- \$500.00 filing fee
- Statement of Appeal
- Cost of adjacent property owner notification by certified mail
- One (1) digital copy of the completed Application to Appeal Zoning Administrator's Decision
- Twelve (12) collated copies of the completed Appeal Zoning Administrator's Decision

I/We, the undersigned do hereby petition and appeal to the Botetourt County Board of Zoning Appeals for the following zoning determination:

Appellant Information:

Date: 6/23/23
 Name: Wesley Hodges
 Physical Address of Property: 191 Bridge St, Eagle Rock, VA 24085
 Mailing Address, if different: 101 Baldwin St, Staunton VA 24401
 Phone Number: (910) 578-5424 Email: wes@wesleyhodgesflyfishing.com

Identification of Property to which appeal pertains:

Property address: 191 Bridge St, Eagle Rock VA 24085 Tax Map number(s): 4A-46
 Zoning: A-1, Agricultural Magisterial District: Fincastle
 Current Land Use: Residential
 Instrument number or Deed Book/Page Number: 19000 2519

This property is regulated by conditions from the Board of Supervisors: Yes No

This property is regulated by an approved variance from the Board of Zoning Appeals Yes No

Application to appeal a decision of the Zoning Administrator

Community Development | Planning & Zoning Division

57 S. Center Drive, Daleville, VA 24083

P: 540.928.2080

E: planning@botetourtva.gov



Statement of Appeal

I/We request an appeal to Section 25- 419 - See attached of the Botetourt County Zoning Ordinance. Please enter the date of the requirement, decision, determination or notice of violation: 5/26/23

The Statement of Appeal should clearly state the issue(s) you wish the Board of Zoning Appeals to consider. Please provide a statement of appeal that addresses all of the following questions.

1. Summarize how the appellant is aggrieved. Please describe the order, requirement, notice of violation, decision or determination of the Zoning Administrator that you wish to appeal. See attached
2. How was the appellant aggrieved or injured by that order, requirement, decision, or determination? See attached
3. What is the basis of the appeal? See attached

Please attach the Zoning Administrator's determination letter, as well as any documents, drawings, photographs or other information cited as evidence in this Statement of Appeal. Please individually mark these attached items as exhibits to the statement (e.g., "Exhibit A to Statement of Appeal, Exhibit to Statement of Appeal", etc.) in the top right-hand corner of each exhibit document.

Certification of Appellant

Sec. 25-553. - Ex parte communications and proceedings.

- (a) The non-legal staff of the governing body may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. The applicant, landowner, or his agent or attorney may have ex parte communications with a member of the board prior to the hearing but may not discuss the facts or law relative to a particular case. If any ex parte discussion of facts or law in fact occurs, the party engaging in such communication shall inform the other party as soon as practicable and advise the other party of the substance of such communication. For the purposes of this section, regardless of whether all parties participate, ex parte communications shall not include (i) discussions as part of a public meeting or (ii) discussions prior to a public meeting to which staff of the governing body, the applicant, landowner or his agent are all invited.

All applications must be signed by the appellant. If the appellant is the owner of the property in question, by signing below, I/we certify this application is complete and accurate to the best of my/our knowledge, and authorize county officials to conduct site reviews on this property.

Is appellant the owner of the property in question? Yes No



Signature, Appellant

June 23 2023

Signature, Appellant

NOTICE AND STATEMENT OF APPEAL

I, Wesley Hodges, appeal the Notice of Violation dated May 26, 2023 related to 191 Bridge Street, Eagle Rock, Virginia (Case No. CE-23-00075).

The notice of violation indicates that §25-419 of the Botetourt County Municipal Code prohibits the presence of tents, decks upon which the tents are placed, and other facilities used in conjunction with such tents in the floodway. Yet, these are uses permitted in the underlying zoning district. Further, the Zoning Administrator interprets § 25-419 as prohibiting any use not being made within the floodway as of the date of enactment. This interpretation conflicts with § 25-414 (a) which contemplates the possibility of new construction, substantial improvements, and other developments upon appropriate certification. § 25-414 seemingly permits the presence of tents and other recreational uses within the floodway. This is consistent with federal regulatory standards. To the extent § 25-419 indeed has the meaning the Zoning Administrator attributes to it, it is inconsistent with federal regulatory standards, and arbitrary and capricious.

The Appellant is aggrieved by the Zoning Administrator's decision because it would require the Appellant to cease all activity in the floodway and relocate the aforesaid tents, decks, and other facilities rather than simply applying for the appropriate permits and/or seeking appropriate certifications.



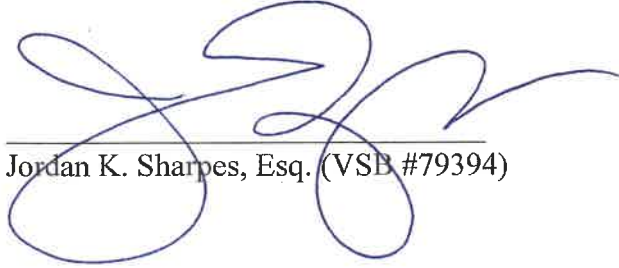


Wesley Hodges

Respectfully Submitted,
WESLEY HODGES

June 23 2023
Date

Counsel for Wesley Hodges:
BSR Legal Group
111 E. Clay Street
Salem, VA 24153
(540) 721-5110
(540) 721-5112 (facsimile)
jsharpes@bsrlegalgroup.com



Jordan K. Sharpes, Esq. (VSB #79394)





NOTICE OF VIOLATION

Sent via: Certified Mail

7022 0410 0002 1750 2902

May 26th, 2023

Case: CE-23-00075

Type: Use, Zoning Permit, Flood Hazard Overlay District

HODGES WESLEY A
101 BALDWIN ST
STAUNTON, VA 24401-3300

Owner/Occupant:	HODGES WESLEY A
Property Address:	191 BRIDGE ST, EAGLE ROCK, VA 24085
Zoning Use District:	A-1, Agricultural
Magisterial District:	Fincastle
Tax Map Number:	4A-46
Flood Hazard Overlay District:	Floodway and Floodplain "AE"

Dear Property Owner(s):

On May 16, 2023, Botetourt County's Planning and Zoning Office observed development that has occurred on your property that included buildings, structures, tents, a sign and other site improvements that appeared to have been developed without the necessary permits and/or approvals. Upon a search of the Botetourt County permitting records and information obtained from internet searches, it is the County's determination that multiple violations of the Botetourt County Zoning Ordinance have occurred upon your property.

More specifically, the following development and establishment of a use upon your property has been determined to have occurred in violation of the zoning ordinance since the required permits / approvals were never obtained, or the zoning ordinance does not allow for the development, structure or use:

- 1) The establishment of the use "Campground" without obtaining a zoning permit as required by [Sec. 25-571 - Zoning Permits](#) and without authorization of the use through the approval of a special exception permit, as required by [Sec. 25-583 - Special Exceptions](#) of the zoning ordinance and within a FEMA designated Floodway where the use is prohibited by [Sec. 25-419 - Prohibited development and uses in floodway sub-district generally](#).
- 2) The construction of decks or platform structures that contain tents upon them, without a zoning permit as required by [Sec. 25-571 - Zoning Permits](#) and within a FEMA designated Floodway where the structures are prohibited by [Sec. 25-414 - Standards for the floodway district; permitted use](#) and [Sec. 25-419 - Prohibited development and uses in floodway sub-district generally](#).
- 3) The construction of a building or structure that appears to be utilized for bathroom (shower/toilet) facilities, without obtaining a zoning permit as required by [Sec. 25-571 - Zoning Permits](#) and within a FEMA designated Floodway where the structure is prohibited by [Sec. 25-414 - Standards for the floodway district; permitted use](#) and [Sec. 25-419 - Prohibited development and uses in floodway sub-district generally](#).
- 4) The construction of other structures, without obtaining a zoning permit as required by [Sec. 25-571 - Zoning Permits](#) and within a FEMA designated floodplain district as required by [Sec. 25-413 - District provisions](#).
- 5) The erection of a business identification sign without obtaining a sign permit as required by [Sec. 25-461 - General Provisions](#) and [Sec. 25-463 - Administration](#) and

- 6) The construction of a gravel driveway within a FEMA designated Floodplain without obtaining a zoning permit as required by [Sec. 25-413 - District provisions](#).

To correct these violations, you are directed to do the following:

- 1) Immediately discontinue or cease operation of the use "Campground",
- 2) Remove all structures, buildings, tents from the FEMA designated Floodway, as a zoning permit cannot be issued for such in a FEMA designated Floodway,
- 3) Obtain a sign permit for the existing business identification sign if said sign meets the standards found in the sign ordinance, otherwise remove the sign,
- 4) Obtain zoning permits for all other structures or buildings that have not previously been permitted and that are located within the FEMA designated floodplain AE Flood Zone or remove these structures / buildings,
- 5) Obtain zoning permit approval for the gravel drive that extends through the FEMA designated AE Flood Zone and into the FEMA designated Floodway or remove the gravel drive.

You are further directed to correct each of the violations as stated above or to present a plan of correction that the County agrees with within **thirty (30) days** from the receipt of this letter, otherwise the County will continue with the enforcement of the zoning ordinance as provided for in Section 23-522. – Enforcement and penalties of the Botetourt County Zoning Ordinance. Please be aware that the initial enforcement shall include a **civil summons or ticket** in the amount of **\$200.00** for the initial summons and **\$500.00** for each additional summons arising from the failure to correct the zoning violations. Once a civil summons is issued, you will be notified of the scheduled **trial date** to appear in general district court, however, Section 23-522(f) provides for an option to prepay the civil penalty and waive the trial. Should you choose to pay the civil penalty and waive the trial and the violations are still not corrected, additional civil penalties will be issued up to a the maximum aggregate limit of \$5,000.00, then enforcement shall be in the form of criminal penalties.

Please be aware that because this letter serves as a Zoning Code interpretation, Section 15.2-2311 of the Code of Virginia, as amended, and Section 25-552 of the Botetourt County Code provides for any party aggrieved by the issuance of this interpretation the opportunity to appeal this decision to the Board of Zoning Appeals within thirty (30) days from the date of this notice. If you fail to appeal this decision within thirty (30) days, this decision shall be final and not subject to further appeal. Applications and additional information for an appeal are available in the Planning Office at 57 S. Center Drive, Daleville, VA 24083 at the Botetourt County Administration Building. The appeal fee is \$500, plus the cost of notification of adjacent property owners by certified mail, which must also be received with a completed application appealing the determination of violation.

Please feel free to contact me at 540-928-2076, or dpearson@botetourtva.gov, with any questions you may have or to discuss the process to appeal this determination of violation. I would also be happy to coordinate a meeting in our office or at the subject property to discuss the violations, however.

Thank you in advance for your timely cooperation,

Drew T Pearson

Drew T Pearson, CZO, CFM
Zoning Administrator

cc: Mike Lockaby, County Attorney
Nicole Pendleton, Community Development Director
Matthew Lewis, Code Enforcement Officer
Sean Nester, ESC & SWM Administrator

Mr. Steven L. Kidd, Chairman, called the July 11, 2023 meeting of the Botetourt County Board of Zoning Appeals to order at 9:00 AM in the Auditorium of the Botetourt County Administration Building in Daleville, Virginia.

PRESENT: Mr. Steven L. Kidd, Chairman
Mr. Hunter Young, Member
Mr. S. E. Cash, Member
Mr. J. Scott Caldwell, Member
Mr. Darrin Hill, Member
Mrs. Nicole Pendleton, Director of Community Development
Mr. Mike Lockaby, County Attorney, *arrived 9:14 AM*
Mr. Drew Pearson, Zoning Administrator
Mrs. Laura Goad, Secretary to Board of Zoning Appeals
Mr. Jon McCoy, Long Range Planner
Nick Baker, Planner

ABSENT: None

After Mr. Kidd introduced Staff and the Board of Zoning Appeals, he explained the public hearing process and asked that comments be directed to the Board, not to others in the audience.

Public hearing

Buchanan District: Scott A. & Constance M Booher request a variance in accordance to *Section 25-75(a)(1)d.- Building Requirements, Agricultural (A-1); Section 25-39(1)b.- Yard requirements for existing lots., Agricultural (A-1) and Section 25-551.- Variance procedure. of the Botetourt County Code for a 20 feet front yard setback variance. This 0.848-acre lot is located within the Agricultural (A-1) Use District, located at 445 Hardbarger Road, Buchanan, identified on the Real Property Identification Maps of Botetourt County as Section 76, Parcel 116A.*

Mr. Baker read the request aloud as he displayed the survey on PowerPoint. He mentioned the applicant's survey and that the applicant was in the Agricultural, A-1 Use District that required a 60 feet setback from the centerline of Hardbarger Road because the right-of-way was less than 50 feet. Mr. Baker pointed out the 30-foot prescription right-of-way, and the applicant requested a 20 feet variance from the required 60 feet setback. Mr. Baker directed their attention to the 40-foot mark, the closest corner of the garage that measured 30 feet by 40 feet. Mr. Baker explained the history of this request. He stated that in the spring of 2023, Mr. Booher was granted a building and zoning permit for a 26 feet by 36 feet building, and showed a concept plan with a 68 feet front yard setback. After excavating, he found a great deal of rock that prevented him from further excavating. Mr. Baker showed photos of property provided by the applicant that indicated where he started excavating. He displayed other photos with structures including a 10 feet by 12 feet storage shed behind the house, the single-family dwelling. Photos of the front of the property were then shown. Mr. Baker pointed to where the variance request proposed to place the building to prevent further excavation of the rock base of that hill. Mr. Baker said the hill had an approximate 20-30 feet rise that was consistent along the property. He noted the applicant's variance application was for a 30 feet by 40 feet structure, larger than the March 2023 building permit application of 26 feet by 36 feet building. Mr. Baker further noted the applicant planned to build a retaining wall along the excavated part.

Mr. Baker stated that the applicant indicated that relief from the setback would allow extra room for any needed repairs, with planting landscaping around the structure. Mr. Baker summarized that the flat area adjacent to the other side of the home contained the septic drain field for the home, and Mr. Booher also owned the adjoining parcel, located about 100 feet behind the house and uphill, pointing out the areas on PowerPoint. He also said that VDOT would not need right-of-way and the parcel was not in the 100-year floodplain. Mr. Baker mentioned two comments from neighbors in support of this request. If approved, Mr. Baker suggested the following condition: "The proposed building shall be limited to the location and size as shown on the survey for Scott A and Constance M. Booher, prepared by Pierson Engineering & Surveying Inc., dated April 17, 2023."

Mr. Kidd asked Mr. Booher if he would like to speak.

Mr. Booher responded that Mr. Baker did an excellent job representing everything that he requested.

Mr. Young requested to view the survey slide again. He pointed out the lower left corner and what appeared to be quite a bit of distance between that corner and the top of the slope. He stated that it looked like 15-17 feet and questioned if it would really look like that or if the corner would be closer to the top.

Mr. Booher replied it would be closer, and estimated it would be about 10 feet.

Mr. Baker explained the space would be for Mr. Booher to move around, do repairs and maintenance.

Mr. Young wanted to know about the height of the retaining wall.

Mr. Booher responded that he would rock baskets about four feet wide, about the width of a pallet. Gabions.

Mr. Young questioned why Mr. Booher could not make the retaining wall out of cinderblock or concrete, and do the back of building against the retaining wall, noting that would not work with gabions. He then asked Mr. Booher if he would have about 10 feet between the back corner and the outward face of the gabion/rock basket.

Mr. Booher said that would be a pretty good estimate.

Mr. Young if this would have ditch drainage or a French drain.

Mr. Booher said he planted clover on the slope, and thus far had not had an issue with wash, but some water did pool as shown in the pictures.

Mr. Caldwell asked if the drainfield was located behind the house, or in the middle or front because it was not shown on the plat.

Mr. Booher responded it that the entrance to the septic was about where the 4 is, maybe a little bit further left on the address [on the displayed survey] and then moved to the right.

There being no one else to speak, Mr. Kidd closed the public hearing.

Mr. Cash stated that most previous requests were from the property line, and he didn't recall any from the center of the road. He further stated the garage would not be 15 feet from the property line.

Mr. Kidd stated that the Board of Zoning Appeals had never granted a variance for movement of building because of rock or terrain. He further stated that while he understood and appreciated the excavation, and the rock, he was not in favor of this request and he did not see that rock would create a hardship.

Mr. Young stated that he struggled with the same thing because there was plenty of rock in the county that people had to remove all the time. He further stated that unfortunately, people had to do this at their inconvenience and their expense. Mr. Young pointed out it would be different if this was a cliff and insurmountable. He said with looking at the survey and layout, he was not convinced that everything had been done to push the building back as far as it could conceivably go, and that 10 feet was a significant distance. Mr. Young stated he wanted to make sure everything had been done to push it back and that he agreed with Mr. Kidd's position on the rock.

Mr. Kidd motioned that the variance request for a 20-foot encroachment into the required 60-foot front yard setback for Scott A. and Constance M. Booher, be denied, as the granting of this request would be contrary to the public interest, and that the standards for a variance as listed in Section 25-551 have not been met.

Mr. Young seconded the motion, which was approved 5:0:0:0 with the following recorded vote:

YES:	Mr. Young, Mr. Hill, Mr. Kidd, Mr. Caldwell, Mr. Cash
NO:	None
ABSTAIN:	None
ABSENT:	None

Consideration was given to the April 11, 2023 minutes.

Mr. Caldwell motioned to approve the April 11, 2023 minutes. Mr. Cash seconded the motion, which was approved 5:0:0:0 with the following recorded vote:

YES:	Mr. Young, Mr. Hill, Mr. Kidd, Mr. Caldwell, Mr. Cash
NO:	None
ABSTAIN:	None
ABSENT:	None

Mr. Kidd announced that the motion carried to deny.

Consideration was given to revising the September 12, 2023 date due to scheduling conflicts.

Mr. Kidd stated that members had the opportunity to change the date, and the Board needed to have full attendance if possible. The August and September calendars were displayed on Powerpoint. After viewing the calendars, Mr. Kidd explained that they did not have to stay on Tuesday, as he asked Mrs. Pendleton to check the calendar of events for this room. He then asked Mr. Lockaby if there were any obstacles to work around.

Mr. Lockaby wanted to know if the date would be for the hearing or upcoming training.

Mrs. Pendleton brought up training prior to the public hearings as she discussed the importance of getting training on the calendar prior to public hearings.

After discussing tentative dates and times, and whether or not to have training on the same or a separate date, Mr. Lockaby commented that generally speaking, training would be an open session, and law regarding specific case would be closed session.

After further discussion, and by general consensus, the Board of Zoning Appeals resolved to hold a training session, with a possible closed session on August 17, 2023 at 9:00 AM and to change the September 12, 2023 public hearing to August 29, 2023, at 9:00 AM.

There being no other business, at 9:28 AM, Mr. Kidd motioned to adjourn, seconded by Mr. Young, which was approved 5:0:0:0 with the following recorded vote:

YES:	Mr. Young, Mr. Hill ,Mr. Kidd, Mr. Caldwell, Mr. Cash
NO:	None
ABSTAIN:	None
ABSENT:	None