

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

**IN RE: AUGUST 15, 2018 DECISION OF THE BOARD OF ZONING APPEALS  
OF ROANOKE COUNTY**

STAN SEYMOUR	)
	)
JANE SEYMOUR,	)
	)
ADRIAN MAVER, and	)
	)
BLAINE CREASY,	)
	)
Petitioners,	)
	)
v.	)
	)
THE BOARD OF SUPERVISORS OF	)
ROANOKE COUNTY, VIRGINIA, and	)
	)
5985 COLEMAN ROAD LLC,	)
	)
Respondents.	)

Case No. CL 18-1377

**PETITIONERS' MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO  
RECONSIDER THE COURT'S RULING ON STANDING**

Petitioners Stan Seymour, Jane Seymour, Adrian Maver, and Blaine Creasy (collectively "Petitioners"), by counsel, move this Court, pursuant to Rule 1:1 and Rule 5A:18 of the Rules of the Supreme Court of Virginia, to reconsider the ruling set forth in the Court's letter opinion of October 3, 2019 that the Petitioners failed to meet the second prong of the *Friends of Rappahannock* test, and therefore, do not have standing, and in support thereof, state as follows:

**I. INTRODUCTION**

At issue here is whether Petitioners have standing to petition this Court for a Writ of Certiorari of the August 15, 2018 decision of the Roanoke County Board of Zoning Appeals'

(the “Board”) determination that that the Petitioners lack standing because they are not aggrieved persons. For the reasons set forth below, Petitioners believe the facts alleged by them and made a part of the record in this matter set forth sufficient particularized harm to them to meet the test for standing set forth in *Friends of Rappahannock* and therefore, respectfully request that the Court reconsider its determination.

## **II. PROCEDURAL HISTORY**

1. Stan Seymour and Jane Seymour (the “Seymours”) and Adrian Maver and Blaine Creasy (“Maver/Creasy”) jointly filed two appeals to the Board dated April 27, 2018 and June 15, 2018, respectively (together, the “Appeals”)<sup>1</sup> requesting the review of certain determination letters by John Murphy, Zoning Administrator of Roanoke County (“Zoning Administrator”), dated March 30, 2018 and May 17, 2018, respectively (together the “Determination Letters”).<sup>2</sup>

2. On August 8, 2018 the Zoning Administrator, through the Roanoke County’s Attorney Office, filed an opposition to the Appeals arguing that the Petitioners lacked standing because they were not “aggrieved persons” (the “Opposition”).<sup>3</sup>

3. On August 15, 2018, at the Board hearing, the Board dismissed the Appeals on the basis that the Petitioners lacked standing because they are not “aggrieved persons.” In reaching its decision, the Board provided no specific written findings of fact or conclusions of law.

4. On September 13, 2018, Petitioners filed their “Petition for Writ of Certiorari Under Va. Code § 15.2-2314” asking this Court to: (1) Issue a Writ of Certiorari for review of

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<sup>1</sup> True copies of the Appeals were introduced into evidence at the hearing in this matter held on July 29, 2019, as **Exhibit A**.

<sup>2</sup> True Copies of the Determination Letters were introduced into evidence at the hearing in this matter held on July 29, 2019, as **Exhibit B**.

<sup>3</sup> A true copy of the Opposition was introduced into evidence at the hearing in this matter held on July 29, 2019, as **Exhibit C**.

the August 15, 2018 decision of the Board.<sup>4</sup> The Petition for Writ of Certiorari of the Board's decision (the "Petition") was assigned Case No. CL18-1377.

5. On September 25, 2018, the Roanoke County Board of Supervisors (together with 5985 Coleman Road, LLC ("5985 LLC"), the "Respondents") granted a special use permit (the "SUP") granting permission to the Southwest Virginia Wildlife Center of Roanoke, Inc. (the "SVWC") allowing "construction of additional structures" at 5985 Coleman Road in Roanoke County (the "5985 Property").

6. On or about October 25, 2018, Petitioners filed a second separate Petition for Appeal of the September 25, 2018 Decision of the Board of Supervisors of Roanoke County, Virginia, Special Use Permit Application PZ-1800595. The Petition for Appeal was assigned Case No. CL18-1555.

7. On July 29, 2019 a hearing on the petition was held in this matter, Case No. CL18-1377, regarding the standing of Petitioners.

8. At the time the Petitioners filed the Petition and the hearing was held in this matter, Petitioners properly understood the SUP to deal only with the "construction of additional structures." Respondents have now taken the position that the SUP also encompassed an approval of all existing structures on the Property (which structures the County has now acknowledged also require an SUP) as well as the proposed raptor building, although this scope is nowhere in the SUP application or in the text of the ordinance granting the SUP. During his deposition, Phillip Thompson, Roanoke County's Acting Director of Planning, stated that the SUP was "for all of the buildings on the property." Thompson Dep. 35:1, Sept. 11, 2019.<sup>5</sup>

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<sup>4</sup> A true copy of the Petition for Writ of Certiorari is attached hereto as **Exhibit D**.

<sup>5</sup> A true copy of the relevant portions of Phillip Thompson's Deposition of September 11, 2019 are attached hereto as **Exhibit E**.

9. On October 3, 2019, this Court issued a letter opinion finding that the Petitioners lacked standing in this matter (the “Letter Opinion”).<sup>6</sup>

10. In its letter opinion, this Court found that Petitioners failed to satisfy both prongs of the *Friends of Rappahannock* test<sup>7</sup> because Petitioners failed to allege sufficient facts “demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioners different from that suffered by the public generally.” Letter Opinion at 4.

11. The Letter Opinion focuses almost exclusively, if not exclusively, on the facts alleged by Petitioners in their Petition for Appeal in Case No. CL18-1555, citing to that Complaint and not the Petition or the facts in the record in this matter, Case No. CL18-1377.

12. Further, the statements of facts setting forth the particularized harm suffered by Petitioners in both the Petition, and Petition for Appeal in Case No. CL18-1555, were limited to allegations of the particularized harm Petitioners might suffer if the raptor building was constructed and not, as Respondents now allege, from the harm Petitioners have suffered to date from the construction of all the additional structures already on the 5985 Property.

13. Petitioners now respectfully ask this Court to reconsider its Letter Opinion and analyze the facts set forth by the Petitioners in this matter, which are more expansive in detailing the particularized harm suffered by Petitioners than the Petition for Appeal in Case No. CL18-1555;<sup>8</sup> and also in light of the fact that Petitioners’ allegations of harm should be read more broadly to encompass the particularized harm they have already suffered due to the construction of the existing accessory structures.

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<sup>6</sup> A true copy of the letter opinion is attached hereto as **Exhibit F**.

<sup>7</sup> See, *Friends of Rappahannock v. Caroline Cnty. Bd. Of Supervisors*, 286 Va. 38, 48 (2013).

<sup>8</sup> In Case No. CL18-1555, this Court has granted Petitioners leave to file an amended complaint, which Petitioners intend to file shortly.

### III. STATEMENT OF FACTS

The statement of facts set forth below are taken from Petitioners' Petition for Writ of Certiorari filed in this matter and introduced as evidence without objection at the July 29, 2019 hearing in this matter.

1. 5985 Coleman Road LLC ("5985 LLC") owns the property located at 5985 Coleman Road, Roanoke, Virginia 24018 (the "5985 Property").

2. Petitioners Stan Seymour and Jane Seymour (the "Seymours") owned the property and residence located at 5960 Coleman Road, Roanoke, Virginia 24018 (the "5960 Property"), bordering the 5985 Property. On or about November 30, 2018, the Seymours deeded the property to Seymour2, LLC by general warranty deed. Seymour2 is a Virginia limited liability company whose sole owners and members are the Seymours.

3. The Seymours live on an adjacent property, 5942 Coleman Road, Roanoke, Virginia 24018 ("5942 Property"), approximately 793 feet from the 5985 Property.

4. Petitioners Adrian Maver and Blaine Creasy (collectively the "Mavers") own and reside on property located at 5946 Coleman Road, Roanoke, Virginia 24018 (the "5946 Property"), approximately 574 feet from the 5985 Property.

5. The 5985 Property is located at the end of Coleman Road and is only accessible via Coleman Road and easements across the 5960 Property and the 5946 Property (one prescriptive and one by deed) and passing the access points for these properties as well as the 5942 Property. Coleman Road is a partly public and partly private road.

6. Access to the 5985 Property over the 5960 Property is pursuant to an easement granted under a deed of record ("Deed"). A correct copy of the Deed was attached to the Petition.

Access to the 5985 Property over the 5946 Property is pursuant to a prescriptive easement.

7. In the Petition, Petitioners alleged the following regarding the particularized harm suffered by them due to the close proximity of their properties to the 5985 Property and SVWC's use of the 5985 Property as a wildlife rehabilitation center:

- Diminishment of the fair market value of their respective properties;
- Increase in noise audible from their properties because of increased animal presence on the 5985 Property;
- Construction of unsightly outdoor cages visible from their properties, particularly the proposed raptor cage along the property line shared by the 5985 Property and the 5960 Property; and
- Increased traffic on the easement connecting to Coleman Road, which will require additional maintenance and upkeep, as well as increased the use of the easement for ingress and egress, causing additional traffic noise, disturbance from car headlights, and increased potential of hazardous traffic near the Mavericks Property at all hours,<sup>9</sup> which exposes the Mavericks' children who play in the yard to increased danger from inattentive drivers.

Petition at 7-10.

8. Petitioners further allege in the Petition that “the easements, and the decrease in value to their properties, are not burdens or grievances shared by the public generally.” Petition at 10.

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<sup>9</sup> The business operating on the 5985 Property staffs the site twenty-four (24) hours per day seven (7) days per week, with employees and volunteers coming and going at all hours of the day and night.

9. Petitioners also introduced, without objection, documents at the hearing held on July 29, 2019, including the Appeals (Ex. A) and several letters<sup>10</sup> from Petitioners' or Petitioners' counsel to the Zoning Administrator and the Board, which further provide factual support for, and a description of, the particularized harm suffered by Petitioners, which is set forth below in pertinent part:

- The absence of adequate landscaping buffers along common boundary lines and along the access easement adjacent to the Maver/Creasy Property;
- The volume of traffic on the easement used by the Petitioners to access their properties which ranged between 33-78 cars a day during the month of June 2018;
- The speed of the traffic crossing the easement to reach the wildlife center with some of the traffic estimated to be between 40-45 miles an hour;
- Maintenance needed on the right-of-way [easements] from all the traffic going to and from the wildlife center; and
- The improper disposal of carcasses, of medical and biological wastes, and of chemicals and hazardous substances.

See Ex. G.

#### **IV. ARGUMENT**

Petitioners respectfully request that the Court reconsider the findings of its Letter Opinion that Petitioners lack standing. In reconsidering the Letter Opinion, the Court should differentiate between the Petition and allegations of particularized harm in this matter as opposed to the allegations of particularized harm set forth in Case No. CL18-1555. Indeed, the allegations of particularized harm set forth above do not appear to be addressed at all by the

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<sup>10</sup> A true copy of the letters are attached hereto as **Exhibit G**.

Court in its Letter Opinion.

The Court held in its Letter Opinion that Petitioners alleged sufficient facts to meet the first prong of the *Friends of Rappahannock Test*, e.g. that they own property in close proximity to the 5985 Property. Moreover, the Court has granted Petitioners leave to file an amended complaint in Case No. CL18-1555. Therefore, this Motion to Reconsider is limited to one narrow issue: Whether Petitioners set forth sufficient facts to meet the second prong of the *Friends of Rappahannock Test* showing particularized harm in this matter.

In *Friends of Rappahannock v Caroline Cnty. Bd. Of Supervisors*, 286 Va. 38 (2013), the Supreme Court of Virginia set forth the following test for determining standing in land use matters:

First, the complainant must own or occupy real property within or in close proximity to the property that is the subject of the land use determination, thus establishing that it has a direct, immediate, pecuniary, and substantial interest in the decision. Second, the complainant must allege facts demonstrating a particularized harm to some real personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.

*Id* at 43 (internal citations omitted). Accordingly, to meet the second prong of the *Friends of Rappahannock* test, a party must allege facts showing “particularized harm” on a property right or a burden or obligation different from that suffered by the general public. As explained below, Petitioners believe they have met that burden in this matter.

In its Letter Opinion, the Court’s primary concern was that Petitioners only “presented conclusory allegations regarding possible harm but failed to articulate any tangible harm that would come out of the SVWC [Southwest Virginia Wildlife Center] being located in close proximity to the Petitioners’ Property.” Letter Opinion at 3. The Court also noted that Petitioners claimed that the easements subject their property to increased traffic, dust, light and



noise but found “there is no factual background to support these claims.” *Id* (citing Paragraphs 29-30 of the Complaint filed in Case No. CL18-1555.) The Court further held that “Petitioners failed to articulate the loss of some personal property right belonging to the individual Petitioners different from that which the general public might suffer.” *Id* at 4.

As set forth above, Petitioners believe the alleged facts before the Court in this matter establish the second prong of the *Friends of Rappahannock* test. In its letter opinion, the Court appears to address only the factual allegations set forth in the Complaint filed by Petitioners in the Board of Supervisors Appeal, Case No. CL-18-1555, as those are the only facts cited by the Court regarding the facts supporting standing. However, the Petition incorporates a number of additional factual allegations that support Petitioners’ standing. For this reason, Petitioners would respectfully ask this Court to reconsider its opinion in light of the Petition filed and evidence presented in this matter, Case No. CL18-1377.

As a general rule, allegations of fact set forth in a complaint are to be read in favor of the plaintiff as a whole and all inferences reasonably drawn therefrom. See e.g. *Fenton v. Danaceau*, 220 Va. 1, 4 (1979). Here, all facts alleged and set forth in this matter by Petitioners must be judged in light of two critical factors. First, the Petitioners’ properties are immediately adjacent or in close proximity to the 5985 Property. Second, the only access to the 5985 Property is via easements that cross directly over the Petitioners’ properties. Therefore, unlike the general public, Petitioners are uniquely subject to harm from the use of the 5985 Property as a wildlife rehabilitation center and any increase in that use.

In the Petition, Petitioners specifically alleged that the increased traffic over the easements has or will “require additional maintenance and upkeep.” Petition at 9. Additionally,

this impact is expounded on in Trial Exhibit 11, page 5:

- SVWC utilizes the Right-of-Way to service the SVWC Property; the Seymours, Adrian Maver, and Blaine Creasy also use portions of the Right-of-Way. SVWC's use of the SVWC Property as a wildlife clinic has increased traffic on the Right-of-Way from a few trips per day to over 50 trips per day in June 2018 and at least 47 trips per day in July 2018. The additional traffic requires additional maintenance and upkeep to the Right-of-Way.

These costs, which are directly associated with the SVWC's use of the easements for ingress and egress to the 5985 Property, are borne exclusively by the Petitioners, who also use the easements to access their properties via the right-of-way, and not by the public generally. Moreover, it is uncontested that there is no road maintenance agreement in place requiring the SVWC to contribute to the cost of this additional maintenance or to repair the damage their use causes. So, the financial cost to repair damage to the right-of-way is borne by the Petitioners, who are also impacted by the deterioration of the gravel right-of-way. This alone grants them standing under the *Friends of Rappahannock* test to challenge any special use permit that would increase the SVWC's use of the 5985 Property and thus the easements. Petitioners, however, also allege other instances of particularized harm.

Petitioners also allege that the increased traffic on the easement causes additional traffic noise, disturbance from car headlights, and the increased potential of hazardous traffic near the property owned by Maver/Creasy which exposes their children, who play in the yard, to increased danger from inattentive drivers. Petition at 9. Again, this is particularized harm suffered only by the Petitioners, Maver/Creasy. As set forth in the Petition, the easements to get to the 5985 Property only cross over the Petitioners' property, including directly over the yard where the Maver/Creasy children play. This is a particularized harm suffered by the Petitioners and not the public generally because the easements do not cross over anyone else's property.

As noted above, Petitioners have also alleged a diminution in the fair market value of their properties from the SVWC's use of the 5985 Property as a wildlife rehabilitation center. Petition at 9. This diminution in value is due in no small part to the other particularized harm alleged by Petitioners, including: (1) increase in audible noise from the 5985 Property from the presence of animals; (2) the view of unsightly outdoor cages on the 5985 Property; and (3) increase in traffic on the easements causing additional noise, dust and headlight disturbance. See Petition at 9. Other particularized harm alleged by Petitioners, such as the speed of traffic crossing over the easements and the disposal of medical waste near their properties, also result in diminution in the value of the Petitioners' Property. *See, e.g.* Ex. 11 at page 5:

- SVWC has acted to increase the density of its use on the SVWC Property, most recently with the intended construction of the raptor cage. Construction of buildings and structures incidental to operation of a wildlife clinic will create visual blight, additional noise, and increased traffic on the Right-of-Way.
- A byproduct of SVWC's use of the SVWC Property has been the increase in refuse containers, animal refuse, and animal waste.
- The combination of the aforementioned harms has made Seymour Property 2, the Maver/Creasy Property, and Seymour Property 1 less desirable, diminishing their fair market value.

Counsel for the Petitioners also restated these particularized harms at the hearing:

Mr. Gregory St. Ours, Esquire, stated he represents Mr. Stan Seymour and Ms. Jane Seymour and Mr. Harris Warner, Jr. represents Mr. Adrian Creasy and Ms. Blaine Creasy. Mr. St. Ours presented a Reply Memorandum in Opposition to Peter Lubeck's August 8, 2018 Motion to Dismiss for Lack of Standing. He discussed the facts and standing of the case. He provided a history of the case and proximity of the property lines. He discussed the shared private roadway. He discussed the petitioner's purchase of adjoining property and plans they had to build on that property. Mr. St. Ours objected to the admission of Mr. Lubeck's memorandum, stating he would like to have had the document in advance of the hearing. Mr. St. Ours discussed case law regarding justiciable interest. He discussed case law regarding land use determination. He discussed noise, dust, and traffic on the shared private roadway. He discussed standing regarding adjacent and proximate properties which share a right-of-way.

Trial Exhibit 13, at page 2. *See also* Petition at 9:

Here, prior to the Board's decision, the Petitioners alleged and testified to a litany of particularized harm and burdens that would result from the Board's decision, including but not limited to:

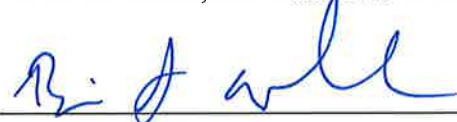
- Diminishment of the fair market value of their properties;
- Increase in noise audible from their properties because of increased animal presence on the 5985 Property;
- Construction of unsightly outdoor cages visible from their properties, particularly the proposed raptor cage along the property line shared by the 5985 Property and Seymour Property 2; and
- Increased traffic on the easement connecting to Coleman Road, which will require additional maintenance and upkeep, as well as increase the use of the easement for ingress and egress, causing additional traffic noise, disturbance from car headlights, and increased potential of hazardous traffic near the Mavericks Property at all hours,<sup>3</sup> which exposes the Mavericks' children who play in the yard to increased danger from inattentive drivers.

The numerous allegations of particularized harm set forth in the Petition and on the record of this matter satisfy the two-part standing test put forth in *Friends of the Rappahannock*. When considering whether a party has standing, it is important to consider the overarching principal of *Friends of the Rappahannock* that “people who own land adjacent to land subject to a rezoning request can suffer a particularized injury related to the zoning decision because of the impact on them flowing from the proximity of their land to the land at issue.” *Judson v. Bd. of Supervisors of Mathews County, Virginia*, E.D. Va. No. 4:18CV121, 2019 WL 2558243, at \*9 (E.D. Va. June 20, 2019). (citing *Friends of the Rappahannock v. Caroline Cty. Bd. Of Supervisors*, 286 Va. 38, 48-49, 743 S.E.2d 132, 137 (2013)). This type of injury is precisely what the Petition sets forth – the particularized injury suffered by Petitioners flowing directly from the proximity of their land from the land at issue, such as the increased maintenance requirements on the right-of-way, and allegations of diminution in property value as a result of same.

Petitioners respectfully disagree with the Court's finding that "[t]he authorities cited by Petitioners have been superseded by *Friends of the Rappahannock*. Letter Opinion at 3. While Petitioners concede that merely owning land in close proximity to the property at issue does not in itself confer standing, the maximum set forth in *Braddock, L.C. v. Bd. Of Sup'rs of Loudon County*, still holds true that "[n]eighbors who own property or reside adjacent to rezoned land ordinarily have interests sufficiently aggrieved to confer upon them standing ..." *Braddock, L.C. v. Bd. Of Sup'rs of Loudon County*, 268 Va. 420, 424 n.1 (2004). For the reasons stated above, this maxim holds in this matter, as well.

WHEREFORE, Petitioners respectfully ask the Court to reconsider its Letter Opinion in light of the allegations of particularized harm set forth by in the Petition, and introduced into the record at the hearing on this matter, and as set forth in this motion.

STAN SEYMOUR, JANE SEYMOUR,  
ADRIAN MAVER, and BLAINE CREASY

By:   
Counsel

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*Counsel for Petitioners*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was sent by email and by first-class mail, postage prepaid, this 8th day of November 2019, to the following counsel of record:

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**County of Roanoke  
Community Development  
Planning & Zoning**

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**For Staff Use Only**

Date received:	Received by:
Application fee:	PC/BZA date:
Placards issued:	BOS date:
Case Number	

**ALL APPLICANTS**

Check type of application filed (check all that apply)  
 Rezoning  Special Use  Variance  Waiver  Administrative Appeal  Comp Plan (15.2-2232) Review

Applicants name/address w/zip Stanley A. Seymour, Phone: \_\_\_\_\_  
 III, Jane L. Seymour, Adrian Maver Work: \_\_\_\_\_  
 and Blaine Creasy (See Schedule A) Cell #: \_\_\_\_\_  
 Fax No.: \_\_\_\_\_

Owner's name/address w/zip Phone #: (540) 798-9836  
 5985 Coleman Road, LLC Work: \_\_\_\_\_  
 5985 Coleman Road, S.W. Fax No. #: \_\_\_\_\_  
 Roanoke, VA 24018

Property Location Magisterial District: Cave Spring  
 5985 Coleman Road  
 Roanoke, VA 24018  
 Community Planning area:

Tax Map No.: Existing Zoning: AR  
 096.08-02-03.00-0000

Size of parcel(s): Acres: 2.7334 Existing Land Use: Development

**REZONING, SPECIAL USE PERMIT, WAIVER AND COMP PLAN (15.2-2232) REVIEW APPLICANTS (R/S/W/CP)**

Proposed Zoning: \_\_\_\_\_  
 Proposed Land Use: \_\_\_\_\_

Does the parcel meet the minimum lot area, width, and frontage requirements of the requested district?  
 Yes  No  **IF NO, A VARIANCE IS REQUIRED FIRST.**  
 Does the parcel meet the minimum criteria for the requested Use Type? Yes  No   
**IF NO, A VARIANCE IS REQUIRED FIRST**  
 If rezoning request, are conditions being proffered with this request? Yes  No

**VARIANCE, WAIVER AND ADMINISTRATIVE APPEAL APPLICANTS (V/W/AA)**

Variance/Waiver of Section(s) \_\_\_\_\_ of the Roanoke County Zoning Ordinance in order to:  
 Appeal of Zoning Administrator's decision to Board of Zoning Appeals  
 Appeal of Interpretation of Section(s): \_\_\_\_\_ of the Roanoke County Zoning Ordinance  
 Appeal of Interpretation of Zoning Map to \_\_\_\_\_

Is the application complete? Please check if enclosed. **APPLICATION WILL NOT BE ACCEPTED IF THESE ITEMS ARE MISSING OR INCOMPLETE.**

R/S/W/CP	V/AA	Consultation
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Justification

R/S/W/CP	V/AA	8 1/2" x 11" concept plan
<input type="checkbox"/>	<input type="checkbox"/>	Metes and bounds description
<input type="checkbox"/>	<input type="checkbox"/>	Water and sewer application

R/S/W/CP	V/AA	Application fee
<input type="checkbox"/>	<input type="checkbox"/>	Proffers, if applicable
<input type="checkbox"/>	<input type="checkbox"/>	Adjoining property owners

I hereby certify that I am either the owner of the property or the owner's agent or contract purchaser and am acting with the knowledge and consent of the owner.  
 \_\_\_\_\_  
 Applicant's Counsel  
 Owner's Signature



**JUSTIFICATION FOR REZONING, SPECIAL USE PERMIT WAIVER OR COMP PLAN (15.2-2232) REVIEW REQUESTS**

Applicant \_\_\_\_\_

The Planning Commission will study rezoning, special use permit waiver or community plan (15.2-2232) review requests to determine the need and justification for the change in terms of public health, safety, and general welfare. Please answer the following questions as thoroughly as possible. Use additional space if necessary.

Please explain how the request furthers the purposes of the Roanoke County Ordinance as well as the purpose found at the beginning of the applicable zoning district classification in the Zoning Ordinance.

Please explain how the project conforms to the general guidelines and policies contained in the Roanoke County Community Plan.

Please describe the impact(s) of the request on the property itself, the adjoining properties, and the surrounding area, as well as the impacts on public services and facilities, including water/sewer, roads, schools, parks/recreation and fire and rescue.



**JUSTIFICATION FOR VARIANCE REQUEST**

Applicant \_\_\_\_\_

The of Zoning Appeals is required by Section 15.2-2309 of the Code of Virginia to consider the following factors before a variance can be granted. Please read the factors listed below carefully and in your own words, describe how the request meets each factor. If additional space is needed, use additional sheets of paper.

1. The variance shall not be contrary to the public interest and shall be in harmony with the intended spirit and purpose of the Zoning Ordinance.

[Empty response area for factor 1]

2. The variance will not be of a substantial detriment to the adjacent properties or the character of the district.

[Empty response area for factor 2]

3. Evidence supporting claim:

[Empty response area for factor 3]

**JUSTIFICATION FOR ADMINISTRATIVE APPEAL REQUEST**

Applicant Stanley A. Seymour, III, Jane L. Seymour, Adrian Maver and Blaine Creasy

Please respond to the following as thoroughly as possible. If additional space is needed, use additional sheets of paper.

1. Reasons for appeal:

See attached Schedule B

2. Evidence supporting claim:

See attached Schedule B

## CONCEPT PLAN CHECKLIST

A concept plan of the proposed project must be submitted with the application. The concept plan shall graphically depict the land use change, development or variance that is to be considered. Further, the plan shall address any potential land use or design issues arising from the request. In such cases involving rezonings, the applicant may proffer conditions to limit the future use and development of the property and by so doing, correct any deficiencies that may not be manageable by County permitting regulations.

The concept plan should not be confused with the site plan or plot plan that is required prior to the issuance of a building permit. Site plan and building permit procedures ensure compliance with State and County development regulations and may require changes to the initial concept plan. Unless limiting conditions are proffered and accepted in a rezoning or imposed on a special use permit or variance, the concept plan may be altered to the extent permitted by the zoning district and other regulations.

A concept plan is required with all rezoning, special use permit, waiver, community plan (15.2-2232) review and variance applications. The plan should be prepared by a professional site planner. The level of detail may vary, depending on the nature of the request. The County Planning Division staff may exempt some of the items or suggest the addition of extra items, but the following are considered minimum:

### ALL APPLICANTS

- a. Applicant name and name of development
- b. Date, scale and north arrow
- c. Lot size in acres or square feet and dimensions
- d. Location, names of owners and Roanoke County tax map numbers of adjoining properties
- e. Physical features such as ground cover, natural watercourses, floodplain, etc.
- f. The zoning and land use of all adjacent properties
- g. All property lines and easements
- h. All buildings, existing and proposed, and dimensions, floor area and heights
- i. Location, widths and names of all existing or platted streets or other public ways within or adjacent to the development
- j. Dimensions and locations of all driveways, parking spaces and loading spaces

### *Additional information required for REZONING and SPECIAL USE PERMIT APPLICANTS*

- k. Existing utilities (water, sewer, storm drains) and connections at the site
- l. Any driveways, entrances/exits, curb openings and crossovers
- m. Topography map in a suitable scale and contour intervals
- n. Approximate street grades and site distances at intersections
- o. Locations of all adjacent fire hydrants
- p. Any proffered conditions at the site and how they are addressed
- q. If project is to be phased, please show phase schedule

I certify that all items required in the checklist above are complete.

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
Date



### POTENTIAL OF NEED FOR TRAFFIC ANALYSIS AND/OR TRAFFIC IMPACT STUDY

The following is a list of potentially high traffic-generating land uses and road network situations that could elicit a more detailed analysis of the existing and proposed traffic pertinent to your rezoning, subdivision waiver, public street waiver, or special use permit request. If your request involves one of the items on the ensuing list, we recommend that you meet with a County planner, the County traffic engineer, and/or Virginia Department of Transportation staff to discuss the potential additional traffic related information that may need to be submitted with the application in order to expedite your application process.

*(Note this list is not inclusive and the County staff and VDOT reserve the right to request a traffic study at any time, as deemed necessary.)*

#### High Traffic-Generating Land Uses:

- Single-family residential subdivisions, Multi-family residential units, or Apartments with more than 75 dwelling units
- Restaurant (with or without drive-through windows)
- Gas station/Convenience store/Car wash
- Retail shop/Shopping center
- Offices (including: financial institutions, general, medical, etc.)
- Regional public facilities
- Educational/Recreational facilities
- Religious assemblies
- Hotel/Motel
- Golf course
- Hospital/Nursing home/Clinic
- Industrial site/Factory
- Day care center
- Bank
- Non-specific use requests

#### Road Network Situations:

- Development adjacent to/with access onto/within 500-ft of intersection of a roadway classified as an arterial road (e.g., Rte 11, 24, 115, 117, 460, 11/460, 220, 221, 419, etc)
- For new phases or changes to a development where a previously submitted traffic study is more than two (2) years old and/or roadway conditions have changed significantly
- When required to evaluate access issues
- Development with ingress/egress on roads planned or scheduled for expansion, widening, improvements, etc. (i.e. on Long Range Transportation Plan, Six-Yr Road Plan, etc.)
- Development in an area where there is a known existing traffic and/or safety problem
- Development would potentially negatively impact existing/planned traffic signal(s)
- Substantial departure from the Community Plan
- Any site that is expected to generate over one hundred (100) trips during the peak hour of the traffic generator or the peak hour on the adjacent streets, or over seven hundred fifty (750) trips in an average day

**Effective date: April 19, 2005**



## NOTICE TO APPLICANTS FOR REZONING, SUBDIVISION WAIVER, PUBLIC STREET WAIVER, OR SPECIAL USE PERMIT PETITION

### PLANNING COMMISSION APPLICATION ACCEPTANCE PROCEDURE

The Roanoke County Planning Commission reserves the right to continue a Rezoning, Subdivision Waiver, Public Street Waiver or Special Use Permit petition if new or additional information is presented at the public hearing. If it is the opinion of the majority of the Planning Commissioners present at the scheduled public hearing that sufficient time was not available for planning staff and/or an outside referral agency to adequately evaluate and provide written comments and suggestions on the new or additional information prior to the scheduled public hearing then the Planning Commission may vote to continue the petition. This continuance shall allow sufficient time for all necessary reviewing parties to evaluate the new or additional information and provide written comments and suggestions to be included in a written memorandum by planning staff to the Planning Commission. The Planning Commission shall consult with planning staff to determine if a continuance may be warranted.

### POTENTIAL OF NEED FOR TRAFFIC ANALYSES AND/OR TRAFFIC IMPACT STUDY

The Roanoke County Planning Commission reserves the right to continue a Rezoning, Subdivision Waiver, Public Street Waiver, or Special Use Permit petition if the County Traffic Engineer or staff from the Virginia Department of Transportation requests further traffic analyses and/or a traffic impact study that would be beneficial in making a land use decision (*Note: a list of potential land uses and situations that would necessitate further study is provided as part of this application package*).

This continuance shall allow sufficient time for all necessary reviewing parties to evaluate the required traffic analyses and/or traffic impact study and to provide written comments and/or suggestions to the planning staff and the Planning Commission. If a continuance is warranted, the applicant will be notified of the continuance and the newly scheduled public hearing date.

**Effective date: April 19, 2005**

\_\_\_\_\_  
**Name of Petitioner**

\_\_\_\_\_  
**Petitioner's Signature**

\_\_\_\_\_  
**Date**

SCHEDULE A

Second Administrative Appeal  
Second Written Zoning Determination for 5985 Coleman Road dated May 17, 2018  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 Coleman Road LLC  
Southwest Virginia Wildlife Center

Co-Applicants:

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Jane L. Seymour**  
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**SCHEDULE B**

Second Administrative Appeal  
Second Written Zoning Determination for 5985 Coleman Road dated May 17, 2018  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 Coleman Road LLC  
Southwest Virginia Wildlife Center  
June 15, 2018

Joint Applicant: Stanley A. Seymour, III and Jane L. Seymour 5960 Coleman Rd. Roanoke, VA 24018  By and through their counsel Wharton Aldhizer & Weaver, PLC Gregory T. St. Ours and James L. Johnson 100 South Mason St. Harrisonburg, VA22801	Joint Applicant: Adrian Maver and Blaine Creasy 5946 Coleman Rd. Roanoke, VA 24018  By and through their counsel Warner & Renick, PLC G. Harris Warner, Jr. 4648 Brambleton Avenue, SW P. O. Box 21584 Roanoke, Virginia 24018
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**Administrative Appeal Application**

This administrative appeal application (this "Second Appeal") appeals determinations by John Murphy (the "Zoning Administrator"), on behalf of Roanoke County, in his May 17, 2018 letter "Second Written Zoning Determination for 5985 Coleman Road" attached as Exhibit 1 (the "May 17 Determination Letter"). Other exhibits to this Second Appeal include:

- Exhibit 2: The March 30, 2018 email from Jim Johnson to the Zoning Administrator;
- Exhibit 3: March 30, 2018 letter "Written Zoning Determination for 5985 Coleman Road"
- Exhibit A: The April 25, 2018 Conceptual Plan;
- Exhibit B: The May 7, 2014 Building Alterations Plan, approved by Roanoke County Building on July 3, 2014, per Application #B-1401231;
- Exhibit C: Application #B-1701280 including undated Bird room plan 2 and Plan 2A furniture;
- Exhibit D-1: SVWC's May 16, 2018 letter "To Whom It May Concern";
- Exhibit D-2: First enclosure with SVWC's May 16, 2018 letter;
- Exhibit D-3: Second enclosure with SVWC's May 16, 2018 letter;
- Exhibit E: SVWC's March 8, 2018 letter "To Whom It May Concern";
- Exhibit F: A copy of Exhibit A overlaid with a dotted/broken line to reflect a rendering of 150 feet from the front line of the Property.

SCHEDULE B, continued

Second Administrative Appeal  
June 15, 2018

This Second Application is brought by the appellants Stanley A. Seymour III, Jane L. Seymour, Adrian Maver, and Blaine Creasy (collectively, "Appellants"). Their first administrative appeal application, filed on April 27, 2018 (the "First Appeal"), appealed the Zoning Administrator's March 30, 2018 letter re "Written Zoning Determination for 5985 Coleman Road" attached as Exhibit 3 (the "March 30 Determination Letter"). The First Appeal is incorporated by reference herein.

The lot at issue in the March 30 and May 17 Determination Letters is owned by 5985 Coleman Road LLC, t/a Southwest Virginia Wildlife Center of Roanoke ("SVWC"), and is known as 5985 Coleman Road, tax map # 096.08-02-03.00 (the "Property"). The Property was placed in issue by Application #PZ-1800595. Appellants own and live on lots immediately west of the Property.

The Zoning Administrator wrote his May 17 Determination Letter in response to a March 30, 2018 email from Jim Johnson, attached as Exhibit 2. Appellants appeal the May 17 Determination Letter for the reasons and grounds noted below.

This Appeal

**A. The proposed raptor building is not the principal building on the Property, it is an accessory building; accessory structure setbacks must apply to the proposed raptor building, not principal structure setbacks; and the Zoning Administrator should not have downgraded the existing principal building, the Wildlife Veterinary Clinic building, and upgraded the proposed raptor building without a request to do so.**

The Zoning Administrator states in his May 17 Determination Letter that if the proposed raptor building is approved and constructed as proposed, it will be considered the principal structure for two reasons: the Property's principal use, veterinary care and rehabilitation of wildlife, will be conducted within the raptor building; and the raptor building will be larger than the existing principal building.

First, the Zoning Administrator erred in determining that the proposed raptor building will be larger than the existing principal building. Second, the Zoning Administrator erred in determining that the primary use of the Property will be conducted in the raptor building, not the existing principal building. Third, the Zoning Administrator erred in upgrading the raptor building to be the principal building and thereby downgrading the existing principal building in the absence of a request and supporting reasons to do so by SVWC in PZ-1800595 and in the absence of any record that SVWC downgraded or otherwise changed the existing principal building. Fourth, because the Zoning Administrator erred in determining that the raptor building



SCHEDULE B, continued

Second Administrative Appeal  
June 15, 2018

will be the principal building on the Property, he also erred in his assessment of the proper setbacks for both the raptor building and the partially constructed building and other cages on the Property.

**First, the Zoning Administrator erred in determining that the proposed raptor building will be larger than the existing principal building.**

Before turning to whether or not the proposed raptor building will be larger than the existing principal building, we note that Roanoke County Code §30-28 makes no mention of size of a building in defining whether a building is the principal building or structure on a lot:

§30-28: Principal building or structure: A building or structure in which the primary use of the lot on which the building is located is conducted.

§30-28: Principal use: The main use of land or structures as distinguished from a secondary or accessory use.<sup>1</sup>

Notwithstanding these two §30-28 definitions (and the definitions in Footnote 1) and giving the Zoning Administrator the benefit of doubt for purposes of this argument, the existing principal building is, and will be, larger than the proposed raptor building.

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<sup>1</sup> Other Definitions under §30-28, as well as §30-34.5, are consistent with the fact that a principal structure on a property is *the* principal structure on a property.

§30-28: Accessory building or structure: A building or structure detached from a principal building on the same lot and customarily incidental and subordinate to *the* principal building or use. Where an accessory building or structure is attached to *the* principal building in a substantial manner, as by a wall or roof, such accessory building shall be considered a part of *the* principal building. (*Emphasis added.*)

§30-28: Building line: The line, parallel to the street right-of-way, that passes through the point of *the* principal building nearest the street right-of-way, or in the case of the rear building line, furthest from the street right-of-way. (*Emphasis added.*)

§30-28: Garage, private: A building for the private use of the owner or occupant of a principal building situated on the same lot as *the* principal building for the storage of motor vehicles. (*Emphasis added.*)

§30-34.5: Where *the* principal structure is more than 150 feet from the street, accessory buildings may be located 150 feet from the street and 20 feet from any side property line. (*Emphasis added.*)

SCHEDULE B, continued

Second Administrative Appeal  
June 15, 2018

When SVWC bought the property, the existing principal building was a house which SVWC converted four years ago to a veterinary wildlife clinic pursuant to the May 7, 2014 Building Alterations Plan. The existing principal building includes 1,840 square feet of first floor space in the original house, 575 square feet of first floor space in the original car port which SVWC converted to usable, enclosed space in 2017, and 1,275 square feet in the basement for a total of 3,690 square feet. See Exhibit B. This is significantly larger than the proposed raptor building, the “Proposed Raptor Complex”, at a total of 2,875 square feet. See Exhibit A.

The Zoning Administrator might respond that the 2,875 square feet attributed to the Proposed Raptor Complex is larger than the 2,520 square feet attributed to the existing principal building, the “Brick Building”, in Exhibit A. Exhibit A, however, significantly understates the existing principal building square footage because Exhibit A overlooks the 1,275 square feet in the basement of the existing principal building.

In conclusion, the Zoning Administrator erred in using size as a determinative factor under the Code, and the Zoning Administrator erred as a matter of fact in determining that the proposed raptor building will be larger than the existing principal building.

**Second, the Zoning Administrator erred in determining that the primary use of the Property will be conducted in the proposed raptor building, not the existing principal building.**

In 2014, the zoning administrator approved the use of the Property as a “veterinary hospital/clinic”. See Exhibit 2. Roanoke County Code §30-29-5 defines a “veterinary hospital/clinic” as follows:

Veterinary hospital/clinic: Any establishment rendering *surgical and medical treatment of animals*. Boarding of animals shall only be conducted indoors, on a short term basis, and shall only be incidental to such hospital/clinic use, unless also authorized and approved as a commercial kennel. (*Emphasis added.*)

In its March 8 letter, SVWC states that it “provides veterinary care *and* rehabilitation for injured, orphaned, and sick native wildlife”. See Exhibit E (emphasis added). In short, SVWC understands and maintains that rehabilitation of animals is distinct from and in addition to veterinary care – surgical and medical treatment – of animals. In its May 16 letter, SVWC identifies the dynamic between veterinary care and rehabilitation in that SVWC states that veterinary care is followed by rehabilitation. See Exhibit D-1. As such, SVWC reconfirmed on May 16 that rehabilitation is distinct from and in addition to veterinary care.

SCHEDULE B, continued

Second Administrative Appeal  
June 15, 2018

Consistent with the forgoing, SVWC states relative to the existing principal building that “The Building located at 5985 is currently used as the Wildlife Veterinary Clinic”. See Exhibit D-2. NOTE: In light of this identification by SVWC of the existing principal building, we refer to the existing principal building, hereinafter, as the “Wildlife Veterinary Clinic building”.

The Wildlife Veterinary Clinic building includes space for veterinary care – surgical and medical treatment of animals – of all wildlife as well as space for holding and at least some rehabilitation of wildlife, as evidenced by the fact that the existing Wildlife Veterinary Clinic building includes a Receiving Room, a veterinary Care Room, Holding Rooms 1-4, a Water Fowl Room, a mammal room, a Nursery including incubator shelves and treatment table, and bird shelves. See Exhibits B and C.

In other words, the principal use of the Property as set forth in the definition under Code §30-29-5 for a “veterinary hospital/clinic” – again, surgical and medical treatment of *wildlife* – is conducted in the Wildlife Veterinary Clinic building, and it also happens that rehabilitation of *wildlife* is also to some degree performed in this building. In contrast, neither surgical nor medical treatment of any animal, whether mammal or bird, reptile or amphibian, will be performed in the proposed raptor building. Rather, the raptor building will be limited to *rehabilitation* only and for *raptors* only.

SVWC’s submissions confirm that the proposed raptor building will not be a principal building under Roanoke County Code §30-28 but an accessory building to the Wildlife Veterinary Clinic building. See Footnote 1 for the definition of “accessory building or structure”.

In its May 16 letter, SVWC states that its goal “is to treat injured, orphaned, and sick *wildlife*” including “many raptors (birds of prey) with fractures and soft tissue injuries that require *veterinary care followed by rehabilitation*”. SVWC goes on to identify the structure at issue as the “oval raptor *flight* building” to “provide the space for the larger species to *complete* their recovery”. See Exhibit D-1 (*emphasis added*.) In short, we learn from SVWC’s May 16 letter that (1) SVWC treats injured, orphaned, and sick wildlife, (2) SVWC provides veterinary care and rehabilitation for wildlife, but (3) the proposed raptor building will be limited to only a subset of SVWC’s patients that does not even include all birds but only raptors, and (4) it will be limited to only one aspect of a raptor’s rehabilitation, flight.

In its March 8, 2018 letter, SVWC states that it “provides *veterinary care and rehabilitation* for injured, orphaned, and sick native *wildlife*” and that “As the *veterinarian* of record of the facility, it is [Dr. D’Orazio’s] responsibility to see that we provide the best medical

SCHEDULE B, continued

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care possible...” SVWC goes on to say that it “needs a large raptor flight building to...[provide] the necessary flight conditions to strengthen muscle tone and improve stamina...and provide a large enough space to determine if the raptors can hunt”. See Exhibit E (*emphasis added*.) In short, we learn from SVWC’s March 8 letter that (1) again, SVWC provides veterinary care and rehabilitation for wildlife, (2) the best veterinary care possible is at the core of SVWC’s purpose, and (3) that the proposed raptor building is not for veterinary care, is limited to only a subset of rehabilitation, flight conditions for muscle tone, stamina and ability to hunt, and is limited to only raptors, a subset of wildlife and even of birds.

In the first enclosure of its May 16 letter, SVWC references the “proposed *primary* raptor building”. See Exhibit D-2 (*emphasis added*.) Further, in the second enclosure of its May 16 letter, SVWC identifies the raptor building as “a *primary* building to house raptors”. See Exhibit D-3 (*emphasis added*.)

The proposed raptor building may very well be the primary building to house raptors, but regardless, the raptor building is not identified anywhere in any document submitted by SVWC as the *principal* building on the Property, that is to say a building in which the primary use of the Property, namely veterinary care – surgical and medical treatment – of wildlife, will be conducted.

Moreover, the Wildlife Veterinary Clinic building is the “Brick Building” in Exhibit A, and SVWC implicitly reaffirms that this building is, in fact, the principal building (i.e., as defined in Code §30-28) on the Property by characterizing construction of the proposed raptor building as “the wildlife center’s expansion of a primary building”. See Exhibit D-2.

In conclusion, SVWC’s submissions on March 8 and May 16 confirm that the proposed raptor building is not the principal structure on the Property in that SVWC treats injured, orphaned, and sick wildlife, whether mammals or birds, reptiles or amphibians, and SVWC provides both veterinary care and rehabilitation for all of this wildlife in the Wildlife Veterinary Clinic building. In contrast, the raptor building is limited to only one narrow group of birds, raptors, and is limited to only one aspect of a raptor’s rehabilitation, flight. As such, the Zoning Administrator erred in determining that the primary use of the Property will be conducted in the raptor building, not the Wildlife Veterinary Clinic building.

**Third, the Zoning Administrator erred in upgrading the proposed raptor building to be the principal building and thereby downgrading the Wildlife Veterinary Clinic building in the absence of a request with supporting reasons to do so by SVWC in PZ-1800595, and in the absence of any record that SVWC has downgraded or otherwise changed the use of the Wildlife Veterinary Clinic building.**

**SCHEDULE B**, continued

Second Administrative Appeal  
June 15, 2018

In the absence of a request by SVWC providing the basis and support for the County to make a determination that a building is a principal building on a property in lieu of an existing principal building, the Zoning Administrator is without authority to make such a determination. Such a determination is like granting a building permit without an application. In this case, SVWC has not asked the County to determine that the proposed raptor building be the principal building instead of the existing Wildlife Veterinary Clinic building. Further, there is no record that SVWC downgraded or otherwise changed the use of the Wildlife Veterinary Clinic building, and without such record, this building should not be downgraded.

**Fourth**, because the Zoning Administrator erred in determining that the proposed raptor building is the principal building on the Property, he also erred in his assessment of the proper setbacks for both the raptor building and the partially constructed building and other cages.

The Zoning Administrator incorrectly applies minimum setbacks applicable to principal structures in Code §30-34-3(B) (i.e.: 30 feet from the front line; 15 feet from the side lines; and 25 feet from the rear line) to the proposed raptor building which, consistent with the explanations above, is an accessory structure. Instead, the proper setbacks for the raptor building are those which apply to accessory structures in Code §30-34-3(B) (i.e.: as to the front line, either behind the principal structure or where the principal structure is more than 150 feet from the front line, 150 feet from the front line; 20 feet from the side lines; and 10 feet from the rear line). The setbacks for the partially constructed building and the other cages are dependent upon the front building line of the principal structure. Accordingly, the raptor building in the location as proposed in Exhibit A will violate §30-34-3(B), and the partially constructed building and the other cages shown in Exhibit A are in violation of §30-34-3(B). For a rendering of 150 feet from the front line of the Property, see the dotted/broken line in Exhibit F.<sup>2</sup>

**B. The Zoning Administrator incorrectly determined that a special use permit for the proposed raptor building can be based on Code § 30-23-5(B) where a lot is nonconforming because it has no public street frontage. Code §30-23-5(B) does not apply, however, because the Property is already developed and because the raptor building will not be an**

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<sup>2</sup> In his March 30 Determination Letter (attached as Exhibit 3), the Zoning Administrator determined "after conducting extensive research" that the front line of the Property is the common property line between the Property and the adjacent parcel addressed as 5960 Coleman Road. The most westerly, 310' line in Exhibit F is this front line -- thus setting the front setback either 150' from said front line or behind the existing principal structure, whichever is closer. In this case, 150' is closer to the front line than the existing principal structure, thus setting the front setback you see depicted in Exhibit F by the dotted/broken line.

SCHEDULE B, continued

Second Administrative Appeal  
June 15, 2018

expansion of an existing structure. Further, other nonconformities in addition to no public street frontage also preclude application of Code § 30-23-5(B).

Nonconforming characteristics and structures plague the Property such as:

- lack of public street frontage;
- nonconforming “other cages”; and
- nonconforming “partially constructed building”.

See Exhibit 1. In light of these nonconformities, construction and use of the proposed raptor building, as well as the partially constructed building as noted by the Zoning Administrator in his May 17 Determination Letter, would run afoul of Roanoke County Code §30-23-2(B):

§30-23-2(B): No nonconforming use shall be enlarged, intensified or increased, nor intensified to occupy a larger structure or building than was occupied at the effective date of adoption or subsequent amendment of this ordinance, with the exception that an existing, nonconforming, single-family residential structure and use in a commercial or industrial zoning district shall be allowed a 50 percent increase (either one time or cumulative) in the square footage of the use or structure in existence at the time of the adoption of this ordinance.

Apparently in light of this, and in particular the Property’s lack of public street frontage, the Zoning Administrator determined that “[t]he requirement for a special use permit for the proposed raptor building and the partially constructed building is based on Zoning Ordinance Section §30-23-5(B), Nonconforming Lots of Record”, and the Zoning Administrator then quoted Code §30-23-5(B) in full at the top of page 2 of his May 17 Determination Letter:

§30-23-5(B): Any lot of record that is nonconforming because it has no public street frontage may be developed, or an existing structure on the lot may be expanded, provided the county reviews and grants a special use permit for the proposed development, expansion, and use in accord with the standards and procedures contained in section 30-19 of this ordinance. This provision shall not apply to the use and development of such parcels for any agricultural and forestry use type, or for single family or two family dwellings.

At the bottom of page 2 of his May 17 Determination Letter, however, the Zoning Administrator incorrectly paraphrased and collapsed the first two clauses of §30-23-5(B) into a single clause, stating:

SCHEDULE B, continued

Second Administrative Appeal  
June 15, 2018

Section 30-23-5(B) states that nonconforming lots (including those that lack public street frontage) may be developed or expanded “provided the county reviews and grants a special use permit for the proposed development, expansion...”

See Exhibit 1. This misstates the actual language of §30-23-5(B) in two respects.

First, Code §30-23-5(B) actually states that “Any lot of record that is nonconforming *because it has no public street frontage* may be developed...” Code §30-23-5(B) does not state “nonconforming lots (*including those that lack public street frontage*) may be developed...” (*Emphasis added.*)

Second, Code §30-23-5(B) actually states that “...*an existing structure on the lot may be expanded...*” Code §30-23-5(B) does not say “*nonconforming lots* (including those that lack public street frontage) may be developed or *expanded...*” (*Emphasis added.*)

Under the actual language of Code §30-23-5(B), a property owner is allowed to avoid the §30-23-2(B) Prohibitions in two situations only: (1) when developing a lot that is a nonconforming lot because it has no public street frontage, or (2) when expanding an existing structure on a lot that is a nonconforming lot because it has no public street frontage. As to the first situation, the Property is already developed. As to the second, SVWC is not expanding an existing structure. To put it another way, the proposed raptor building is not an expansion of an existing structure but instead a proposed stand-alone structure on a previously developed lot. Therefore, Code §30-23-5(B), which only applies in the two narrow situations provided in §30-23-5(B), cannot apply and should not be invoked in this case.

Further, Code §30-23-5(B) is not available for lots with other nonconforming uses, characteristics or structures, in addition to lack of public street frontage, which brings us back to the nonconforming “other cages” and the nonconforming “partially constructed building”.

The Zoning Administrator states in his May 17 Determination Letter that the zoning permit for the other cages on the Property was issued in error, and hence, the other cages are nonconforming structures. See Exhibit 1. Further, the Zoning Administrator recognizes that these cages are accessory structures in his May 17 Determination Letter and, as such, nonconforming in another respect: They are not located at least 150 feet from the front line of the Property pursuant to Code §30-34-3(B). See Exhibit F. As for the “partially constructed building”, again, the Zoning Administrator recognizes that this building is an accessory building in his May 17 Determination Letter and, as such, nonconforming because, again, it is not located at least 150 feet from the front line of the Property. See Exhibit F. Also note that the First

**SCHEDULE B**, continued

Second Administrative Appeal  
June 15, 2018

Appeal, incorporated by reference herein, notes other nonconformities, any one of which would also preclude application of Code §30-23-5(B) in this case.

In conclusion, in order to invoke Code §30-23-5(B), the lack of public street frontage must be a lot's only nonconformity. Should any other nonconformities exist, as they do here, Code §30-23-5(B) is inapplicable. Furthermore, the two narrow situations in which Code §30-23-5(B) may be invoked do not exist here and so, for the reasons set forth above, Code §30-23-5(B) is not applicable to this case thereby barring enlarging, intensifying, or increasing use of the Property such as construction and use of the proposed raptor building.

**C. Reservation of Rights.**

Appellants reserve the right to further amend this Second Application as necessary. Additional detail supporting this Second Application, including but not limited to the evidence referenced herein, may be available upon request and may be provided prior to any scheduled hearing, subject to the protections offered under the attorney client privilege.

June 15, 2018

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SCHEDULE C

Second Administrative Appeal  
Second Written Zoning Determination for 5985 Coleman Road dated May 17, 2018  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 Coleman Road LLC  
Southwest Virginia Wildlife Center

Adjoining Property Owners:

Stanley A. Seymour, III and Jane L. Seymour  
5942 Coleman Road  
Roanoke, VA 24018  
Parcel ID: 096.08-02-04.00-0000  
Property Address: 5960 Coleman Road  
Roanoke, VA 24018

James P. Holladay and Ellen L. Antoniacci  
6546 Sugar Ridge Drive  
Roanoke, VA 24018  
Parcel ID: 096.08-02-01.00-0000  
Property Address: 5423 Crystal Creek Drive  
Roanoke, VA 24018

Nicholas H. Beasley  
5489 Crystal Creek Drive  
Roanoke, VA 24018  
Parcel ID: 096.02-01-46.01-0000  
Property Address: 5491 Crystal Creek Drive  
Roanoke, VA 24018

Richard N. Lovegreen and Erika E. Long  
6513 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-17.00-0000  
Property Address: 6513 Brookhaven Court  
Roanoke, VA 24018

Brian T. Loop and Jocassar Loop  
6517 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-16.00-0000  
Property Address: 6517 Brookhaven Court  
Roanoke, VA 24018

James Robert Bradshaw and Kimberly Mooney Bradshaw  
6521 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-15.00-0000  
Property Address: 6521 Brookhaven Court  
Roanoke, VA 24018

Russell P. Reiter  
6523 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-14.00-0000  
Property Address: 6523 Brookhaven Court  
Roanoke, VA 24018



# County of Roanoke

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FAX: (540) 776-7155

Arnold Covey, DIRECTOR  
Tarek Moneir,  
DEPUTY DIRECTOR OF DEVELOPMENT SERVICES  
Phillip Thompson,  
DEPUTY DIRECTOR OF PLANNING

BUILDING PERMITS / INSPECTIONS  
DEVELOPMENT SERVICES  
ENGINEERING  
PLANNING & ZONING  
STORMWATER MANAGEMENT  
TRANSPORTATION

May 17, 2018

Mr. Stanley A. Seymour, III  
5942 Coleman Road  
Roanoke, Virginia 24018

RE: Second Written Zoning Determination for 5985 Coleman Road  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 COLEMAN ROAD LLC  
Southwest Virginia Wildlife Center  
"The Property"

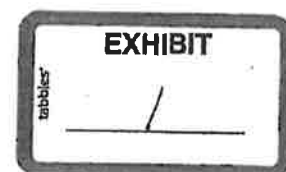
Dear Mr. Seymour:

In response to my first zoning determination written to you (on March 30, 2018) relating to the above noted Property, I received your request, dated March 30, 2018 (your "second request"), made through your attorney, Mr. Johnson, requesting additional zoning opinions related to the Property. Since the request is for a property not under your ownership or control I will also provide a copy of my written determination to the owners of the Property.

### Setbacks

You requested information on several items regarding setbacks. Section 30-34-3(B) of the Roanoke County Code sets forth the applicable minimum setback requirements (for AR Agricultural/ Residential Districts).

**The required setback for the proposed raptor building:** If the raptor building is approved and constructed as proposed, it will be considered the principal structure (because the Property's principal use (veterinary care and rehabilitation of wildlife) will be conducted within it and because it will be larger in size than the existing principal structure). Accordingly, the minimum front yard setback for the proposed raptor building would be 30 feet, the side yard setback would be 15 feet and the rear yard setback would be 25 feet.



**The setback for the partially constructed building:** Where the principal structure is more than 150 feet from the street, accessory buildings may be located 150 feet from the street and 20 feet from any side property line.

**The other cages on the property** will fall within the same setback category as the other accessory structures as the "partially constructed building." If a Special Use Permit is approved and the raptor building is constructed where proposed, the setback distances for the accessory structures will then be located behind the rear building line of the raptor building and the accessory structures will need to meet a minimum 10 feet side setback.

**The need for a special use permit**

The requirement for a special use permit for the proposed raptor building and the partially constructed building is based on Zoning Ordinance Section 30-23-5(B), Nonconforming Lots of Record. (B) *Any lot of record that is nonconforming because it has no public street frontage may be developed, or an existing structure on the lot may be expanded, provided the county reviews and grants a special use permit for the proposed development, expansion, and use in accord with the standards and procedures contained in Section 30-19 of this ordinance. This provision shall not apply to the use and development of such parcels for any agricultural and forestry use type, or for single family or two family dwellings.* (Emphasis added).

**A variance is not required**

In your request for a determination, you also shared your opinion that because the proposed projects appear to require "a modification of the road frontage ordinance," you believe that the County Code requires that the applicants obtain a variance, rather than a special use permit.

Section 30-19-1 of the County Code, General Standards, states: *The administrator shall not accept a special use permit application for a lot or parcel that does comply with the minimum requirements contained in Article IV, use and design standards, for that use. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the administrator shall thereafter accept the special use permit application for the consideration of the commission and board.*

Article IV of the Zoning Ordinance outlines additional, modified or more stringent standards for uses that have an asterisk (\*) beside the permitted uses list. In Section 30-34-2 of the County Code (which sets forth permitted uses in the AR Agricultural/Residential District), the Veterinary Hospital/Clinic use does not have an asterisk; **it does not have any use and design standards.** Site development regulations, which are set forth in Section 30-34-3 of the County Code (including frontage requirements), are not use and design standards; the variance requirement applicable to use and design standards does not apply. As noted above, Section 30-23-5(B) states that nonconforming lots (including those that lack public street frontage) may be developed or expanded, "provided the county reviews and grants a special use permit for the proposed development, expansion ...."

Further, Section 30-14(C) of the County Code (Amendments to Ordinance) states: *The administrator shall not accept any amendment application for a lot or parcel that does not comply with the minimum lot area, width or frontage requirements of the requested zoning*

*district. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the administrator shall thereafter accept the amendment application for the consideration of the commission and board. (Emphasis added).* This section refers to situation in which an applicant is requesting a rezoning from one zoning district to another. An application for a special use permit for a nonconforming lot of record (pursuant to Section 30-23-5) is the pending request. Based on the above, it is my determination that a variance was not required prior to the acceptance of this special use permit application.

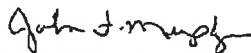
**The other cages also require a special use permit**

The Property does have multiple animal enclosure structures that were constructed, but were not large enough to require building permits. A zoning permit was initially issued for these structures. However, after further review of the information originally submitted for the zoning permit, I determined that the zoning permit for the accessory structures was issued in error and those structures will also require a special use permit.

Please be aware that this written determination is issued by the Roanoke County Zoning Administrator. Any person aggrieved by a written determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. Appeals must be made within thirty (30) days of the entry of the written determination which is the date of receipt of this letter. Also please note that this written determination of the Roanoke County Zoning Administrator shall be final and unappealable if not appealed by the deadline noted in this letter {Sec 15.2-2311 Code of Va}. It is the applicant's responsibility to submit a complete administrative appeal application within the required deadline in order for the appeal request to become valid. In addition, there is a \$275 administrative appeal application fee and required legal advertisement fees shall be the responsibility of the appellant.

I will include an Administrative Appeal Application for your reference.

Sincerely,



John F. Murphy, CZA  
Zoning Administrator

Attachment: Administrative Appeal Application

CC: 5985 COLEMAN ROAD LLC  
5985 Coleman, Road  
Roanoke, Virginia 24018

James Johnson - Re: [EXTERNAL] - Re: 5985 Coleman Road FOIA email 3 of 8 EL-1700242

From: James Johnson  
To: Peter Lubeck  
Date: 3/30/2018 3:40 PM  
Subject: Re: [EXTERNAL] - Re: 5985 Coleman Road FOIA email 3 of 8 EL-1700242  
Cc: Greg St. Ours; Heather VanLear; John Murphy; Stan Seymour

---

Mr. Lubeck:

We would like to thank the Zoning Administrator (Mr. Murphy) for his letter referenced below in response to Mr. Seymour's questions pertaining to Southwest Virginia Wildlife Center's (the "Clinic") development of its real estate (the "Property"). We currently have three points from the letter for which we seek clarification:

- 1) The letter states that with regard to ascertaining proper setback restrictions, the "front property line for the Property is the common property line (309.93' in length) between the [Clinic's] Property and the adjacent parcel...addressed as 5960 Coleman Road." We ask that the Zoning Administrator please clarify the minimum setback requirement for the Property's front line regarding each of the following structures: (a) the proposed raptor building (for which Mr. Murphy determined a special use permit must be approved), (b) the partially constructed building (for which Mr. Murphy determined a special use permit must also be approved); and/or (c) other cages located on the Property within the setbacks (for which it appears no special permit was approved). At minimum, please provide the governing code section.
- 2) As mentioned in #1(a) and (b) above, Mr. Murphy's letter states that due to the lack of proper road frontage, the proposed raptor building and the partially constructed building must be approved via a "Special Use Permit". Please provide the code section or other authority on which Mr. Murphy bases this determination. As mentioned in his February 27, 2018 letter to Mr. Murphy, Mr. Seymour does not understand why the proper procedure for such a project would not be "Variance", rather than "Special Use Permit", in light of the fact that such a request appears to require a modification of the road frontage ordinance.
- 3) As mentioned in #1(c) above, and as per my letter to you of last week, my client believes there appears to be currently several animal cages already constructed on the premises without permits. We ask that the Zoning Administrator please clarify whether such structures should have required the same approval procedure under the authority on which you base your determination (i.e. the answer to #2 above.)

We appreciate the time and consideration Mr. Murphy, you, and staff have given these requests. My client reserves all rights regarding this matter, including appealing the determinations made in your letter dated March 30, 2018 and any clarification thereof.

Regards,

Jim Johnson





# County of Roanoke

DEPARTMENT OF COMMUNITY DEVELOPMENT

DIRECTOR, ARNOLD COVEY  
DEPUTY DIRECTOR OF DEVELOPMENT SERVICES, TAREK MONEIR  
DEPUTY DIRECTOR OF PLANNING, PHILIP THOMPSON

BUILDING PERMITS/ INSPECTIONS  
DEVELOPMENT REVIEW  
ENGINEERING  
ENVIRONMENTAL MANAGEMENT  
PLANNING & ZONING  
TRANSPORTATION

March 30, 2018

Mr. Stanley A. Seymour, III  
5942 Coleman Road  
Roanoke, Virginia 24018

RE: Written Zoning Determination for 5985 Coleman Road  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 COLEMAN ROAD LLC  
Southwest Virginia Wildlife Center

Dear Mr. Seymour:

I have received your letter with additional information that was delivered to the Roanoke County Administration Center on February 27, 2018. Since the request pertains to a property not under your ownership or control I will also provide a copy of my written determination to the owners of 5985 Coleman Road (the "Property").

Your letter includes a request for zoning determinations related to the use of the Property.

The first category of your letter was "Nonconforming Use." I understand your question to be whether the present use of the property (as a veterinary hospital/ clinic) is a nonconforming use. It is my opinion that the present use is conforming. In 2014, the zoning administrator approved the use as a veterinary hospital/ clinic. The construction of the proposed raptor building and partially constructed building on the Property will require a Special Use Permit, due to a lack of public road frontage. The Special Use Permit is a public hearing process through the Planning Commission and Board of Supervisors.

The second category of your letter was "Zoning". I understand your question presented in this section to be whether the present use is *properly classified* as a veterinary hospital/ clinic. You specifically question whether the fact that animals stay at the facility overnight prevents the use from being thus classified.

It is my opinion that the use is properly classified as a veterinary hospital/ clinic use and that animals who remain at the facility overnight (whether indoors or outdoors) are not boarding. Although the term "boarding" is not defined in the County Code, I understand the term to refer to



situations in which owners of domestic animals drop their animals off at the facility for a set amount of time in exchange for a fee.

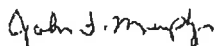
In the situation at hand, the animals who stay at the facility are not domestic animals and do not stay at the facility for a set amount of time in exchange for payment. All animals who stay overnight at the facility are receiving veterinary care. There are no boarding activities conducted at the facility that are incidental to the medical treatment of wild animals. This conclusion is supported by the finding made by the Commonwealth of Virginia Department of Health Professions, Board of Veterinary Medicine. The license approved for the Property is a Veterinary Establishment, Wildlife Rehabilitation Center and has a specific restriction stating "No Boarding."

The last category listed in your letter is "Setbacks". I understand that your question pertaining to setbacks is regarding the location of the front property line. After conducting extensive research originating with information on the County GIS and then reviewing plat and deed information, it is my determination that the front property line for the Property is the common property line (309.93' in length) between the Property and the adjacent parcel identified by Tax Map Number 096.08-02-04.00-0000, addressed as 5960 Coleman Road. This determination is different than what I advised you in our original discussion about this issue.

Please be aware that this written determination is issued by the Roanoke County Zoning Administrator. Any person aggrieved by a written determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. Appeals must be made within thirty (30) days of the entry of the written determination which is the date of receipt of this letter. Also please note that this written determination of the Roanoke County Zoning Administrator shall be final and unappealable if not appealed by the deadline noted in this letter (Sec 15.2-2311 Code of Va). It is the applicant's responsibility to submit a complete administrative appeal application within the required deadline in order for the appeal request to become valid. In addition, there is a \$275 administrative appeal application fee and required legal advertisement fees shall be the responsibility of the appellant.

I will include an Administrative Appeal Application for your reference.

Sincerely,



John F. Murphy, CZA  
Zoning Administrator

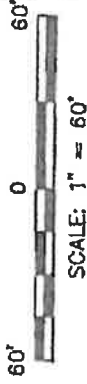
Attachment: Administrative Appeal Application

CC: 5985 COLEMAN ROAD LLC  
5985 Coleman, Road  
Roanoke, Virginia 24018



**EXHIBIT "A"**  
**SPECIAL USE PERMIT**  
**CONCEPTUAL PLAN**

Roanoke Wildlife Rescue



TAX #096.08-02-01.00  
 ZONED: AR

TAX #096.02-01-46.01  
 ZONED: AR

CURRENT & PROPOSED USE: VETERINARY CLINIC  
 SITE ACREAGE: 2.854 AC. (124,327 SF)  
 MAXIMUM COVERAGE (AR ZONING):  
 MAX. BUILDING COVERAGE: 25%  
 PROPOSED BUILDING COVERAGE: 8.5%  
 MAX. LOT COVERAGE: 50%  
 PROPOSED LOT COVERAGE: 14.8%

S 75°45'00" E  
 324.70'

TAX #096.08-02-03.00  
 PROPERTY OF  
 5985 COLEMAN ROAD LLC  
 INSTRUMENT #201612560  
 2.854 AC. (124,327 S.F.)  
 #5985 COLEMAN RD.  
 ZONED: AR

S 37°30'00" E  
 212.40'

S 61°15'00" W  
 109.10'

S 75°45'00" E  
 310.00'

TAX #096.08-02-04.00  
 ZONED: AR

15' INGRESS/EGRESS EASEMENT  
 FOR THE BENEFIT OF TRACT A-1  
 INSTRUMENT #20110542

PROPOSED  
 RAPTOR  
 COMPLEX  
 #2,875 S.F.

POSSIBLE AREA  
 FOR 7 PARKING  
 SPACES

BRICK BUILDING  
 #5985 - 1 STORY  
 2,520 S.F.

WOODEN BUILDING  
 #5985

WIRE PEN  
 CHAINLINK PEN  
 GROUND HOG #1

GROUND HOG #1  
 BOY SCOUT

METAL  
 CAGE

CONC.  
 SPRING  
 HOUSE

SHED

EVEREST

S 75°45'00" E  
 300.00'

TAX #096.08-04-16.00  
 ZONED: PRD

TAX #096.08-04-15.00  
 ZONED: PRD

TAX #096.08-04-14.00  
 ZONED: PRD

TAX #096.08-04-17.00  
 ZONED: PRD

N 14°15'00" E  
 40.0'

30' R/W TO RTE 755  
 D.B. 600, PG. 431



**LUMSDEN ASSOCIATES, P.C.**  
**ENGINEERS-SURVEYORS-PLANNERS**  
**ROANOKE, VIRGINIA**

4664 BRAMBLETON AVENUE  
 P.O. BOX 20669  
 ROANOKE, VIRGINIA 24018  
 PHONE: (540) 774-4411  
 FAX: (540) 772-9445  
 E-MAIL: MAIL@LUMSDENPC.COM

DATE:	April 25, 2018
SCALE:	1" = 60'
COMM. NO.:	18-088







# RESIDENTIAL PERMIT APPLICATION

Roanoke County / Town of Vinton - Community Development  
5204 Bernard Dr. / P.O. Box 29800 Phone 540-772-2065  
Roanoke, VA 24018 Fax 540-772 2108



APPLICATION #

b. 1701280

Check Appropriate Boxes

New     
  Alteration     
  Addition     
  Demolition

Single Family     
  Duplex     
  Townhouse     
  Mobile Home

Single Family (attached)     
  Accessory Structure

<b>PROPERTY INFORMATION</b>	Job Address: <b>5985 Coleman Rd</b>			
	Subdivision:	Lot#:	Tax Map#: <b>096.08-02-03.00-0000</b>	Zoning: <b>AR</b> <input type="checkbox"/>
	Owner(s): <b>5985 Coleman Road LLC</b>			Phone: <b>540-798-8545</b>
	Mailing Address: <b>same as above</b>			Cell:
<b>APPLICANT INFORMATION</b>	Applicant (if other than owner): <b>Mutter Construction / Keith Roberts</b>			Phone: <b>540-580-4771</b>
	Applicant Address: <b>1250 Chandler Rd Goodview VA 24095</b>			Cell: <b>540-354-0883</b>
	<b>1250 Chandler Rd Goodview VA 24095</b>		Fax:	E-mail: <b>karoberts38@gmail.com</b>
	State License #: <b>2705078736</b>	Expiration Date: <b>08/31/2017</b>	County License #: <b>100026054</b>	
	<p style="text-align: center;">Briefly, but thoroughly, describe the proposed work. You may attach additional sheets if necessary.</p> <p><b>Convert covered screened in carport into usable space with elec and plumb</b></p>			

<b>NEW SINGLE FAMILY &amp; ADDITIONS INFORMATION:</b>	Building Height:	# Fireplaces:	<b>Heat Source</b> <input type="checkbox"/> Heat Pump <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input type="checkbox"/> Wood Stove <input type="checkbox"/> Solar <input type="checkbox"/> Other _____	<b>MANUFACTURED HOME INFORMATION:</b>	<input type="checkbox"/> Single-wide (under 19')
	Living Area (Include Fin. Basement) (Sq. Ft.):	# Bedrooms:			<input type="checkbox"/> Double-wide
	Garage Area (Sq. Ft.):	# Full Bathroom:			<input type="checkbox"/> Triple-wide
	Unfinished Basement Area (Sq. Ft.):	# Half Bathroom:			Manufacturer:
	Carport Area (Sq. Ft.):	# Stories:	Year:		
	Deck Area (Sq. Ft.):	# Units:	Est. Cost: \$		
	Covered Porch (Sq. Ft.):	<b>Foundation</b>	<b>Sewage</b> <input type="checkbox"/> Public Sewer <input type="checkbox"/> Septic		<b>S &amp; DEMOLITION INFORMATION:</b> Estimated cost should include all electrical, plumbing, and mechanical work, including equipment, labor, overhead and profit.
	Gazebo/ Storage Bld. (Sq. Ft.):	<input type="checkbox"/> Slab <input type="checkbox"/> Crawl <input type="checkbox"/> Basement			

I hereby certify that I am the owner of the record of the herein described property, or that the proposed work has been authorized by the owner of record and that I that I have been authorized to make this application as a designated agent. I agree to conform to all applicable state and local regulations, rules and policies and such shall be deemed a condition entering into the execution of this permit. In addition, if a permit is issued, I certify that the code official or his authorized representative shall have the authority to enter the area(s) described herein at any reasonable hour for the purpose of enforcing the provisions of the applicable code(s).

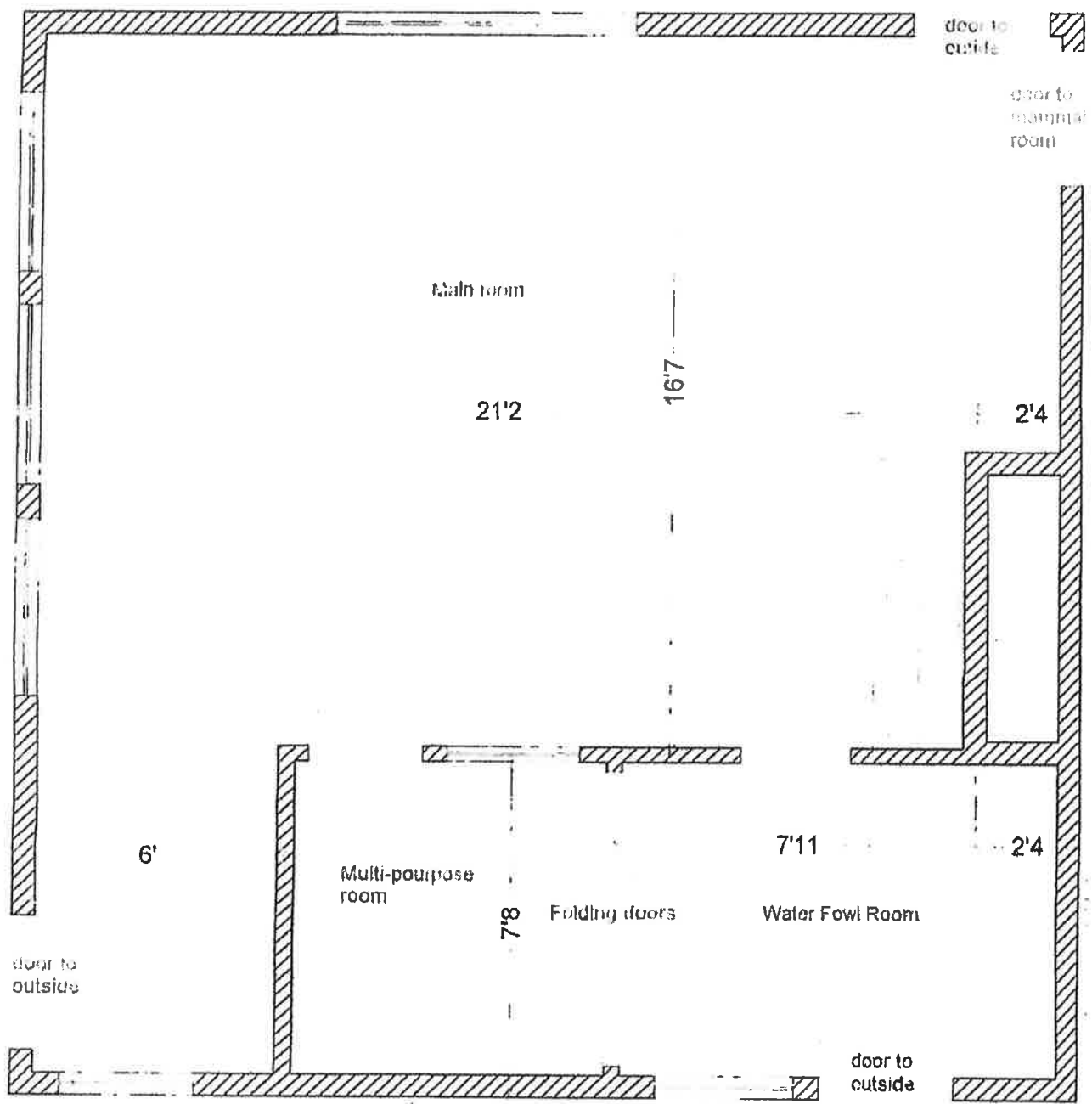


Estimated Cost: \$ 38,000.00

Signature: [Signature] Date: 5/23/2017

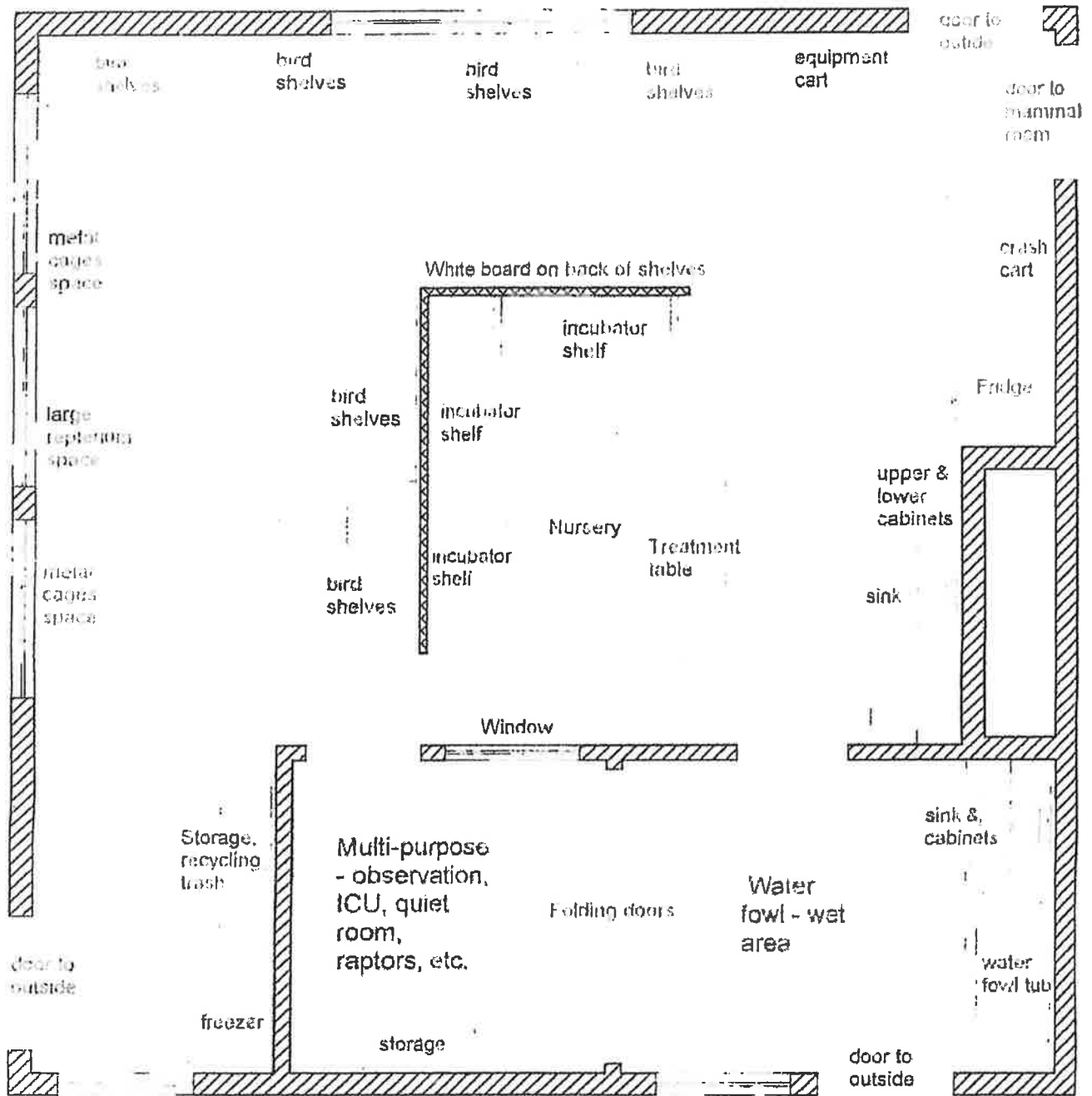
**OFFICE USE ONLY**

FEMA  YES  NO



Measurements are not exact

Bird room plan 2



Plan 2A furniture



# Southwest Virginia Wildlife Center of Roanoke



May 16, 2018

To Whom It May Concern:



The goal of the Southwest Virginia Wildlife Center is to treat injured, orphaned, and sick wildlife in a manner that they will be successful when returned to the wild. There are many steps involved in achieving this goal. We treat many raptors (birds of prey) with fractures and soft tissue injuries that require veterinary care followed by rehabilitation. It is pointless to repair fractures and treat wounds without providing the physical therapy and flight conditioning necessary for the birds to be successful in the wild. Likewise, attempting rehabilitation without addressing the medical issues would be futile. Veterinary care and rehabilitation go hand in hand in giving these birds the best chance at recovery.

When raptors are taken into captivity, they rapidly lose muscle and soft tissue strength as well as flexibility. The stress of being indoors and handled can slow the healing process. Once their medical issues are addressed, it's critical that physical therapy and rehabilitation begin almost immediately in order for the birds to regain the strength and flexibility needed for flight and hunting food. To minimize stress and pain, physical therapy is usually performed under anesthesia initially. Then the birds are moved into increasingly larger aviaries where they are encouraged to fly, thus, giving themselves physical therapy and conditioning without the stress of being handled.

The oval raptor flight building the SWVWC hopes to build will provide the space needed for the larger species to complete their recovery. The shape of the structure will allow the birds to fly continuously, thus, shortening the time to release. In the past, we've had to transport the larger raptor species to another facility two hours away for flight conditioning, which can be a very stressful experience for the birds. In 2017, we treated 49 large raptors. Most would have benefited from onsite flight conditioning. Having an oval raptor flight building will provide the continuum of care needed to give the raptors every opportunity to heal and be released back to the wild.

5985 Coleman Road Roanoke, VA 24018  
Main Line: 540-798-9836

swvawildlifecenter@gmail.com  
www.swvawildlifecenter.org

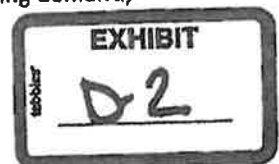
The property located at 5985 Coleman Road is currently zoned AR and falls under Article III-District Regulations, Section 30-3-2. AR Agricultural/Residential District Permitted Uses. (A) Commercial Uses-Veterinary Hospital/Clinic. The Building located at 5985 is currently used as a Wildlife Veterinary Clinic.

The nonconforming development on the 2.85 acres falls within the applicable use and design under the District regulations Section 30-23-5- Nonconforming Lots of Record. Expansion is allowed providing the county reviews and grants a special use permit set forth in the standards and procedures contained in Section 30-19 of this ordinance.

The impact on the property at 5985 Coleman Road is minimal. The proposed primary Raptor building will be situated beyond the set back line stated in 30-34-3 Site Development Regulations. The building will also be located over 31 feet behind the building line. The selected location will be 31 feet from the side yard meeting the regulation. The height is 20 feet which is less than the maximum of 45 feet in height per the regulations. The total building coverage, including accessory structures, is approximately 6.5% which remain well below the maximum allowable (25%) by zoning code for this district. Additionally, the total proposed lot coverage is approximately 14.8% which also remain well below the maximum allowable (50%) by zoning code for this district. These totals are based off the total surveyed lot acreage of 2.854 acres (124,327s.f.).

The impact to allow the wildlife center's expansion of a primary building is minimal. As stated in the above paragraph the building meets all requirements, and is smaller than the allowed size. The building is a state of the art design, becoming an asset to the Roanoke County and the community. The request for a building is necessary to lessen the time needed to rehabilitate raptors, and the time each hawk or owl spends at the veterinary center. It allows for multiple species to receive necessary flight time at the same time, building pectoral muscles and stamina for release and returning vital wildlife much quicker to their original habitat and allowing the species to continue to flourish.

Impacting the private well on the property will increase only slightly, raptors are not large consumers of water, typically they only bathe, and the wildlife is already in our care at the center. A fence was added on one side of the driveway nearest the closest adjoining neighbor after we opened to lessen the view. These neighbors actually expressed how disheartened they were when the fence was placed between our properties; they actually expressed a desire to watch our rehab efforts, especially after the numerous improvements made to the site and building. Roanoke County Animal Control, Conservation Officers and the Police Department will still be able to use our facility as they do now, for dropping off injured or orphaned wildlife in need of our services. The wildlife center greatly benefits the environment: County, Parks, and Greenway with our release of species in decline. The center's rehab of endangered, threatened and migratory species has a profound effect on our environment and well-being. Southwest Virginia Wildlife Center of Roanoke is an asset that few localities have. The public's need for wildlife care has been met and daily, their gratification is expressed for our volunteer work and hours provided free for the community. The center provides invaluable education programs to the area elementary and middle schools, churches and civic groups and is in constant and growing demand, teaching the youth about their environment and wildlife and coexisting.



When an injured or orphaned wild animal is admitted the patient is placed in an appropriate sized containment. Depend on the needs the animal may be placed in ICU for intensive treatment and possible surgery, x-rays. The animal is moved to the appropriate room to be housed with similar species.

Once the animal is at the proper stage (age) or eating on its own, it is then placed outside in appropriate sized building for that species to flourish, while gaining strength for release. This stage is necessary for the animal's viability in nature. Once the patient is deemed releasable by the staff veterinarian or the Category III, they are taken back to the location of rescue or a suitable habitat for release; returning needed and declining species that help decrease our foot print on our environment and the cycle of life. Different sized buildings are required for different species. We do not place a Buteo (one species of hawk) in a 10' X 10' cage; it requires an area larger than its wing span to strength pectoral muscles required for capturing small mammals and rodents. We following building requirements set forth by the VDGIF and USFWS.



The Special Use is in accordance with the current and approved use of the property at 5985 Coleman Road. Requesting a special use permit for a primary building to house raptors will allow the center to properly exercise native species and return them to their proper habitat in a timely manner. The building is less than what the Special Use Permit allows. The building will be built by a Class A contractor. This property was vacant and in need of many repairs when purchased in 2013. The center continually maintains the grounds and building. In 2017 the center was awarded Federal Money from an environmental lawsuit against a local company. The United States Attorney then selected our center as beneficiary, due to our work with raptors. Precedent was set in State of Virginia when the center was awarded the Federal funds for Capital Improvements to the veterinary clinic. The government felt the money for the damages inflicted in our area, should stay here.

The addition of a raptor building is in the best interest of the community, assuring the County of Roanoke is investing in the diverse and threatened wildlife needed to sustain a healthy environment in Roanoke County. The wildlife veterinary center is vital to the County of Roanoke community, providing necessary help and solutions to wildlife conflict.

The building will not be detrimental to the surrounding community. The property at 5985 Coleman Road has been in use as a Wildlife Veterinary Center since 2014, serving the community, receiving wildlife from the public of Roanoke County, Animal Control to Conservation Officers in need of our services. The building will be high quality, enhancing the wooded and natural look of the property currently Zoned AR. Height of 20 feet is less than the allowed 45 feet per the regulations and less than a two story home. The center at 5985 Coleman Road is located at the end of Coleman Road. The addition of a building of this quality will not affect any adjoining properties. The center's acreage is surrounded on three sides by properties zoned AR with outdoor building on each. One side is a residential area and a privacy fence was placed between these properties.

Supporting the request, Southwest Virginia Wildlife Center of Roanoke went to extra steps to acquire plans for a quality and ecstatically pleasing building. The cost to build this building exceeds \$82,000.00, and the center has made applications for grants and private funding to complete this state of the art building. \$55,000.00 has been granted to begin the building and the public is already sending in donations earmarked for this project. Plans were selected with care to make this a professional and quality project that will not affect any surrounding areas. Adjacent properties have outdoor buildings and sheds that do not reflect the high standard or appearance of this building.



March 8, 2018

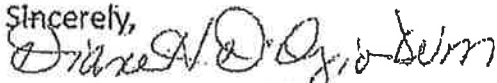
To Whom It May Concern:

The Southwest Virginia Wildlife Center provides veterinary care and rehabilitation for injured, orphaned, and sick native wildlife. As the veterinarian of record for the facility, it is my responsibility to see that we provide the best medical care possible within the constraints of our resources. That includes from the time an animal is admitted to our facility until it is released back to the wild, transferred to another permitted facility, or humanely euthanized.

In captivity, wild animals not only have to endure the extent of their injuries, but also the stress of being vulnerable to predators (the humans who are trying to help them). Birds have a high rate of metabolism compared to mammals. They lose muscle tone and stamina rapidly as a result of being in captivity. Song birds must be able to evade predators and the predators such as raptors (birds of prey) have to be able to catch prey to survive. As a result, the flight conditioning to increase strength and stamina is an essential part of the medical treatment that we need to provide.

Southwest Virginia Wildlife Center needs a large raptor flight building to give our patients the best chance possible at returning to the wild by providing the necessary flight conditions to strengthen muscle tone and improve stamina. It would also provide a large enough space to determine if the raptors can hunt. We only release birds who can sustain appropriate flight for their species and who can feed themselves successfully.

Sincerely,



Diane H. D'Orazio, DVM

Southwest Virginia Wildlife Center

5985 Coleman Rd.

Roanoke, Va. 24018

Work: 540-798-9836

Cell: 540-797-9886





**County of Roanoke  
Community Development  
Planning & Zoning**

5204 Bernard Drive  
P O Box 29800  
Roanoke, VA 24018

(540) 772-2068 FAX (540) 776-7155

**For Staff Use Only**

Date received:	Received by:
Application fee:	PC/BZA date:
Placards issued:	BOS date:
Case Number	

**ALL APPLICANTS**

Check type of application filed (check all that apply)  
 Rezoning  Special Use  Variance  Waiver  Administrative Appeal  Comp Plan (15.2-2232) Review

Applicants name/address w/zip Stanley A. Seymour, Phone: \_\_\_\_\_  
 III, Jane L. Seymour, Adrian Maver Work: \_\_\_\_\_  
 and Blaine Creasy (See Schedule A) Cell #: \_\_\_\_\_  
 Fax No.: \_\_\_\_\_

Owner's name/address w/zip Phone #: (540) 798-9836  
 5985 Coleman Road, LLC Work: \_\_\_\_\_  
 5985 Coleman Road, S.W. Fax No. #: \_\_\_\_\_  
 Roanoke, VA 24018

Property Location  
 5985 Coleman Road Magisterial District: Cave Spring  
 Roanoke, VA 24018 Community Planning area:

Tax Map No.: Existing Zoning: AR  
 096.08-02-03.00-0000

Size of parcel(s): Acres: 2.7334 Existing Land Use: Development

**REZONING, SPECIAL USE PERMIT, WAIVER AND COMP PLAN (15.2-2232) REVIEW APPLICANTS (R/S/W/CP)**

Proposed Zoning: \_\_\_\_\_  
 Proposed Land Use: \_\_\_\_\_

Does the parcel meet the minimum lot area, width, and frontage requirements of the requested district?  
 Yes  No  **IF NO, A VARIANCE IS REQUIRED FIRST.**  
 Does the parcel meet the minimum criteria for the requested Use Type? Yes  No   
**IF NO, A VARIANCE IS REQUIRED FIRST**  
 If rezoning request, are conditions being proffered with this request? Yes  No

**VARIANCE, WAIVER AND ADMINISTRATIVE APPEAL APPLICANTS (V/W/AA)**

Variance/Waiver of Section(s) \_\_\_\_\_ of the Roanoke County Zoning Ordinance in order to:

Appeal of Zoning Administrator's decision to Board of Zoning Appeals  
 Appeal of Interpretation of Section(s): \_\_\_\_\_ of the Roanoke County Zoning Ordinance  
 Appeal of Interpretation of Zoning Map to \_\_\_\_\_

Is the application complete? Please check if enclosed. **APPLICATION WILL NOT BE ACCEPTED IF ANY OF THESE ITEMS ARE MISSING OR INCOMPLETE.**

R/S/W/CP	V/A	Application	8 1/2" x 11" concept plan	R/S/W/CP	V/A	Application fee
<input type="checkbox"/>	<input type="checkbox"/>	Consultation	Metes and bounds description	<input type="checkbox"/>	<input type="checkbox"/>	Proffers, if applicable
<input type="checkbox"/>	<input type="checkbox"/>	Application	Water and sewer application	<input type="checkbox"/>	<input type="checkbox"/>	Adjoining property owners
<input type="checkbox"/>	<input type="checkbox"/>	Justification		<input type="checkbox"/>	<input type="checkbox"/>	

I hereby certify that I am either the owner of the property or the owner's agent or contract purchaser and am acting with the knowledge and consent of the owner.

*G. Harris Warner, Jr.*  
 Applicant's Owner's Signature (counsel)



**JUSTIFICATION FOR REZONING, SPECIAL USE PERMIT WAIVER OR COMP PLAN (15.2-2232) REVIEW REQUESTS**

Applicant \_\_\_\_\_

The Planning Commission will study rezoning, special use permit waiver or community plan (15.2-2232) review requests to determine the need and justification for the change in terms of public health, safety, and general welfare. Please answer the following questions as thoroughly as possible. Use additional space if necessary.

Please explain how the request furthers the purposes of the Roanoke County Ordinance as well as the purpose found at the beginning of the applicable zoning district classification in the Zoning Ordinance.

Please explain how the project conforms to the general guidelines and policies contained in the Roanoke County Community Plan.

Please describe the impact(s) of the request on the property itself, the adjoining properties, and the surrounding area, as well as the impacts on public services and facilities, including water/sewer, roads, schools, parks/recreation and fire and rescue.

**JUSTIFICATION FOR VARIANCE REQUEST**

Applicant \_\_\_\_\_

The of Zoning Appeals is required by Section 15.2-2309 of the Code of Virginia to consider the following factors before a variance can be granted. Please read the factors listed below carefully and in your own words, describe how the request meets each factor. If additional space is needed, use additional sheets of paper.

1. The variance shall not be contrary to the public interest and shall be in harmony with the intended spirit and purpose of the Zoning Ordinance.

2. The variance will not be of a substantial detriment to the adjacent properties or the character of the district.

3. Evidence supporting claim:

**JUSTIFICATION FOR ADMINISTRATIVE APPEAL REQUEST**

Applicant Stanley A. Seymour, III, Jane L. Seymour, Adrian Maver and Blaine Creasy

Please respond to the following as thoroughly as possible. If additional space is needed, use additional sheets of paper.

1. Reasons for appeal:

See attached Schedule B

2. Evidence supporting claim:

See attached Schedule B

**CONCEPT PLAN CHECKLIST**

A concept plan of the proposed project must be submitted with the application. The concept plan shall graphically depict the land use change, development or variance that is to be considered. Further, the plan shall address any potential land use or design issues arising from the request. In such cases involving rezonings, the applicant may proffer conditions to limit the future use and development of the property and by so doing, correct any deficiencies that may not be manageable by County permitting regulations.

The concept plan should not be confused with the site plan or plot plan that is required prior to the issuance of a building permit. Site plan and building permit procedures ensure compliance with State and County development regulations and may require changes to the initial concept plan. Unless limiting conditions are proffered and accepted in a rezoning or imposed on a special use permit or variance, the concept plan may be altered to the extent permitted by the zoning district and other regulations.

A concept plan is required with all rezoning, special use permit, waiver, community plan (15.2-2232) review and variance applications. The plan should be prepared by a professional site planner. The level of detail may vary, depending on the nature of the request. The County Planning Division staff may exempt some of the items or suggest the addition of extra items, but the following are considered minimum:

**ALL APPLICANTS**

- a. Applicant name and name of development
- b. Date, scale and north arrow
- c. Lot size in acres or square feet and dimensions
- d. Location, names of owners and Roanoke County tax map numbers of adjoining properties
- e. Physical features such as ground cover, natural watercourses, floodplain, etc.
- f. The zoning and land use of all adjacent properties
- g. All property lines and easements
- h. All buildings, existing and proposed, and dimensions, floor area and heights
- i. Location, widths and names of all existing or platted streets or other public ways within or adjacent to the development
- j. Dimensions and locations of all driveways, parking spaces and loading spaces

*Additional information required for REZONING and SPECIAL USE PERMIT APPLICANTS*

- k. Existing utilities (water, sewer, storm drains) and connections at the site
- l. Any driveways, entrances/exits, curb openings and crossovers
- m. Topography map in a suitable scale and contour intervals
- n. Approximate street grades and site distances at intersections
- o. Locations of all adjacent fire hydrants
- p. Any proffered conditions at the site and how they are addressed
- q. If project is to be phased, please show phase schedule

I certify that all items required in the checklist above are complete.

\_\_\_\_\_  
Signature of applicant

\_\_\_\_\_  
Date



## POTENTIAL OF NEED FOR TRAFFIC ANALYSIS AND/OR TRAFFIC IMPACT STUDY

The following is a list of potentially high traffic-generating land uses and road network situations that could elicit a more detailed analysis of the existing and proposed traffic pertinent to your rezoning, subdivision waiver, public street waiver, or special use permit request. If your request involves one of the items on the ensuing list, we recommend that you meet with a County planner, the County traffic engineer, and/or Virginia Department of Transportation staff to discuss the potential additional traffic related information that may need to be submitted with the application in order to expedite your application process.

*(Note this list is not inclusive and the County staff and VDOT reserve the right to request a traffic study at any time, as deemed necessary.)*

### High Traffic-Generating Land Uses:

- Single-family residential subdivisions, Multi-family residential units, or Apartments with more than 75 dwelling units
- Restaurant (with or without drive-through windows)
- Gas station/Convenience store/Car wash
- Retail shop/Shopping center
- Offices (including: financial institutions, general, medical, etc.)
- Regional public facilities
- Educational/Recreational facilities
- Religious assemblies
- Hotel/Motel
- Golf course
- Hospital/Nursing home/Clinic
- Industrial site/Factory
- Day care center
- Bank
- Non-specific use requests

### Road Network Situations:

- Development adjacent to/with access onto/within 500-ft of intersection of a roadway classified as an arterial road (e.g., Rte 11, 24, 115, 117, 460, 11/460, 220, 221, 419, etc)
- For new phases or changes to a development where a previously submitted traffic study is more than two (2) years old and/or roadway conditions have changed significantly
- When required to evaluate access issues
- Development with ingress/egress on roads planned or scheduled for expansion, widening, improvements, etc. (i.e. on Long Range Transportation Plan, Six-Yr Road Plan, etc.)
- Development in an area where there is a known existing traffic and/or safety problem
- Development would potentially negatively impact existing/planned traffic signal(s)
- Substantial departure from the Community Plan
- Any site that is expected to generate over one hundred (100) trips during the peak hour of the traffic generator or the peak hour on the adjacent streets, or over seven hundred fifty (750) trips in an average day

**Effective date: April 19, 2005**





NOTICE TO APPLICANTS FOR REZONING, SUBDIVISION WAIVER, PUBLIC STREET WAIVER, OR SPECIAL USE PERMIT PETITION

PLANNING COMMISSION APPLICATION ACCEPTANCE PROCEDURE

The Roanoke County Planning Commission reserves the right to continue a Rezoning, Subdivision Waiver, Public Street Waiver or Special Use Permit petition if new or additional information is presented at the public hearing. If it is the opinion of the majority of the Planning Commissioners present at the scheduled public hearing that sufficient time was not available for planning staff and/or an outside referral agency to adequately evaluate and provide written comments and suggestions on the new or additional information prior to the scheduled public hearing then the Planning Commission may vote to continue the petition. This continuance shall allow sufficient time for all necessary reviewing parties to evaluate the new or additional information and provide written comments and suggestions to be included in a written memorandum by planning staff to the Planning Commission. The Planning Commission shall consult with planning staff to determine if a continuance may be warranted.

POTENTIAL OF NEED FOR TRAFFIC ANALYSES AND/OR TRAFFIC IMPACT STUDY

The Roanoke County Planning Commission reserves the right to continue a Rezoning, Subdivision Waiver, Public Street Waiver, or Special Use Permit petition if the County Traffic Engineer or staff from the Virginia Department of Transportation requests further traffic analyses and/or a traffic impact study that would be beneficial in making a land use decision (*Note: a list of potential land uses and situations that would necessitate further study is provided as part of this application package*).

This continuance shall allow sufficient time for all necessary reviewing parties to evaluate the required traffic analyses and/or traffic impact study and to provide written comments and/or suggestions to the planning staff and the Planning Commission. If a continuance is warranted, the applicant will be notified of the continuance and the newly scheduled public hearing date.

**Effective date: April 19, 2005**

\_\_\_\_\_  
**Name of Petitioner**

\_\_\_\_\_  
**Petitioner's Signature**

\_\_\_\_\_  
**Date**

**SCHEDULE A**

Administrative Appeal  
Written Zoning Determination for 5985 Coleman Road dated March 30, 2018  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 Coleman Road LLC  
Southwest Virginia Wildlife Center

Co-Applicants:

**Stanley A. Seymour, III and  
Jane L. Seymour**  
5960 Coleman Rd.  
Roanoke, VA 24018

By and through their counsel  
Wharton Aldhizer & Weaver, PLC  
Gregory T. St. Ours and James L. Johnson  
100 South Mason St.  
Harrisonburg, VA 22801  
Telephone: 540-438-5334  
Facsimile: 540-434-5502

**Adrian Maver and  
Blaine Creasy**  
5946 Coleman Rd.  
Roanoke, VA 24018

By and through their counsel  
Warner & Renick, PLC  
G. Harris Warner, Jr.  
4648 Brambleton Avenue, SW  
P. O. Box 21584  
Roanoke, Virginia 24018  
Telephone: 540-777-4600  
Facsimile: 540-777-4700

**SCHEDULE B**

Administrative Appeal  
Written Zoning Determination for 5985 Coleman Road dated March 30, 2018  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 Coleman Road LLC  
Southwest Virginia Wildlife Center

Joint Applicant: Stanley A. Seymour, III and Jane L. Seymour 5960 Coleman Rd. Roanoke, VA 24018  By and through their counsel Wharton Aldhizer & Weaver, PLC Gregory T. St. Ours and James L. Johnson 100 South Mason St. Harrisonburg, VA22801	Joint Applicant: Adrian Maver and Blaine Creasy 5946 Coleman Rd. Roanoke, VA 24018  By and through their counsel Warner & Renick, PLC G. Harris Warner, Jr. 4648 Brambleton Avenue, SW P. O. Box 21584 Roanoke, Virginia 24018
---	--

**Supplement to Administrative Appeal Application**

This application is an appeal of several determinations made by Roanoke County by and through John Murphy, CZA (the “Zoning Administrator”), in his letter dated March 30, 2018, attached hereto as Exhibit A (the “Zoning Letter”).

As background, joint appellants Stanley A. Seymour III, Jane L. Seymour, Adrian Maver, and Blaine Creasy (collectively, the “Appellants”) live in close proximity to the property at issue owned by 5985 Coleman Road LLC, t/a Southwest Virginia Wildlife Center of Roanoke (“SVWC”), known as 5985 Coleman Road, tax map # 096.08-02-03.00 (the “SVWC Property”) and located in the County of Roanoke. The SVWC Property is currently the subject of various permit requests by SVWC to the Department of Community Development for further development, including, but not limited to possible change of use, construction of additional facilities, and other possible improvements.

The Zoning Administrator made the following determinations in his Zoning Letter, each from which this application seeks administrative appeal:

1. The Zoning Administrator determined that the present use of the SVWC Property as a veterinary hospital/clinic is in conformance with Roanoke County rules and ordinances (the “County Code”).

2. The Zoning Administrator determined that the proposed construction on the SVWC Property requires a Special Use Permit rather than a variance.
3. The Zoning Administrator determined that the use of the SVWC Property is properly classified as a veterinary hospital/clinic based on the Zoning Administrator's determination that there are no boarding activities conducted at the SVWC Property.

REASONS FOR APPEAL (Question 1, page 5 of the Administrative Appeal Application):

1. The present use of the SVWC Property as a veterinary hospital/clinic is not in conformance with Roanoke County rules and ordinances (the "County Code").

Whether the SVWC is properly classified or not, any proposed development of the SVWC Property must be denied due to the SVWC Property's lack of conformance with the County Code. County Code § 30-23-2(B), § 30-14(C) and § 30-19-1.

First, pursuant to the Zoning Letter, the SVWC Property does not have public road frontage, the lack of which requires a Special Use Permit. The County Code allows a property owner without public road frontage to obtain approval pursuant to a Special Use Permit. County Code § 30-23-5. Without such approval, present use of the SVWC Property is not in conformance with the County Code.

Second, upon information and belief of the Appellants, structures (including outdoor cages) have recently been erected on the SVWC Property without proper approval by the County. Until such time said structures are removed and properly approved, the SVWC Property is not in conformance with the County Code.

Third, even if the Zoning Administrator correctly determined that SVWC merely operates a veterinary hospital/clinic on the site, pursuant to County Code § 30-29-5, veterinary hospital/clinics are expressly prohibited from boarding animals for any reason other than on a short term, indoors basis that is incidental to an allowed veterinary hospital/clinic. In order to board any kind of animal outdoors or on a long term basis, the County Code, at a minimum, requires that any veterinary hospital/clinic first be approved as a "commercial kennel." As will be discussed further below, the Appellants' believe the Zoning Administrator erred in his determination that SVWC does not "board" animals. In addition to the other reasons cited above, SVWC's practices of "rehabilitating" animals for extended periods of time, whether indoors or outdoors, place the SVWC in non-conformance with the County Code.

2. The SVWC Property is not yet eligible for a special use permit.

County Code § 30-23-2(B) requires that prior to any approvals sought through the Department of Community Development, any property subject to said approval must first be required to be in conformity with the County Code. See also § 30-14(C) and § 30-19-1. As discussed above, there are several reasons for which the SVWC Property is not in conformance with the County Code. Incidental to conformance with County Code, SVWC must also seek variance or approval under the County Code for the more intense and higher uses it performs in its capacity as a wildlife rehabilitation center and/or it must seek approval as a commercial kennel if it seeks to perform such services at the SVWC Property.

3. Proper classification of the present use of the SVWC Property is not that of a “veterinary hospital/clinic”.

First, County Code § 30-29-5 defines a veterinary hospital/clinic as any “establishment rendering surgical and medical treatment of animals.” The SVWC Property is currently being used by SVWC to treat, rehabilitate and keep wild animals indoors and outdoors. In fact, the Zoning Letter states that SVWC’s license to operate is that of a “Veterinary Establishment, Wildlife Rehabilitation Center”, and not that of a mere veterinary hospital/clinic. Although SVWC may perform certain services similar to that of a veterinary hospital/clinic, SVWC’s use of the site is more intense and higher than that of a mere veterinary hospital/clinic.

Second, per County Code § 30-29-5, a veterinary hospital/clinic is an allowable “commercial use type.” According to the Zoning Letter and indeed SVWC’s own literature, SVWC is not a commercial enterprise. As a civic group, SVWC may operate a “civic use type” as defined under the County Code, but it does not follow that such a civic group would operate a commercial use type. County Code § 30-29-3. Although the County Code allows several civic use types, defined pursuant to County Code § 30-29-3, SVWC’s use type does not conform to any of these civic use types.

Third, SVWC’s practice of keeping animals overnight is not associated with use of a veterinary hospital/clinic allowable pursuant to County Code’s definition of a “veterinary hospital/clinic”. The Zoning Administrator’s definition of the term “boarding” in his Zoning Letter is too narrow. To support his position, the Zoning Administrator references the fact that because SVWC purportedly does not collect fees from a pet owner, SVWC is not boarding animals. However, the term “boarding” is not defined in the County Code. Indeed, the County Code does not contemplate refuges or shelters of animals at all. As such, the Appellants believe that the purpose of limitations on boarding must be to prevent either the extended or outdoor keeping or sheltering of all animals by all establishments other than those subject to the stricter standards of “commercial kennels”.

SVWC, according to its website, does collect donations and other funds for the performance of its services, including the practice of keeping or sheltering animals on a long term basis. Such a practice is only consistent with a “commercial kennel” use type under the County Code, for which SVWC has not been approved. Moreover, upon information and belief, no other “veterinary hospital/clinic” in Roanoke County has outside cages for the care and rehabilitation of animals. Therefore, such sheltering of animals on the SVWC Property is prohibited “boarding” as intended by the County Code, which, along with the other reasons cited herein, removes the SVWC Property from possible classification as a veterinary hospital/clinic.

EVIDENCE SUPPORTING CLAIM (Question 2, page 5 of the Administrative Appeal Application):

In addition to the facts and circumstances referred to above, the following list includes additional evidence supporting Appellants’ claims: (1) Various photographs, satellite images, and testimony indicating structures have been erected on the SVWC Property to shelter animals; (2) Various photographs, satellite images, and testimony which indicate no other “veterinary hospital/clinic” in Roanoke County has outside cages within its facilities for the long term care and rehabilitation of animals, including that of wildlife; (3) Evidence, including but not limited to SVWC’s own website and literature, indicating that SVWC is not only a hospital/clinic, but that it is a not-for-profit clinic dedicated to the preservation and rescue of wildlife whose use is more intense and higher than that of a veterinary hospital/clinic; and (4) any or all other evidence as may be determined necessary prior to any administrative appeal hearing on this Administrative Appeal Application.

Appellants reserve the right to further amend this Administrative Appeal Application as necessary. Additional detail supporting this Administrative Appeal Application, including but not limited to the evidence referenced herein, may be available upon request and may be provided prior to any scheduled hearing, subject to the protections offered under the attorney client privilege. Requests for further additional information can be made in writing to:

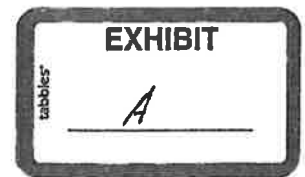
Wharton, Aldhizer & Weaver, PLC  
Attn: Gregory T. St. Ours, Esq.  
James L. Johnson, Esq.  
100 South Mason St.  
Harrisonburg, VA 22801  
Telephone: (540) 438-5334  
Fax: (540) 434-5502  
gstours@wawlaw.com  
jjohnson@wawlaw.com  
18004960

Warner & Renick, PLC  
Attn: G. Harris Warner, Jr., Esq.  
4648 Brambleton Avenue, SW  
P. O. Box 21584  
Roanoke, Virginia 24018  
Telephone: (540) 777-4600  
Fax: (540) 777-4700  
hwarner@warnerrenick.com



# County of Roanoke

DEPARTMENT OF COMMUNITY DEVELOPMENT



DIRECTOR, ARNOLD COVEY  
DEPUTY DIRECTOR OF DEVELOPMENT SERVICES, TAREK MONEIR  
DEPUTY DIRECTOR OF PLANNING, PHILIP THOMPSON

BUILDING PERMITS/ INSPECTIONS  
DEVELOPMENT REVIEW  
ENGINEERING  
ENVIRONMENTAL MANAGEMENT  
PLANNING & ZONING  
TRANSPORTATION

March 30, 2018

Mr. Stanley A. Seymour, III  
5942 Coleman Road  
Roanoke, Virginia 24018

RE: Written Zoning Determination for 5985 Coleman Road  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 COLEMAN ROAD LLC  
Southwest Virginia Wildlife Center

Dear Mr. Seymour:

I have received your letter with additional information that was delivered to the Roanoke County Administration Center on February 27, 2018. Since the request pertains to a property not under your ownership or control I will also provide a copy of my written determination to the owners of 5985 Coleman Road (the "Property").

Your letter includes a request for zoning determinations related to the use of the Property.

The first category of your letter was "Nonconforming Use." I understand your question to be whether the present use of the property (as a veterinary hospital/ clinic) is a nonconforming use. It is my opinion that the present use is conforming. In 2014, the zoning administrator approved the use as a veterinary hospital/ clinic. The construction of the proposed raptor building and partially constructed building on the Property will require a Special Use Permit, due to a lack of public road frontage. The Special Use Permit is a public hearing process through the Planning Commission and Board of Supervisors.

The second category of your letter was "Zoning". I understand your question presented in this section to be whether the present use is *properly classified* as a veterinary hospital/ clinic. You specifically question whether the fact that animals stay at the facility overnight prevents the use from being thus classified.

It is my opinion that the use is properly classified as a veterinary hospital/ clinic use and that animals who remain at the facility overnight (whether indoors or outdoors) are not boarding. Although the term "boarding" is not defined in the County Code, I understand the term to refer to

situations in which owners of domestic animals drop their animals off at the facility for a set amount of time in exchange for a fee.

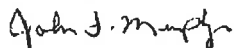
In the situation at hand, the animals who stay at the facility are not domestic animals and do not stay at the facility for a set amount of time in exchange for payment. All animals who stay overnight at the facility are receiving veterinary care. There are no boarding activities conducted at the facility that are incidental to the medical treatment of wild animals. This conclusion is supported by the finding made by the Commonwealth of Virginia Department of Health Professions, Board of Veterinary Medicine. The license approved for the Property is a Veterinary Establishment, Wildlife Rehabilitation Center and has a specific restriction stating "No Boarding."

The last category listed in your letter is "Setbacks". I understand that your question pertaining to setbacks is regarding the location of the front property line. After conducting extensive research originating with information on the County GIS and then reviewing plat and deed information, it is my determination that the front property line for the Property is the common property line (309.93' in length) between the Property and the adjacent parcel identified by Tax Map Number 096.08-02-04.00-0000, addressed as 5960 Coleman Road. This determination is different than what I advised you in our original discussion about this issue.

Please be aware that this written determination is issued by the Roanoke County Zoning Administrator. Any person aggrieved by a written determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. Appeals must be made within thirty (30) days of the entry of the written determination which is the date of receipt of this letter. Also please note that this written determination of the Roanoke County Zoning Administrator shall be final and unappealable if not appealed by the deadline noted in this letter {Sec 15.2-2311 Code of Va}. It is the applicant's responsibility to submit a complete administrative appeal application within the required deadline in order for the appeal request to become valid. In addition, there is a \$275 administrative appeal application fee and required legal advertisement fees shall be the responsibility of the appellant.

I will include an Administrative Appeal Application for your reference.

Sincerely,



John F. Murphy, CZA  
Zoning Administrator

Attachment: Administrative Appeal Application

CC: 5985 COLEMAN ROAD LLC  
5985 Coleman, Road  
Roanoke, Virginia 24018



SCHEDULE C

Administrative Appeal

Written Zoning Determination for 5985 Coleman Road dated March 30, 2018

Tax Map Number: 096.08-02-03.00-0000

AR Agricultural/Residential District

5985 Coleman Road LLC

Southwest Virginia Wildlife Center

Adjoining Property Owners:

Stanley A. Seymour, III and Jane L. Seymour

5942 Coleman Road

Roanoke, VA 24018

Parcel ID: 096.08-02-04.00-0000

Property Address: 5960 Coleman Road  
Roanoke, VA 24018

James P. Holladay and Ellen L. Antoniaci

6546 Sugar Ridge Drive

Roanoke, VA 24018

Parcel ID: 096.08-02-01.00-0000

Property Address: 5423 Crystal Creek Drive  
Roanoke, VA 24018

Nicholas H. Beasley

5489 Crystal Creek Drive

Roanoke, VA 24018

Parcel ID: 096.02-01-46.01-0000

Property Address: 5491 Crystal Creek Drive  
Roanoke, VA 24018

Richard N. Lovegreen and Erika E. Long

6513 Brookhaven Court

Roanoke, VA 24018

Parcel ID: 096.08-04-17.00-0000

Property Address: 6513 Brookhaven Court  
Roanoke, VA 24018

Brian T. Loop and Jocassar Loop  
6517 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-16.00-0000  
Property Address: 6517 Brookhaven Court  
Roanoke, VA 24018

James Robert Bradshaw and Kimberly Mooney Bradshaw  
6521 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-15.00-0000  
Property Address: 6521 Brookhaven Court  
Roanoke, VA 24018

Russell P. Reiter  
6523 Brookhaven Court  
Roanoke, VA 24018  
Parcel ID: 096.08-04-14.00-0000  
Property Address: 6523 Brookhaven Court  
Roanoke, VA 24018



# County of Roanoke

COMMUNITY DEVELOPMENT  
5204 Bernard Drive, Second Floor, P.O. Box 29800  
Roanoke, Virginia 24018-0798  
TEL: (540) 772-2080  
FAX: (540) 776-7155

Arnold Covey, DIRECTOR  
Tarek Monelr,  
DEPUTY DIRECTOR OF DEVELOPMENT SERVICES  
Philip Thompson,  
DEPUTY DIRECTOR OF PLANNING

BUILDING PERMITS / INSPECTIONS  
DEVELOPMENT SERVICES  
ENGINEERING  
PLANNING & ZONING  
STORMWATER MANAGEMENT  
TRANSPORTATION

May 17, 2018

Mr. Stanley A. Seymour, III  
5942 Coleman Road  
Roanoke, Virginia 24018

RE: Second Written Zoning Determination for 5985 Coleman Road  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 COLEMAN ROAD LLC  
Southwest Virginia Wildlife Center  
"The Property"

Dear Mr. Seymour:

In response to my first zoning determination written to you (on March 30, 2018) relating to the above noted Property, I received your request, dated March 30, 2018 (your "second request"), made through your attorney, Mr. Johnson, requesting additional zoning opinions related to the Property. Since the request is for a property not under your ownership or control I will also provide a copy of my written determination to the owners of the Property.

#### Setbacks

You requested information on several items regarding setbacks. Section 30-34-3(B) of the Roanoke County Code sets forth the applicable minimum setback requirements (for AR Agricultural/Residential Districts).

**The required setback for the proposed raptor building:** If the raptor building is approved and constructed as proposed, it will be considered the principal structure (because the Property's principal use (veterinary care and rehabilitation of wildlife) will be conducted within it and because it will be larger in size than the existing principal structure). Accordingly, the minimum front yard setback for the proposed raptor building would be 30 feet, the side yard setback would be 15 feet and the rear yard setback would be 25 feet.

D-2

**The setback for the partially constructed building:** Where the principal structure is more than 150 feet from the street, accessory buildings may be located 150 feet from the street and 20 feet from any side property line.

The other cages on the property will fall within the same setback category as the other accessory structures as the "partially constructed building." If a Special Use Permit is approved and the raptor building is constructed where proposed, the setback distances for the accessory structures will then be located behind the rear building line of the raptor building and the accessory structures will need to meet a minimum 10 feet side setback.

**The need for a special use permit**

The requirement for a special use permit for the proposed raptor building and the partially constructed building is based on Zoning Ordinance Section 30-23-5(B), Nonconforming Lots of Record. (B) *Any lot of record that is nonconforming because it has no public street frontage may be developed, or an existing structure on the lot may be expanded, provided the county reviews and grants a special use permit for the proposed development, expansion, and use in accord with the standards and procedures contained in Section 30-19 of this ordinance. This provision shall not apply to the use and development of such parcels for any agricultural and forestry use type, or for single family or two family dwellings.* (Emphasis added).

**A variance is not required**

In your request for a determination, you also shared your opinion that because the proposed projects appear to require "a modification of the road frontage ordinance," you believe that the County Code requires that the applicants obtain a variance, rather than a special use permit.

Section 30-19-1 of the County Code, General Standards, states: *The administrator shall not accept a special use permit application for a lot or parcel that does comply with the minimum requirements contained in Article IV, use and design standards, for that use. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the administrator shall thereafter accept the special use permit application for the consideration of the commission and board.*

Article IV of the Zoning Ordinance outlines additional, modified or more stringent standards for uses that have an asterisk (\*) beside the permitted uses list. In Section 30-34-2 of the County Code (which sets forth permitted uses in the AR Agricultural/Residential District), the Veterinary Hospital/Clinic use does not have an asterisk; it does not have any use and design standards. Site development regulations, which are set forth in Section 30-34-3 of the County Code (including frontage requirements), are not use and design standards; the variance requirement applicable to use and design standards does not apply. As noted above, Section 30-23-5(B) states that nonconforming lots (including those that lack public street frontage) may be developed or expanded, "provided the county reviews and grants a special use permit for the proposed development, expansion ...."

Further, Section 30-14(C) of the County Code (Amendments to Ordinance) states: *The administrator shall not accept any amendment application for a lot or parcel that does not comply with the minimum lot area, width or frontage requirements of the requested zoning*

*district. In such situations, the applicant shall first seek a variance from the board of zoning appeals. If a variance is granted, the administrator shall thereafter accept the amendment application for the consideration of the commission and board. (Emphasis added).* This section refers to situation in which an applicant is requesting a rezoning from one zoning district to another. An application for a special use permit for a nonconforming lot of record (pursuant to Section 30-23-5) is the pending request. Based on the above, it is my determination that a variance was not required prior to the acceptance of this special use permit application.

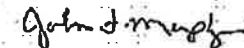
**The other cages also require a special use permit**

The Property does have multiple animal enclosure structures that were constructed, but were not large enough to require building permits. A zoning permit was initially issued for these structures. However, after further review of the information originally submitted for the zoning permit, I determined that the zoning permit for the accessory structures was issued in error and those structures will also require a special use permit.

Please be aware that this written determination is issued by the Roanoke County Zoning Administrator. Any person aggrieved by a written determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. Appeals must be made within thirty (30) days of the entry of the written determination which is the date of receipt of this letter. Also please note that this written determination of the Roanoke County Zoning Administrator shall be final and unappealable if not appealed by the deadline noted in this letter {Sec 15.2-2311 Code of Va}. It is the applicant's responsibility to submit a complete administrative appeal application within the required deadline in order for the appeal request to become valid. In addition, there is a \$275 administrative appeal application fee and required legal advertisement fees shall be the responsibility of the appellant.

I will include an Administrative Appeal Application for your reference.

Sincerely,



John F. Murphy, CZA  
Zoning Administrator

Attachment: Administrative Appeal Application

CC: 5985 COLEMAN ROAD LLC  
5985 Coleman, Road  
Roanoke, Virginia 24018



# County of Roanoke

DEPARTMENT OF COMMUNITY DEVELOPMENT

DIRECTOR, ARNOLD GOVEY  
DEPUTY DIRECTOR OF DEVELOPMENT SERVICES, TAREK MONEIR  
DEPUTY DIRECTOR OF PLANNING, PHILIP THOMPSON

BUILDING PERMITS/INSPECTIONS  
DEVELOPMENT REVIEW  
ENGINEERING  
ENVIRONMENTAL MANAGEMENT  
PLANNING & ZONING  
TRANSPORTATION

March 30, 2018

Mr. Stanley A. Seymour, III  
5942 Coleman Road  
Roanoke, Virginia 24018

RE: Written Zoning Determination for 5985 Coleman Road  
Tax Map Number: 096.08-02-03.00-0000  
AR Agricultural/Residential District  
5985 COLEMAN ROAD LLC  
Southwest Virginia Wildlife Center

Dear Mr. Seymour:

I have received your letter with additional information that was delivered to the Roanoke County Administration Center on February 27, 2018. Since the request pertains to a property not under your ownership or control I will also provide a copy of my written determination to the owners of 5985 Coleman Road (the "Property").

Your letter includes a request for zoning determinations related to the use of the Property.

The first category of your letter was "Nonconforming Use." I understand your question to be whether the present use of the property (as a veterinary hospital/ clinic) is a nonconforming use. It is my opinion that the present use is conforming. In 2014, the zoning administrator approved the use as a veterinary hospital/ clinic. The construction of the proposed raptor building and partially constructed building on the Property will require a Special Use Permit, due to a lack of public road frontage. The Special Use Permit is a public hearing process through the Planning Commission and Board of Supervisors.

The second category of your letter was "Zoning". I understand your question presented in this section to be whether the present use is properly classified as a veterinary hospital/ clinic. You specifically question whether the fact that animals stay at the facility overnight prevents the use from being thus classified.

It is my opinion that the use is properly classified as a veterinary hospital/ clinic use and that animals who remain at the facility overnight (whether indoors or outdoors) are not boarding. Although the term "boarding" is not defined in the County Code, I understand the term to refer to

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situations in which owners of domestic animals drop their animals off at the facility for a set amount of time in exchange for a fee.

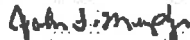
In the situation at hand, the animals who stay at the facility are not domestic animals and do not stay at the facility for a set amount of time in exchange for payment. All animals who stay overnight at the facility are receiving veterinary care. There are no boarding activities conducted at the facility that are incidental to the medical treatment of wild animals. This conclusion is supported by the finding made by the Commonwealth of Virginia Department of Health Professions, Board of Veterinary Medicine. The license approved for the Property is a Veterinary Establishment, Wildlife Rehabilitation Center and has a specific restriction stating "No Boarding."

The last category listed in your letter is "Setbacks". I understand that your question pertaining to setbacks is regarding the location of the front property line. After conducting extensive research originating with information on the County GIS and then reviewing plat and deed information, it is my determination that the front property line for the Property is the common property line (309.93' in length) between the Property and the adjacent parcel identified by Tax Map Number 096.08-02-04.00-0000, addressed as 5960 Coleman Road. This determination is different than what I advised you in our original discussion about this issue.

Please be aware that this written determination is issued by the Roanoke County Zoning Administrator. Any person aggrieved by a written determination of the Zoning Administrator may appeal the decision to the Board of Zoning Appeals. Appeals must be made within thirty (30) days of the entry of the written determination which is the date of receipt of this letter. Also please note that this written determination of the Roanoke County Zoning Administrator shall be final and unappealable if not appealed by the deadline noted in this letter (Sec 15.2-2311 Code of Va). It is the applicant's responsibility to submit a complete administrative appeal application within the required deadline in order for the appeal request to become valid. In addition, there is a \$275 administrative appeal application fee and required legal advertisement fees shall be the responsibility of the appellant.

I will include an Administrative Appeal Application for your reference.

Sincerely,



John F. Murphy, CZA  
Zoning Administrator

Attachment: Administrative Appeal Application

CC: 5985 COLEMAN ROAD LLC  
5985 Coleman, Road  
Roanoke, Virginia 24018



# County of Roanoke

## OFFICE OF THE COUNTY ATTORNEY

PO Box 29800, 5204 Bernard Drive  
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**RUTH ELLEN KUHNEL**  
COUNTY ATTORNEY

**PETER S. LUBECK**  
**MARY BETH NASH**  
SENIOR ASSISTANT COUNTY ATTORNEYS  
**RACHEL W. LOWER**  
ASSISTANT COUNTY ATTORNEY

## MEMORANDUM

To: Roanoke County Board of Zoning Appeals

From: Peter Lubeck, Sr. Assistant County Attorney  
In behalf of John Murphy, Zoning Administrator

Date: August 8, 2018

Re: Appeals of Decision of the Zoning Administrator Rendered on March 30, 2018  
and on May 17, 2018.

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Dear Mr. Chairman and Members of the Board,

As you know, an appeal hearing has been scheduled for August 15, 2018 on the request of Adrian Maver and Blaine Creasy ("Maver and Creasy") and Stan and Jane Seymour (the "Seymours") (collectively, the "Appellants"), regarding determinations rendered by Mr. Murphy (the "Zoning Administrator") on March 30, 2018 and on May 17, 2018. As legal counsel to the Zoning Administrator, I am writing to share with you, in advance of the hearing, legal authority for the Zoning Administrator's position that this matter is not properly before the Board. Specifically, it is the Zoning Administrator's position that the Board should dismiss this appeal because the Appellants lack standing (are not proper parties).

In this memorandum, I will share with you a brief summary of the relevant facts of the matter and the controlling legal authorities regarding the principles of jurisdiction and standing.



Because the matter is not properly before the Board, I will not at this time address the merits of the Zoning Administrator's determinations regarding the property.

### 1. BACKGROUND

This matter involves appeals of the Zoning Administrator's determinations regarding property owned by 5985 Coleman Road LLC, t/a Southwest Virginia Wildlife Center of Roanoke ("SVWC").

SVWC is a state and federally licensed wildlife rehabilitation facility that offers veterinary treatment to the native Virginia wildlife (not domestic animals) of the greater Roanoke Valley and surrounding areas. The center specializes in birds; intakes include raptors (owls, kestrels, hawks, etc.) waterfowl (including herons, geese, ducks, and shorebirds), and all varieties of migratory birds.<sup>1</sup>

SVWC, which has been in operation since 2000, acquired the property at 5985 Coleman Road in September 2013 and established their facility at this location (the "Property"). The Property is located at the end of Coleman Road (which is partly a public and partly a private road). The Appellants and SVWC are neighboring landowners. Upon information and belief, the Seymours purchased their first residence, 5942 Coleman Rd., ("Seymour 1") in 2008. Upon information and belief, Maver & Creasy purchased their residence, 5946 Coleman Rd., in July 2017 (after SVWC had relocated to Coleman Rd.), and the Seymours subsequently purchased a second residence, 5960 Coleman Rd., ("Seymour 2") in December 2017 (after SVWC had relocated to Coleman Rd.). The below overhead diagram depicts the location of the properties:

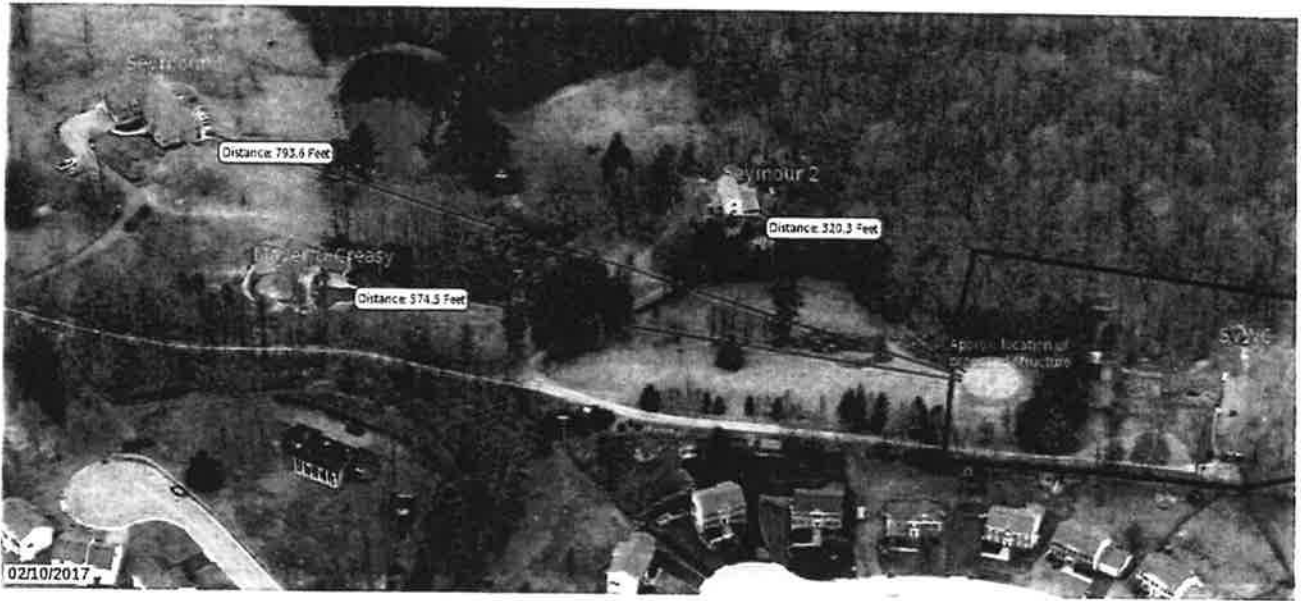
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<sup>1</sup> Information obtained from SVWC's website at <http://swvawildlifecenter.org>



The section of Coleman road depicted above is the private section of the road. The parties share road access but do not have a road maintenance agreement. Regrettably, disagreements have developed between the neighbors regarding the use and maintenance of the road and other issues. These disagreements are irrelevant to the matter at hand and will not be discussed further.

In March 2018, SVWC filed an application with the County's Department of Community Development for a special use permit to construct a new building that would be used for the rehabilitation of large birds (the "Raptor Building"), having received a financial grant for this purpose. The below diagram depicts the approximate location of the proposed Raptor Building with approximate distances to the Appellants' residences (although not clearly depicted below, the building will be located more than thirty feet (30') from the property line that is shared with Seymour 2):



As noted above, Seymour 1 is located approximately 793 feet from the proposed Raptor Building and does not share a mutual property line with SVWC. Maver & Creasy's residence is located approximately 574 feet from the proposed Raptor Building and does not share a mutual property line with SVWC. Seymour 2 is located approximately 320 feet from the proposed Raptor Building and does share a mutual property line with SVWC. Upon information and belief, the Seymours do not reside at Seymour 2.

Upon learning of SVWC's desire to construct the Raptor Building, the Appellants, through counsel, requested a determination from the Zoning Administrator regarding several aspects of SVWC's operation and SVWC's ability to construct the Raptor Building. In response to this request, the Zoning Administrator issued a determination letter on March 30, 2018. In response to a second request by the Appellants, the Zoning Administrator issued a second determination letter on May 17, 2018. The Appellants have appealed several of the issues addressed in the determination letters.

Specifically, the Appellants challenge the Zoning Administrator's determinations that:

1. The present use of the SVWC Property as a veterinary hospital/ clinic is in conformance with Roanoke County Rules and Ordinances;
2. The proposed construction of a new building on the SVWC Property requires a special use permit ("SUP") rather than a variance;
3. There are no animal boarding activities being conducted at the SVWC Property;
4. The proposed new building should not be considered a "primary structure"; it should be considered an accessory structure (with then following four specific assignments of error):
  - a. The proposed building is proposed to be larger than the existing building;
  - b. The primary use of the Property will be conducted in the proposed building;
  - c. The Zoning Administrator should not have classified the proposed building as a primary structure without a specific request by the SWVC to do so; and
  - d. Because the Zoning Administrator erred in classifying the new proposed structure as a primary structure, he also erred in his assessment of the proper setbacks for the new building as well as a certain partially constructed building and other cages on the Property.
5. That a SUP for the proposed building can be based on County Code Section 30-23-5(B).

The Zoning Administrator is prepared to address each of the above issues. None of his determinations regarding the above are in error. However, as noted above, it is the Zoning Administrator's position that the Appellants lack standing to bring this appeal (they are not proper parties). Accordingly, this memorandum will ONLY address the issue of standing. This is where the Board's analysis should begin and end.

**2. THE BOARD SHOULD DISMISS THE APPEAL PRIOR TO HEARING EVIDENCE ON THE SUBSTANCE OF THE APPEAL**

**A. Jurisdiction**

In order for a court or a board to have authority to hear matters and make binding decisions, it must have jurisdiction. Jurisdiction is defined as "a court's [or board's] power to decide a case or issue a decree." Black's Law Dictionary 855 (7<sup>th</sup> ed. 1999). Before hearing a matter, the Board must determine that it has jurisdiction over the property and over the people.

For example, this Board does not have power to hear a matter involving property located in Los Angeles, California. If this Board were to receive a request to review a zoning administrator's decision regarding property located in Los Angeles, the Board *must* decline to hear the matter; it doesn't have the power and authority to make decisions regarding property located in California.

Likewise, the Board must determine whether it has power to hear matters involving or affecting certain people. Before hearing a matter involving property located in Roanoke County, the Board must determine that the parties are proper parties. If a citizen of Los Angeles (who has no property in Roanoke County) believes that a determination made by the Zoning Administrator is in error, she cannot challenge the determination just because she disagrees with the determination; the Los Angeles resident lacks "standing." Again, the Board *must* decline to hear such an appeal. In the matter at hand, although the Appellants are local property owners, they lack standing because they are not "aggrieved" by the Zoning Administrator's determinations.

#### **B. "Standing" in General**

The Supreme Court of Virginia, in Cupp v. Board of Supervisors, 227 Va. 580, 589 (1984), has stated the following with regards to "standing":

The concept of standing concerns itself with the characteristics of the person or entity who files suit. The point of standing is to ensure that the person who asserts a position has a substantial legal right to do so and that **his rights will be affected by the disposition of the case.**

In the matter at hand, the Appellants are not denied a personal or property right as a direct result of the Zoning Administrator's determinations. The Appellants do not own the property that is the subject of the determinations. Their rights and ability to use their own property are in no

way affected by the Zoning Administrator's determinations. If the Appellants object to SVWC's construction of the proposed Raptor Building because of the potential for the building to affect the views from their property (despite the fact that the building would likely not be visible from either the Seymour 1 or Maver & Creasy properties), the appropriate course of action is for the Appellants to share their concerns with the Planning Commission and Board of Supervisors in any future public hearings regarding the land use issue (whether to grant SVWC a SUP to build the structure).

**C. Standing to Appeal a Zoning Administrator's Determination: the "Person Aggrieved" Standard**

Further, in order to have standing to appeal a zoning administrator's decision to the Board, in addition to meeting the general requirements for standing (establishing that the appellant's rights will be affected), an appellant must further meet the "person aggrieved" standard. Section 15.2-2311 of the Code of Virginia, which sets forth the standards and procedures for a proper party to appeal a zoning administrator's decision to a local board of zoning appeals, states that "**any person aggrieved**" by a decision of the zoning administrator may appeal such decision to the Board. (Emphasis added).

The Supreme Court of Virginia, in Virginia Beach Beautification Comm'n v. Board of Zoning Appeals, 231 VA. 415, 419-20 (1986), in interpreting whether a party was a "person aggrieved," and thus whether the party had standing to bring suit, held,

The term "aggrieved" has a settled meaning in Virginia when it becomes necessary to determine who is a proper party to seek court relief from an adverse decision. In order for a petitioner to be "aggrieved," it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. The petitioner "**must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest**" .... The word "aggrieved" in a statute contemplates a substantial grievance and means a **denial of some personal or property right,**

legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.

(Emphasis added).

In summary, in addition to showing that by reason of making his determinations regarding SVWC's property, the Appellants have been denied some personal or property right, the Appellants **must further show that the Zoning Administrator's determinations will have a direct, immediate, and substantial impact on the Appellants' pocketbooks.**

The Zoning Administrator's determinations regarding the SVWC's property does not have any direct, immediate financial impact (much less a substantial one) on the Appellants. Accordingly, this Board lacks jurisdiction to hear the appeal. Even if members of the Board are intrigued by the legal issues raised by the Appellants, and want to hear the merits of the appeal, they should not; the Board lacks the authority to hear the matter. As noted above, if the Appellants object to SVWC's building of the proposed Raptor Building, the Appellants' proper course of action is to share their concerns with the Planning Commission and Board of Supervisors. Accordingly, the Board should dismiss the Appellants' appeal prior to hearing it on its merits.

Respectfully submitted,

By: 

Peter S. Lubeck  
For John Murphy, Zoning Administrator

Peter S. Lubeck, Esq. (VSB 71223)  
Senior Assistant County Attorney  
Ruth Ellen Kuhnel, Esq. (VSB 28156)  
County Attorney  
County of Roanoke  
5204 Bernard Drive, Suite 431

Roanoke, Virginia 24018  
Telephone: (540) 772-2009  
Email: [plubeck@roanokecountyva.gov](mailto:plubeck@roanokecountyva.gov)

**CERTIFICATE**

I hereby certify that on the 8th day of August 2018, I provided a true and correct copy of this Memorandum to G. Harris Warner, Esquire, by email and by mail at P.O. Box 21584, Roanoke, VA 24018, Counsel for Adrian Maver and Blaine Creasy; and to Gregory St. Ours, Esquire, by email and by mail at P.O. Box 20028, Harrisonburg, VA 22801-7528, Counsel for Stan and Jane Seymour.

  
\_\_\_\_\_  
Peter S. Lubeck



VIRGINIA :

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

IN RE: AUGUST 15, 2018 DECISION OF THE BOARD OF ZONING APPEALS OF ROANOKE COUNTY

STAN SEYMOUR )

JANE SEYMOUR, )

ADRIAN MAVER, and )

BLAINE CREASY, )

PETITIONERS, )

v. )

THE BOARD OF SUPERVISORS OF )  
ROANOKE COUNTY, VIRGINIA, and )

5985 COLEMAN ROAD LLC, )

RESPONDENTS. )

Service to: )

THE BOARD OF SUPERVISORS OF )  
ROANOKE COUNTY, VIRGINIA )

Serve: )

**Ruth Ellen Kuhnel** )

**Roanoke County Attorney** )

**5204 Bernard Dr., Suite 431** )

**Roanoke, Virginia 24018** )

rekuhnel@roanokecountyva.gov )

**(ROANOKE COUNTY)** )

5985 COLEMAN RD. LLC )

Serve: )

**Clark H. Worthy, Registered Agent** )

**Gentry Locke** )

**10 Franklin Road S.E., Suite 900** )

**Roanoke, VA 24011** )

**(CITY OF ROANOKE)** )

Case No. CL 18001377

*Rhonda Rogers*

ROANOKE COUNTY BOARD OF )  
 ZONING APPEALS )  
 Serve: )  
 Richard L. "Jyke" Jones, Jr. )  
 Chairman )  
 Roanoke County Administration Center )  
 5204 Bernard Dr. )  
 Roanoke, VA 24018 )  
 (ROANOKE COUNTY) )

**PETITION FOR WRIT OF CERTIORARI UNDER VA. CODE § 15.2-2314**

NOW COME Petitioners STAN SEYMOUR, JANE SEYMOUR, ADRIAN MAVER, and BLAINE CREAMY (collectively "Petitioners"), by counsel, pursuant to Code of Virginia § 15.2-2314 and County of Roanoke Zoning Ordinance § 30-24-5, and petition this Court for a Writ of Certiorari of the August 15, 2018 decision of the Board of Zoning Appeals of Roanoke County (the "Board"). In support of their Petition, Petitioners state as follows:

**I. ASSIGNMENTS OF ERROR**

1. THE ROANOKE COUNTY BOARD OF ZONING APPEALS ERRED WHEN IT DETERMINED THAT THE PETITIONERS LACK STANDING BECAUSE THEY ARE NOT AGGRIEVED PERSONS.

**II. FACTS AND PROCEDURAL POSTURE:**

***A. The Parties and Properties relevant to this matter.***

1. 5985 Coleman Road LLC ("5985 LLC") owns the property located at 5985 Coleman Road, Roanoke, Virginia 24018 (the "5985 Property").
2. Petitioners Stan Seymour and Jane Seymour (the "Seymours") own the property and residence located at 5960 Coleman Road, Roanoke, Virginia 24018 ("Seymour Property 2"), bordering the 5985 Property.
3. The Seymours live on an adjacent property, 5942 Coleman Road, Roanoke, Virginia 24018 ("Seymour Property 1"), approximately 793 feet from the 5985 Property.

4. Petitioners Adrian Maver and Blaine Creasy (collectively the "Mavers") own and reside on property located at 5946 Coleman Road, Roanoke, Virginia 24018 (the "Maver Property"), approximately 574 feet from the 5985 Property.

5. The 5985 Property is located at the end of Coleman Road and is only accessible via Coleman Road and easements across the Seymours' and the Mavericks' properties (one prescriptive and one by deed), crossing the Seymours' and Mavericks' properties and passing the access points for Maver Property, Seymour Property 1, and Seymour Property 2.

6. Coleman Road is a partly public and partly private road.

7. Access to the 5985 Property over Seymour Property 2 is pursuant to an easement granted under a deed of record ("Deed"). A correct copy of the Deed is attached hereto as **Exhibit A**.

8. Access to the 5985 Property over the Maver Property is pursuant to a prescriptive easement.

***B. The Zoning Administrator's Letter Determinations and Petitioners' Appeals to the Board.***

9. The Seymours and the Mavericks jointly filed two appeals to the Board, dated April 27, 2018, and June 15, 2018, respectively (together, the "Appeals"), requesting review of certain determination letters of John Murphy, Zoning Administrator of Roanoke County ("Zoning Administrator"), dated March 30, 2018 and May 17, 2018 (together, the "Determination Letters").

10. On August 8, 2018, the Zoning Administrator, by and through the Roanoke County Attorney's Office, filed an opposition to the Appeals arguing that the Petitioners lacked standing because they are not "aggrieved persons" (the "Opposition").<sup>1</sup>

11. On August 15, 2018, at the Board hearing, the Board dismissed the Appeals on the basis that Petitioners lacked standing because they are not "aggrieved persons."

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<sup>1</sup> A true copy of the Opposition is attached hereto as **Exhibit B**.

12. In rendering its decision, the Board provided no specific written findings of fact or conclusions of law.

13. From the Board's discussion prior to its vote, however, it appears that the Board made its determination based upon the arguments set forth in the Zoning Administrator's Opposition to Petitioners' Appeals, arguing that the Petitioners lacked standing because they are not "aggrieved person(s)" under Virginia law.

14. This determination was erroneous because Petitioners are clearly "aggrieved persons" under Virginia law, as set forth below.

15. The Board's decision was in error.

16. The Petitioners properly provided notice to all necessary parties and filed this Petition within thirty days of the Board's Determination.

17. Pursuant to Code of Virginia § 15.2-2314, and Roanoke Zoning Ordinance § 30-24-5, Petitioners intend to present evidence to the Court in support of this Petition and their appeal of the Board's Determination.

### **III. ARGUMENT**

#### ***A. Standard of Review on Appeal under Va. Code § 15.2-2314.***

In an appeal to this Court, the Board's findings of facts are presumed correct, but that presumption can be rebutted by a preponderance of the evidence. The Board's findings of law, however, are reviewed *de novo*. Code of Virginia § 15.2-2314.

Here, the determination that Petitioners lacked standing because they are not "aggrieved persons" under the law is a question of law subject to the *de novo* standard of review.

#### ***B. The Petitioners do not lack standing.***

The Virginia Supreme Court has set forth the "particular statutory requirement . . . for standing in the context of a challenge to a land use decision by a board of zoning appeals" where the challenging party does not hold an ownership interest in the subject property or otherwise have standing as an adjoining landowner or possessor of an interest in affected property rights. Friends of the Rappahannock v. Caroline County Bd. of Sup'rs, 286 Va. 38, 46–47, 743 S.E.2d 132, 136 (2013). The requirement under the applicable statute and Friends of the Rappahannock" is that the party challenging the decision must be "aggrieved." Id.

A party who claims no ownership interest in the subject property must satisfy a two-step test to demonstrate it is an "aggrieved" person:

First, the complainant must own or occupy 'real property within or in close proximity to the property that is the subject of the land use determination, thus establishing that it has 'a direct, immediate, pecuniary, and substantial interest in the decision.'

Second, the complainant must allege facts demonstrating a particularized harm to 'some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.'

Id. at 48–49, 137 (internal citations omitted).

In this case, the Petitioners easily meet the Friends of the Rappahannock standard. However, Petitioners need not meet the more stringent requirements of this test, as Petitioners each also either own adjoining land and/or have a property interest in the matter because the 5985 Property is accessed via an easement over their properties. The Board failed to consider this fact in assessing the Petitioners' standing.

**i. Petitioners own and/or occupy real property adjoining and in close proximity to the 5985 Property.**

The Virginia Supreme Court has recognized that "[n]eighbors who own property or reside adjacent to rezoned land ordinarily have interests sufficiently affected to confer upon them

standing . . ." Braddock, L.C. v. Bd. of Sup'rs of Loudoun County, 268 Va. 420, 424 n.1, 601 S.E.2d 552, 554 n.1 (2004).

Here, the Seymours own Seymour Property 2, which shares a property line with the 5985 Property. Alone, this adjoining property line is sufficient to confer standing. See, e.g., Carolinas Cement Co. GP v. County of Warren, 52 Va. Cir. 6, 2000 WL 33258759, at \*7 (2000) (noting "persons who have standing are the abutting landowners") (citing Barton v. Town of Middleburg, 27 Va. Cir. 20 (Loudoun 1992) (holding that owner of adjacent land has standing to challenge site plan)). This adjoining property line is more than sufficient to satisfy step one, above, and demonstrates that the Seymours have standing to challenge the Board's Decision.

Moreover, the Seymours also own Seymour Property 1 and occupy the residence thereon, approximately 793 feet from the 5985 Property, and the Mavers own the Maver Property and occupy the residence thereon, approximately 574 feet from the 5985 Property. Thus, each of the Petitioners own or occupy real property within or in close proximity to the 5985 Property.<sup>2</sup> See, e.g., Riverview Farm Associates Virginia Gen. P'ship v. Bd. of Sup'rs of Charles City County, 259 Va. 419, 427, 528 S.E.2d 99, 103 (2000) (finding that "plaintiffs live within sufficiently close proximity to the property . . . to possess a 'justiciable interest' in the litigation" where all plaintiffs "owned property located within about 2,000 feet of **either** the [property at issue] or **the access road serving the [property at issue]**") (emphasis added); see also Carolinas Cement Co. GP v. County of Warren, 52 Va. Cir. 6, 2000 WL 33258759, at \*7 (2000) (noting that potential "aggrieved persons" are those "persons who own property within, or in close proximity to . . . and who suffer a burden different from that of the public at large") (citing WANV v. Houff, 219 Va. 57, 64, 244 S.E.2d 760 (1978)).

---

<sup>2</sup> Indeed, the Opposition to Petitioners' Appeals to the Board states: "The [Petitioners] and SVWC are neighboring landowners." Opposition at pg. 2.

In addition, not only do Petitioners live on and own property in close proximity to, and with regard to the Seymours adjoining, the 5985 Property, but the only access to the 5985 Property is across Petitioners' properties, via easements which cross the Seymours' and the Mavers' properties.

Because use of Coleman Road and the easements to access the 5985 Property is via easements across Petitioners' properties, Petitioners' property rights are directly affected by the use of, and any increase in traffic on (among other impacts), Coleman Road and the easements. Indeed, Virginia law recognizes that ownership or interest in an easement affected by a decision of a zoning board of appeals is, by itself, sufficient to confer standing. See, e.g., Tran v. Fairfax County Bd. of Supervisors, 87 Va. Cir. 344, 2013 WL 9576574, at \*3 (2013) ("In the instant case, Plaintiff Church has standing because Plaintiff Church was a party to the original Bartlett Easement contract; thus Plaintiff Church has an ownership interest in the Bartlett Easement.")

Therefore, each Petitioner here more than satisfies the first step of the two-step process set forth in Friends of the Rappahannock, as each Petitioner can demonstrate standing through ownership of adjoining land or as owners of property over which easements serving the 5985 Property passes. Additionally, as Petitioners own and live in close proximity to the 5985 Property, and have alleged particularized grievances not shared by the public (as set forth below), Petitioners also meet the requirements for standing under Friends of the Rappahannock.

**ii. Petitioners alleged particularized harm to their personal property rights and imposition of a burden different from that suffered by the public generally.**

As this Court has previously recognized in McGhee v. Bd. of Zoning Appeals of City of Roanoke, 57 Va. Cir. 47, 2001 WL 34038613, at \*1–2 (2001) (Weckstein, J.), in order to establish standing "to seek review of a BZA decision pursuant to Code § 15.2-2314, one must be 'aggrieved,'

which means that she or he must assert the existence of 'a substantial grievance, denial of some personal or property right . . . or imposition of a burden or obligation . . . different from that suffered by the public generally.'" Id. (quoting Virginia Beach Beautification Commission v. Board of Zoning Appeals, 231 Va. 425, 344 S.E.2d 899 (1986)).

The McGhee Court, examining whether neighboring property owners could challenge the Board's decision regarding construction of a building, found that where the petitioners "own property, live, and work in this neighborhood. 'They are the aggrieved persons,' just as surely as 'the parties who may be adversely affected by the construction of a radio tower in a particular residential district are those persons who own or live on property within, or in close proximity to, the district'" and "[t]hrough they may share this burden with some South Roanoke neighbors, it is not one suffered by the public generally." Id.

Examining whether the parties' particularized allegations of burden and harm were sufficient, the McGhee Court further noted that "[a]mong the petitioners are property owners who, as [the opposing party] and the Board concede, are qualified under the law of Virginia to give opinion evidence about the value of their property. They testified that [opposing party's] building will have a marked and adverse effect on the market value of homes in which they live, and on the rental value of investment property which one of them rents for residential use to others . . ." Id. (internal citations omitted and emphasis added); See also Sierra Club v. Morton, 405 U.S. 727, 734-735 (1972) (Noneconomic injuries-"[a]esthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society," may suffice to demonstrate standing, so long as "the party seeking review be himself among the injured.") (applying federal law). In McGhee, allegations of diminishment of value were sufficient to confer standing. The same result should control in this case.



Here, prior to the Board's decision, the Petitioners alleged and testified to a litany of particularized harm and burdens that would result from the Board's decision, including but not limited to:

- Diminishment of the fair market value of their properties;
- Increase in noise audible from their properties because of increased animal presence on the 5985 Property;
- Construction of unsightly outdoor cages visible from their properties, particularly the proposed raptor cage along the property line shared by the 5985 Property and Seymour Property 2; and
- Increased traffic on the easement connecting to Coleman Road, which will require additional maintenance and upkeep, as well as increase the use of the easement for ingress and egress, causing additional traffic noise, disturbance from car headlights, and increased potential of hazardous traffic near the Mavericks Property at all hours,<sup>3</sup> which exposes the Mavericks' children who play in the yard to increased danger from inattentive drivers.

As another Virginia Circuit Court has noted in the context of determining standing to appeal a Board decision, "any depreciation in the value of property arising from the manner in which a proposed use is conducted is sufficient to confer standing to challenge the proposed use, and the diminution in value would not have to be substantial to confer standing." Carolinas Cement Co. GP v. County of Warren, 52 Va. Cir. 6, 2000 WL 33258759, at \*8 (2000).

Critically, at this stage this Court need only determine that the Petitioners have alleged particularized grievances or harm. Whether those allegations will prevail is not presently before this Court and is a matter of fact to be tried on the merits of Petitioners' arguments before the Board. See Andrews v. American Health & Life Insurance Co., 236 Va. 221, 226, 372 S.E.2d 399 (1988) ("Standing to maintain an action is a preliminary jurisdictional issue having no relation to the substantive merits of an action."); see also McGhee, 2001 WL 34038613, at \*2 (2001)

---

<sup>3</sup> The business operating on the 5984 Property staffs the site twenty-four (24) hours per day seven (7) days per week, with employees and volunteers coming and going at all hours of the day and night.

("Decisions about the weight and effect of evidence have little or no impact on the question of standing to sue.").

Petitioners have alleged substantial grievances and burdens that are unique to them and not those suffered by the public generally, as the increased traffic across their properties, via the easements, and the decrease in value of their properties, are not burdens or grievances shared by the public generally. Therefore, Petitioners satisfy the second step of the two-step process set forth in Friends of the Rappahannock and, as a result, have standing to appeal the Decision of the Board.

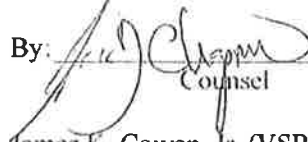
#### **IV. CONCLUSION**

Because Petitioners, *inter alia*: (1) own property adjoining the 5985 Property; (2) reside on real property in close proximity to the 5985 Property; (3) have property rights stemming from their ownership of the properties over which an easement benefitting the 5985 Property passes and which provides the only access to the 5985 Property; (4) have set forth allegations of particularized substantial harm, grievances, and burdens, including but not limited to diminishment of Petitioners' property value and increased traffic on the easements over their properties, which are not shared by the public generally; and (5) properly brought these matters before the Board during their Appeals, the Board clearly erred when it determined that the Petitioners lacked standing because they are not "aggrieved persons," and this Court should:

1. Issue a Writ of Certiorari for review of the August 15, 2018 decision of the Board;
2. Reverse the August 15, 2018 decision of the Board;
3. Award Petitioner its costs and attorneys' fees incurred for this appeal; and
4. Grant such other and further relief as the nature of the case may require.

Respectfully submitted,

By:



Counsel

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*Counsel for Petitioners*

## EXHIBIT A

4118  
 THIS DEED, made this the 5th day of August, 1958, by and between Walter J. Martin, unmarried, party of the first part; and Albert Akers Martin and Elizabeth Fuller Martin, husband and wife, as tenants by the entirety with the right of survivorship, parties of the second part;

- W I T N E S S E T H -

THAT FOR AND IN CONSIDERATION of the sum of TEN DOLLARS (\$10.00) cash and other good and valuable consideration paid by the parties of the second part unto the party of the first part, the receipt whereof is hereby acknowledged, Walter J. Martin, unmarried, party of the first part doth hereby bargain, sell, grant and convey with covenants of General Warranty of Title unto Albert Akers Martin and Elizabeth Fuller Martin, husband and wife, as tenants by the entirety with the right of survivorship, as at common law and as provided for under the laws and statutes of Virginia, parties of the second part, all of that certain lot or parcel of land located in the County of Roanoke, Virginia, and more particularly described as follows; to-wit:

BEGINNING at an old iron pipe at Corner No. 1 by a chestnut stump at the southwest corner of Wright property; thence with the northwest line of Thomas Beasley property S. 61° 15' W., 261.8 feet to an iron pin where set between poplar stumps 1 foot apart at Corner No. 2; thence continuing with the north line of the Thomas Beasley property N. 75° 45' W., 300.0 feet to an iron pin at Corner No. 3; thence with two new division lines and with the easterly terminalus of a 30-foot width road right-of-way to be hereinafter mentioned N. 14° 15' E., passing the northeast corner of said road right-of-way at 30 feet in all a total distance of 110.0 feet to iron pin at Corner No. 4; thence S. 75° 45' E., 324.7 feet to an iron pin at the southwest line of Wright property at Corner No. 5; thence with the same S. 37° 30' E., 212.4 feet to the PLACE OF BEGINNING containing 2.85 acres; and

BEING a southeast portion of property an undivided interest in which was conveyed to Walter J. Martin by

Albert Akers Martin by deed dated November 14, 1952, of record in the Clerk's Office of the Circuit Court of Roanoke County, Virginia, in Deed Book 481, page 396.

Together with the perpetual right of egress and ingress over the 30-foot width road right-of-way which is situate along the southerly boundary of the remaining property of Walter J. Martin - said right-of-way connecting the southwesterly corner of the herein described property with Virginia Highway, Route No. 735.

TO HAVE AND TO HOLD unto Albert Akers Martin and Elisabeth Fuller Martin, husband and wife, as tenants by the entirety, and unto the survivor of them and his or her heirs and assigns, forever, in fee simple.

The party of the first part covenants that he is seized in fee simple of the said land; that he has the right to convey the same to the parties of the second part; that he has done no act to encumber the said land; that the parties of the second part shall have quiet and peaceable possession of the same, free from all encumbrances, and that he will execute such other and further assurances of title as may be requisite.

WITNESS the following signature and seal this the day and year first hereinabove written.

Walter J. Martin (SEAL)  
Walter J. Martin



STATE OF VIRGINIA }  
CITY OF ROANOKE } to-wit:

I, W. H. Gifford, a Notary Public in and for the City of Roanoke, State of Virginia, do hereby certify that Walter J. Martin, unmarried, whose name is signed to the foregoing writing bearing date the 5th day of August, 1958, has personally appeared before me and acknow-

ledged the same in my City and State aforesaid.

GIVEN under my hand this the 14th day of August, 1958.

W. H. Gifford  
Notary Public

My commission expires:

June 14, 1959

HARLENDVE  
HAWKELFORD & CARR  
ATTORNEYS AT LAW  
ROANOKE, VA.

1.50  
3.50  
1.00  
6.00

In the Clerk's Office of the District Court for the County of Roanoke, Va., this 21st day of August, 1958, the foregoing and with the Certificate of Acknowledgment thereunto submitted to record at 12:25 o'clock P. Having affixed thereto duly cancelled United States Internal Revenue Stamp of the value of \$1.10  
Recorded: W. H. Gifford Clerk



**RUTH ELLEN KUHNEL**  
COUNTY ATTORNEY

# County of Roanoke

## OFFICE OF THE COUNTY ATTORNEY

PO Box 29800, 5204 Bernard Drive  
Roanoke, Virginia 24018-0798  
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**PETER S. LUBECK**  
**MARY BETH NASH**  
SENIOR ASSISTANT COUNTY ATTORNEYS  
**RACHEL W. LOWER**  
ASSISTANT COUNTY ATTORNEY

EXHIBIT B

## MEMORANDUM

**To:** Roanoke County Board of Zoning Appeals

**From:** Peter Lubeck, Sr. Assistant County Attorney  
In behalf of John Murphy, Zoning Administrator

**Date:** August 8, 2018

**Re:** Appeals of Decision of the Zoning Administrator Rendered on March 30, 2018  
and on May 17, 2018.

---

Dear Mr. Chairman and Members of the Board,

As you know, an appeal hearing has been scheduled for August 15, 2018 on the request of Adrian Maver and Blaine Creasy ("Maver and Creasy") and Stan and Jane Seymour (the "Seymours") (collectively, the "Appellants"), regarding determinations rendered by Mr. Murphy (the "Zoning Administrator") on March 30, 2018 and on May 17, 2018. As legal counsel to the Zoning Administrator, I am writing to share with you, in advance of the hearing, legal authority for the Zoning Administrator's position that this matter is not properly before the Board. Specifically, it is the Zoning Administrator's position that the Board should dismiss this appeal because the Appellants lack standing (are not proper parties).

In this memorandum, I will share with you a brief summary of the relevant facts of the matter and the controlling legal authorities regarding the principles of jurisdiction and standing.

Because the matter is not properly before the Board, I will not at this time address the merits of the Zoning Administrator's determinations regarding the property.

1. BACKGROUND

This matter involves appeals of the Zoning Administrator's determinations regarding property owned by 5985 Coleman Road LLC, t/a Southwest Virginia Wildlife Center of Roanoke ("SVWC").

SVWC is a state and federally licensed wildlife rehabilitation facility that offers veterinary treatment to the native Virginia wildlife (not domestic animals) of the greater Roanoke Valley and surrounding areas. The center specializes in birds; intakes include raptors (owls, kestrels, hawks, etc.) waterfowl (including herons, geese, ducks, and shorebirds), and all varieties of migratory birds.<sup>1</sup>

SVWC, which has been in operation since 2000, acquired the property at 5985 Coleman Road in September 2013 and established their facility at this location (the "Property"). The Property is located at the end of Coleman Road (which is partly a public and partly a private road). The Appellants and SVWC are neighboring landowners. Upon information and belief, the Seymours purchased their first residence, 5942 Coleman Rd., ("Seymour 1") in 2008. Upon information and belief, Maver & Creasy purchased their residence, 5946 Coleman Rd., in July 2017 (after SVWC had relocated to Coleman Rd.), and the Seymours subsequently purchased a second residence, 5960 Coleman Rd., ("Seymour 2") in December 2017 (after SVWC had relocated to Coleman Rd.). The below overhead diagram depicts the location of the properties:

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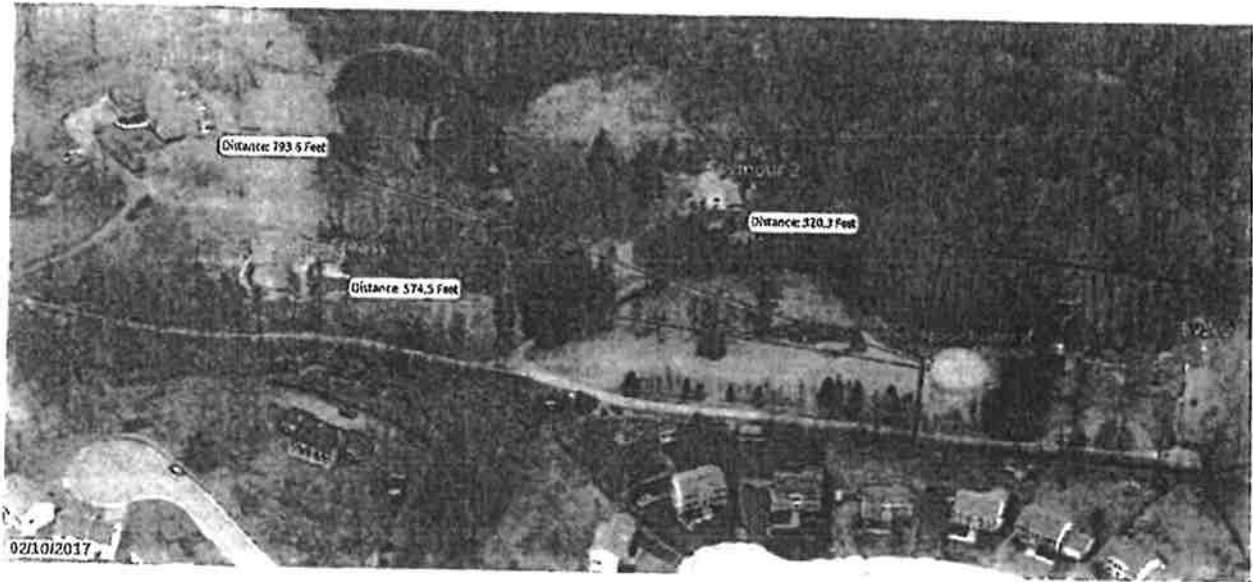
<sup>1</sup> Information obtained from SVWC's website at <http://swvawildlifecenter.org>



The section of Coleman road depicted above is the private section of the road. The parties share road access but do not have a road maintenance agreement. Regrettably, disagreements have developed between the neighbors regarding the use and maintenance of the road and other issues. These disagreements are irrelevant to the matter at hand and will not be discussed further.

In March 2018, SVWC filed an application with the County's Department of Community Development for a special use permit to construct a new building that would be used for the rehabilitation of large birds (the "Raptor Building"), having received a financial grant for this purpose. The below diagram depicts the approximate location of the proposed Raptor Building with approximate distances to the Appellants' residences (although not clearly depicted below, the building will be located more than thirty feet (30') from the property line that is shared with Seymour 2):





As noted above, Seymour 1 is located approximately 793 feet from the proposed Raptor Building and does not share a mutual property line with SVWC. Maver & Creasy's residence is located approximately 574 feet from the proposed Raptor Building and does not share a mutual property line with SVWC. Seymour 2 is located approximately 320 feet from the proposed Raptor Building and does share a mutual property line with SVWC. Upon information and belief, the Seymours do not reside at Seymour 2.

Upon learning of SVWC's desire to construct the Raptor Building, the Appellants, through counsel, requested a determination from the Zoning Administrator regarding several aspects of SVWC's operation and SVWC's ability to construct the Raptor Building. In response to this request, the Zoning Administrator issued a determination letter on March 30, 2018. In response to a second request by the Appellants, the Zoning Administrator issued a second determination letter on May 17, 2018. The Appellants have appealed several of the issues addressed in the determination letters.

Specifically, the Appellants challenge the Zoning Administrator's determinations that:

1. The present use of the SVWC Property as a veterinary hospital/ clinic is in conformance with Roanoke County Rules and Ordinances;
2. The proposed construction of a new building on the SVWC Property requires a special use permit ("SUP") rather than a variance;
3. There are no animal boarding activities being conducted at the SVWC Property;
4. The proposed new building should not be considered a "primary structure"; it should be considered an accessory structure (with then following four specific assignments of error):
  - a. The proposed building is proposed to be larger than the existing building;
  - b. The primary use of the Property will be conducted in the proposed building;
  - c. The Zoning Administrator should not have classified the proposed building as a primary structure without a specific request by the SWVC to do so; and
  - d. Because the Zoning Administrator erred in classifying the new proposed structure as a primary structure, he also erred in his assessment of the proper setbacks for the new building as well as a certain partially constructed building and other cages on the Property.
5. That a SUP for the proposed building can be based on County Code Section 30-23-5(B).

The Zoning Administrator is prepared to address each of the above issues. None of his determinations regarding the above are in error. However, as noted above, it is the Zoning Administrator's position that the Appellants lack standing to bring this appeal (they are not proper parties). Accordingly, this memorandum will ONLY address the issue of standing. This is where the Board's analysis should begin and end.

**2. THE BOARD SHOULD DISMISS THE APPEAL PRIOR TO HEARING EVIDENCE ON THE SUBSTANCE OF THE APPEAL.**

**A. Jurisdiction**

In order for a court or a board to have authority to hear matters and make binding decisions, it must have jurisdiction. Jurisdiction is defined as "a court's [or board's] power to decide a case or issue a decree." Black's Law Dictionary 855 (7<sup>th</sup> ed. 1999). Before hearing a matter, the Board must determine that it has jurisdiction over the property and over the people.

For example, this Board does not have power to hear a matter involving property located in Los Angeles, California. If this Board were to receive a request to review a zoning administrator's decision regarding property located in Los Angeles, the Board *must* decline to hear the matter; it doesn't have the power and authority to make decisions regarding property located in California.

Likewise, the Board must determine whether it has power to hear matters involving or affecting certain people. Before hearing a matter involving property located in Roanoke County, the Board must determine that the parties are proper parties. If a citizen of Los Angeles (who has no property in Roanoke County) believes that a determination made by the Zoning Administrator is in error, she cannot challenge the determination just because she disagrees with the determination; the Los Angeles resident lacks "standing." Again, the Board *must* decline to hear such an appeal. In the matter at hand, although the Appellants are local property owners, they lack standing because they are not "aggrieved" by the Zoning Administrator's determinations.

#### **B. "Standing" in General**

The Supreme Court of Virginia, in Cupp v. Board of Supervisors, 227 Va. 580, 589 (1984), has stated the following with regards to "standing":

The concept of standing concerns itself with the characteristics of the person or entity who files suit. The point of standing is to ensure that the person who asserts a position has a substantial legal right to do so and that **his rights will be affected by the disposition of the case.**

In the matter at hand, the Appellants are not denied a personal or property right as a direct result of the Zoning Administrator's determinations. The Appellants do not own the property that is the subject of the determinations. Their rights and ability to use their own property are in no

way affected by the Zoning Administrator's determinations. If the Appellants object to SVWC's construction of the proposed Raptor Building because of the potential for the building to affect the views from their property (despite the fact that the building would likely not be visible from either the Seymour 1 or Maver & Creasy properties), the appropriate course of action is for the Appellants to share their concerns with the Planning Commission and Board of Supervisors in any future public hearings regarding the land use issue (whether to grant SVWC a SUP to build the structure).

**C. Standing to Appeal a Zoning Administrator's Determination: the "Person Aggrieved" Standard**

Further, in order to have standing to appeal a zoning administrator's decision to the Board, in addition to meeting the general requirements for standing (establishing that the appellant's rights will be affected), an appellant must further meet the "person aggrieved" standard. Section 15.2-2311 of the Code of Virginia, which sets forth the standards and procedures for a proper party to appeal a zoning administrator's decision to a local board of zoning appeals, states that "any person aggrieved" by a decision of the zoning administrator may appeal such decision to the Board. (Emphasis added).

The Supreme Court of Virginia, in Virginia Beach Beautification Comm'n v. Board of Zoning Appeals, 231 VA. 415, 419-20 (1986), in interpreting whether a party was a "person aggrieved," and thus whether the party had standing to bring suit, held,

The term "aggrieved" has a settled meaning in Virginia when it becomes necessary to determine who is a proper party to seek court relief from an adverse decision. In order for a petitioner to be "aggrieved," it must affirmatively appear that such person had some direct interest in the subject matter of the proceeding that he seeks to attack. The petitioner "must show that he has an immediate, pecuniary and substantial interest in the litigation, and not a remote or indirect interest" .... The word "aggrieved" in a statute contemplates a substantial grievance and means a denial of some personal or property right,

legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.

(Emphasis added).

In summary, in addition to showing that by reason of making his determinations regarding SVWC's property, the Appellants have been denied some personal or property right, the Appellants **must further show that the Zoning Administrator's determinations will have a direct, immediate, and substantial impact on the Appellants' pocketbooks.**

The Zoning Administrator's determinations regarding the SVWC's property does not have any direct, immediate financial impact (much less a substantial one) on the Appellants. Accordingly, this Board lacks jurisdiction to hear the appeal. Even if members of the Board are intrigued by the legal issues raised by the Appellants, and want to hear the merits of the appeal, they should not; the Board lacks the authority to hear the matter. As noted above, if the Appellants object to SVWC's building of the proposed Raptor Building, the Appellants' proper course of action is to share their concerns with the Planning Commission and Board of Supervisors. Accordingly, the Board should dismiss the Appellants' appeal prior to hearing it on its merits.

Respectfully submitted,

By:



Peter S. Lubeck

For John Murphy, Zoning Administrator

Peter S. Lubeck, Esq. (VSB 71223)  
Senior Assistant County Attorney  
Ruth Ellen Kuhnel, Esq. (VSB 28156)  
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County of Roanoke  
5204 Bernard Drive, Suite 431

Roanoke, Virginia 24018  
Telephone: (540) 772-2009  
Email: [plubeck@roanokecountyva.gov](mailto:plubeck@roanokecountyva.gov)

CERTIFICATE

I hereby certify that on the 8th day of August 2018, I provided a true and correct copy of this Memorandum to G. Harris Warner, Esquire, by email and by mail at P.O. Box 21584, Roanoke, VA 24018, Counsel for Adrian Maver and Blaine Creasy; and to Gregory St. Ours, Esquire, by email and by mail at P.O. Box 20028, Harrisonburg, VA 22801-7528, Counsel for Stan and Jane Seymour.

  
\_\_\_\_\_  
Peter S. Lubeck

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE

In Re: APPEAL OF SEPTEMBER 25, 2018  
DECISION OF THE BOARD OF SUPERVISORS  
OF ROANOKE COUNTY, VIRGINIA.  
Special Use Permit Application PZ-1800595

STAN SEYMOUR, JANE SEYMOUR, )  
ADRIAN MAVER and BLAINE )  
CREASY, )

Plaintiffs, )

vs. )

CL18-1555 )

5985 COLEMAN ROAD, LLC, )  
SOUTHWEST VIRGINIA WILDLIFE )  
CENTER OF ROANOKE, INC., and )  
THE ROANOKE COUNTY BOARD OF )  
SUPERVISORS GEORGE G. )  
ASSAID, PHIL C. NORTH, )  
JOSEPH P. MCNAMARA, )  
MARTHA B. HOOKER and )  
J. JASON PETERS, in their )  
official capacities as the )  
Roanoke County Board of )  
Supervisors, )

Defendants. )

DEPOSITION OF PHILIP THOMPSON  
Wednesday, September 11, 2019  
10:09 a.m.  
Roanoke, Virginia

RAY REPORTING  
P.O. BOX 12133  
ROANOKE, VIRGINIA 24023  
(540) 397-9603  
raycourtreporting@gmail.com  
Reported by: Francine Rossini, CSR

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APPEARANCES:

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amiller@gbsrattorneys.com

Counsel for 5985 Coleman Road, LLC, and  
Southwest Virginia Wildlife Center of  
Roanoke, Inc.



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1           The deposition of Philip Thompson was  
2 taken at the Roanoke County Attorney's Office, 5204  
3 Bernard Drive, Roanoke, Virginia, on Wednesday,  
4 September 11, 2019, in the presence of counsel for  
5 the parties.

6           All formalities as to caption,  
7 certificate and notice of filing were waived. It was  
8 agreed that Francine Rossini, CSR, Notary Public in  
9 and for the Commonwealth of Virginia, at Large, would  
10 take said deposition in machine shorthand, transcribe  
11 the same to typewriting by means of computer-aided  
12 transcription.

13           Said deposition was taken subject alone  
14 to objections that are required by the Rules of the  
15 Supreme Court of Virginia to be made at the time the  
16 deposition is taken. All other objections were  
17 reserved until the trial.

18

19

20                           PHILIP THOMPSON

21 was called as a witness, and after having first been  
22 duly sworn to tell the truth, the whole truth and  
23 nothing but the truth, was examined and testified as  
24 follows:

1 (An off-the-record discussion was held.)

2

3 (Plaintiff's Exhibit 2 was marked for  
4 identification.)

5

6 BY MR. WHEELER:

7 Q Mr. Thompson, I have asked the court  
8 reporter to hand you what has been identified as  
9 Plaintiff's Exhibit 2.

10 Sir, I am going to ask you, do you  
11 recognize this document?

12 A Yes.

13 Q And what is this document?

14 A It is the application -- special use  
15 application or what most -- I would say is the  
16 application for the Southwest Virginia Wildlife  
17 Center of Roanoke.

18 Q Is this the complete application?

19 A I think there are additional -- again,  
20 that's the submittal date, right? So there are  
21 things that -- pieces of information that may have  
22 been submitted. And when I say that, I know there is  
23 a letter or a statement from Sabrina Garvin about the  
24 inclusion of the additional -- that the special use

1 permit is for all of the buildings on the property  
2 that the special use permit -- because I don't know  
3 because I don't know if that is necessarily submitted  
4 with this at the time of the actual submission, so  
5 what submission -- so I would say this appears to be  
6 the -- the majority of the application for  
7 consideration by the Planning Commission and the  
8 Board of Supervisors. There may be additional  
9 information that would be in addition to what is  
10 here. Does that make sense?

11 Q That does make sense. Let me --

12 A So I would say this contains a lot of  
13 the information, but was this the entire packet that  
14 was considered for the applicants and the board? I  
15 can't say that for a fact because there is other  
16 stuff that was submitted during the process. Let me  
17 put it that way.

18  
19 (Plaintiff's Exhibit 3 was marked for  
20 identification.)

21

22 BY MR. WHEELER:

23 Q So let me ask, the Plaintiff's Exhibit  
24 2 that was handed to you, does that appear to be the

TWENTY-THIRD JUDICIAL CIRCUIT  
OF VIRGINIA



CHARLES N. DORSEY, JUDGE  
ROANOKE COUNTY COURTHOUSE  
305 EAST MAIN STREET  
SALEM, VIRGINIA 24153  
(540) 387-6041  
FAX (540) 387-6278  
E-MAIL: CDORSEY@VACOURTS.GOV

CIRCUIT COURT FOR THE COUNTY OF ROANOKE  
CIRCUIT COURT FOR THE CITY OF ROANOKE  
CIRCUIT COURT FOR THE CITY OF SALEM

COMMONWEALTH OF VIRGINIA

3 October 2019

**VIA E-MAIL ONLY**

James K. Cowan, Jr., Esquire  
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Ruth Ellen Kuhnel, Esquire  
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James I. Gilbert, IV  
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Re: Appeal of September 25, 2018 Decision of the Board of Supervisors of Roanoke County, Virginia, Special Use Permit Application PZ-1800595  
Stan Seymour, Jane Seymour, Adrian Maver & Blaine Creasy v. 5985 Coleman Road, LLC,  
Roanoke County Circuit Court Case Number CL18-1555

Dear Counsel:

This matter came before the Court on July 29, 2019. Thank you all for your thorough preparation and arguments. Having reviewed the relevant pleadings, case law, and having considered both the written and oral arguments of counsel, the Court finds the Petitioners do not have standing for the reasons discussed below.

**FACTS**

Petitioners Stan and Jane Seymour live at 5942 Coleman Rd., Roanoke, Virginia 24018. The Seymours also own the property and residence located at 5960 Coleman Rd., Roanoke, Virginia 24018. Petitioners Adrian Maver and Blaine Creasy own and reside on property located at 5946 Coleman Rd., Roanoke, Virginia 24018, which is adjacent to the Seymour property. 5985 Coleman Road, LLC is the owner of the property located at 5985 Coleman Rd., Roanoke, Virginia 24018, access to which is only available by a recorded easement across the Seymour and Maver and Creasy properties.

**EXHIBIT F**

The Southwest Virginia Wildlife Center of Roanoke (“SWCV”) filed a Special Use Permit with the Roanoke County Department of Community Development to install a “raptor building,” more commonly known as an aviary, to rehabilitate large birds at 5985 Coleman Road. Coleman Road is a partially public and partially private drive. The SWCV is accessible only through Coleman Road and an easement granted by deed which traverses Petitioners’ properties. Petitioner, Stan Seymour, complained to the Zoning Administrator to stop the approval process. The Zoning Administrator replied to Seymour’s complaints by letters dated March 30 and May 17, 2018. The letters described, among other things, how a special use permit was the appropriate way to start the approval process for the aviary and that animals are not “boarded” at the Wildlife Center. Dissatisfied with the Zoning Administrator’s written explanations, Petitioners appealed to the Board of Zoning Appeals (BZA). The Board of Zoning Appeals dismissed the appeal on August 15, 2018, stating that Petitioners lacked standing because they are not aggrieved parties. The Board of Supervisors of Roanoke County ultimately granted the Special Use Permit, although it imposed additional requirements.

### ISSUE

Do Petitioners have standing?

### LEGAL STANDARD

“The purpose of requiring standing is to make certain that a party who asserts a particular position has the legal right to do so and that his rights will be affected by the disposition of the case.”<sup>1</sup>

A party who does not have an ownership interest in the subject property must satisfy a two-step test to have standing to challenge the BZA’s decision.<sup>2</sup>

“First, the complainant must own or occupy ‘real property within or in close proximity to the property that is the subject of’ the land use determination, thus establishing that it has a ‘direct, immediate, pecuniary, and substantial interest in the decision.’ Second, the complainant must allege facts demonstrating a particularized harm to ‘some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.’<sup>3</sup>

---

<sup>1</sup> *Goldman v. Landsidle*, 262 Va. 364, 371, 552 S.E.2d 67, 71 (2001).

<sup>2</sup> *See, e.g., Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38, 48 (2013).

<sup>3</sup> *Id.* (citation omitted)

### ANALYSIS

Petitioners claim they are aggrieved and have standing to challenge the Special Use Permit. The only access to the SVWC is by and through a deeded easement which traverses the Petitioners' properties. Petitioners own and occupy property within close proximity to the SVWC. The Seymours own and occupy one piece of property which shares a common property line with the SVWC. A second piece of property owned by the Seymours lies approximately 793 feet from the SVWC. The Maver and Creasy property is approximately 574 feet from the SVWC. Due to the fact that the easement across Petitioners' property serves as the only access to the SVWC, Petitioners allegedly have suffered particularized injury not shared by the general public. Petitioners allegedly are uniquely subject to increased traffic, dust, light and noise due to the granting of the Special Use Permit.

*Friends of the Rappahannock* is the controlling authority. The authorities cited by Petitioners have been superseded by *Friends of the Rappahannock*. In *Friends of the Rappahannock*, the Caroline County Board of Supervisors issued a permit to Black Marsh Farm, Inc., subject to thirty-three (33) enumerated conditions, to conduct a sand and gravel mining operation on a tract of land bordering the Rappahannock River.<sup>4</sup> Although the property was zoned for industrial use, the mining operation required a special use permit. Friends of the Rappahannock, a non-profit organization, along with six individual complainants, challenged the Board's land use decision to issue the permit. The plaintiffs' complaint claimed standing for each of the individual complainants who were all neighboring land owners. The plaintiffs listed four (4) vague concerns.<sup>5</sup> The court found that the concerns were not supported by facts and did not show a loss of any personal or property right different from that suffered by the public generally. The court found the plaintiffs lacked standing.

Petitioners here presented conclusory allegations regarding possible harm, but failed to articulate any tangible harm that would come out of the SVWC being located in close proximity to the Petitioners' property. The Supreme Court of Virginia has established that the Petitioners must meet "their burden to provide sufficient facts in their complaint."<sup>6</sup> Petitioners claim that the SVWC's easement across their property subjects Petitioners to increased traffic, dust, light and noise concerns, but there is no factual background to support these claims.<sup>7</sup> No factual evidence or background has been presented or established to support the allegations by Petitioners of harm. Further, no evidence has been presented that the construction of an additional raptor building would cause an increase in dust, light, noise, or other harm. As *Friends of the Rappahannock* states, while plaintiffs "presented conclusory allegations as to the possible harms, the general objections pled by the individual complainants present no factual background upon which an inference can be drawn that particular use of the property would produce such harms and thus

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<sup>4</sup> *Id* at 42.

<sup>5</sup> *Id* at 42-43.

<sup>6</sup> *Id* at 49.

<sup>7</sup> Compl. ¶¶ 29-30.

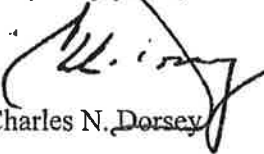
impact the complainants.”<sup>8</sup> Additionally, Petitioners failed to articulate the loss of some personal or property right belonging to the individual Petitioners different from that which the general public might suffer.

While it is undisputed by Respondents that Petitioners have met the first prong of *Friends of the Rappahannock*, the Petitioners lack the required particularized facts to establish the second prong. In order to meet the *Friends of the Rappahannock* second prong, Petitioners must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioners different from that suffered by the public generally.<sup>9</sup> Instead, Petitioner lists only generic problems that may occur with the heavier use of the easement for SVWC purposes. These generic problems are similar to those alleged by the plaintiffs in *Friends of the Rappahannock*, all of which the Supreme Court found insufficient to meet the particularized harm standard. Therefore, the Petitioners fail to meet the second prong of the *Friends of the Rappahannock* test, and do not have standing.

If Mr. Lubeck would draft an order, incorporating this opinion, and submit it for entry, after obtaining endorsements of all counsel, and preserving all objections, it would be appreciated.

With best regards, I am

Very truly yours,



Charles N. Dorsey

CND/dco

---

<sup>8</sup>*Id* at 49.

<sup>9</sup> *Id* at 48.



January 28, 2018

Mr. John Murphy  
Zoning Administrator, Roanoke County  
5204 Bernard Drive  
Second Floor  
Roanoke, Virginia 24018

In Re: Southwest Virginia Wildlife Center (SVWC), 5985 Coleman Road  
Tax Parcel ID: 096.08-02-03.00-0000

Dear Mr. Murphy:

Thanks for meeting with me to review some of the Zoning Ordinances regarding the Wildlife Center (SVWC). I think saving and rehabilitating wildlife is a noble cause. However, I would like for SVWC to follow the same Code as the rest of the citizens. After considering the information provided carefully, I have additional questions and comments.

### **Nonconforming Use**

Please consider all of the Code in Section 30-23. By definition the land is Nonconforming because it is completely landlocked and has no frontage on a Public Right-of-Way.

### **Zoning**

I would like to see the Zoning permit required under this Section for the April 2015 Occupancy.

### **SEC. 30-10. - CERTIFICATES OF ZONING COMPLIANCE.**

(A) A certificate of zoning compliance shall be required for any of the following:

1. Occupancy or use of a building hereafter erected, enlarged or structurally altered.
- ~~2. Change in the use or occupancy of an existing building.~~

The criteria to determine the front Setback line was parallel to the Right-of-Way. It is in fact a driveway by definition.

**Driveway:** A private roadway providing access for vehicles to a parking space, garage, dwelling, or other structure.

**Right-of-way:** A legally established area or strip of land, either public or private, on which an irrevocable right of passage has been recorded, **and** which is occupied or intended to be occupied by a street, utility service, water main, sanitary or storm sewer main, or other similar use.

The easement in use was given in a family subdivision as a driveway to a private residence. The commercial use also creates an Overburden of Use on an easement by Virginia Statute, but that is a Civil matter.

The Use of Property under County Code, you stated it was a Veterinary/Clinic.

***Veterinary hospital/clinic:*** Any establishment rendering surgical and medical treatment of animals. Boarding of animals shall only be conducted indoors, on a short term basis, and shall only be incidental to such hospital/clinic use, unless also authorized and approved as a commercial kennel.

The SVWC as a part of their stated use on their Website and Facebook pages says they provide veterinary care and rehabilitation of wildlife. SVWC does veterinary care but some of the animals have been there for months. The second sentence restricts it by adding "boarding of animals shall only be indoors". SVWC does engage in the long term care of different animals and provides continuous overnight boarding in cages outside for months at a time. The inclusion of "on a short term basis" adds an additional restriction to Use under that definition. The SVWC stated Use and historical actions clearly indicate a Use higher than the Code Definition for a Veterinary Clinic in a Residential Area.

***Kennel, commercial:*** The boarding, breeding, raising, grooming or training of two (2) or more dogs, cats, or other household pets of any age not owned by the owner or occupant of the premises, and/or for commercial gain.

The typical use for this service is usually a week or two, certainly not months for a single animal. You mentioned that the Vet Clinic was intended for dogs and cats not all forms of wildlife. However, the Code clearly states "animals" in one instance and "dogs & cats" specifically in another. This would lead me to believe that Clinic engaged in the boarding of animals, any animals, automatically kicks it up to the higher Use restrictions.

Additionally, it appears that SVWC should fall under the Commercial Kennel Use because they have numerous cages outside for their animal patients, some of which exceed 250 square feet. After an impromptu inspection of 3 Veterinary Clinics, a Cat Vet and an Avian Clinic, none of these facilities had any outside accessory structures which is consistent with Code. SVWC literally appears to be building a zoo.

If you look at the Use and Design Standards Definition;

**Sec. 30-85-18. - Kennel, Commercial.**

**(A) General standards:**

1. *Each commercial kennel shall install and operate a kennel silencer.*
2. *Animal waste shall [be] disposed of in a manner acceptable to the department of health.*
3. *Crematoria or land burial of animals in association with a commercial kennel shall be prohibited.*

**(B) Additional standards in the AG-3, AG-1, AR and AV districts:**

1. *The minimum area required for a commercial kennel shall be two (2) acres.*
2. *All facilities associated directly with the commercial kennel, whether indoors or outdoors, shall be set back a minimum of one hundred (100) feet from any property line.*
3. *When adjoining a residential use type, a Type C buffer yard in accordance with Section 30-92 shall be provided along the property line which adjoins the residential use type.*
4. *The site shall front on and have direct access to a publicly owned and maintained street.*

**(C) Additional standards in the C-2 district:**

1. *All outdoor runs, training areas and pens associated with a commercial kennel shall be set back a minimum of one hundred (100) feet from any property line.*

It is absolutely clear that Code never intended for a facility like this to be nestled in a residential area. Even in the difficult Commercial C-2 Zoning, the restrictions are tough. "Training areas" and "Pens" are

always more than 100 feet from any property line, which is the benchmark for all Zoning districts in the County.

#### **SEC. 30-14. - AMENDMENTS TO ORDINANCE.**

- (C) *The administrator shall not accept any amendment application for a lot or parcel that does not comply with the minimum lot area, width, or frontage requirements of the requested zoning district. In such situations, ~~the applicant shall first seek a variance~~ from the board of zoning appeals. If a variance is granted, the administrator shall thereafter accept the amendment application for the consideration of the commission and board.*

Additionally,

#### **SEC. 30-24. - BOARD OF ZONING APPEALS.**

*Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and:*

- 1. The property interest for which the variance is being requested was acquired in good faith and any hardship was ~~not created by the applicant~~ for the variance;*

As you stated, you are not aware of any zoning permits for any of the pens some of which may be large enough for a building permit as well. I have heard on the Radio that SVWC is soliciting for donations to erect a very large raptor flight cage. It was stated in one web listing that it would be 100ft in length. A footprint is shown in the last picture on their CrowdRise funding page. If it is 100ft long, scaling shows it to be over 80ft wide. With approximately 4,880 sq ft, this would make it significantly larger than the Primary structure of 2,490 sq ft.

In our meeting, I told you that I have made more than 5 attempts to contact them and even dropped an information packet with a cover note in the mailbox. We had 3 conversations prior to the packet delivery, but since then they have been ignoring my attempts to contact. You also know that I did not raise the issue with zoning but now that it is active I am compelled to see it to an end. Please let me know your decision on the zoning issue with logic, the category they filed under to open the Clinic in 2015, and copies of any zoning/building permits they submitted for approval with dates.

Respectfully,

Stan Seymour

CC: Gregory T. Stours, Esq.

Wharton, Aldhizer & Weaver.

February 27, 2018

Mr. John Murphy  
Zoning Administrator, Roanoke County  
5204 Bernard Drive  
Second Floor  
Roanoke, Virginia 24018

In Re: Southwest Virginia Wildlife Center (SVWC), 5985 Coleman Road  
Tax Parcel ID: 096.08-02-03.00-0000

Dear Mr. Murphy:

Thanks for meeting with me to review some of the Zoning Ordinances regarding the Wildlife Center (SVWC). I think saving and rehabilitating wildlife is a noble cause. However, I would like for SVWC to follow the same Code as the rest of the citizens. After considering the information provided carefully, I have additional questions and comments. I have reached out to SVWC on several occasions to no avail.

### **Nonconforming Use**

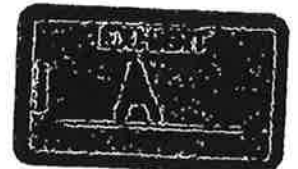
Please consider all of the Code in Section 30-23. By definition the land is landlocked and has no frontage on a Public Right-of-Way.

### **Zoning**

I would like to see the Zoning permit required under this Section for the April 2015 Occupancy.

The Use of Property under County Code as you stated it was a Veterinary/Clinic. The County Code requires animals to be kept indoors and if boarded indoors it must meet the zoning requirements for a Commercial Kennel.

Additionally, it appears that SVWC should fall under the Commercial Kennel Use because they have numerous cages outside for their animal patients, some of which exceed 250 square feet if you look at the Use and Design Standards Definition;



## **SetBacks**

I remain in disagreement with your evaluation of the Front, Side and Rear setback lines. The code is written on the assumption that Properties are built on a State Maintained Roadway. This property is landlocked, has no road frontage, and is defined at best as a "pipe stem" property. Again the Code is written as if there is a paved road.

Code is very clear in the definition of the rear lot. It is the "Point farthest from the right of way". Reviewing the plat for this property clearly has only one point that is furthest away. The code also states that rear lot is opposite the front lot.

In our meeting, I told you that I have made more than 5 attempts to contact them and even dropped an information packet with a cover note in the mailbox. We had 3 conversations prior to the packet delivery, but since then they have been ignoring my attempts to contact. You also know that I did not raise the issue with zoning but now that it is active I am compelled to see it to an end. Please let me know your decision on the zoning issue with logic, the category they filed under to open the Clinic in 2015, and copies of any zoning/building permits they submitted for approval with dates.

Respectfully,

Stan Seymour

CC: Gregory T. St ours, Esq.  
Wharton, Aldhizer & Weaver.

Martha Hooker, Chair  
Roanoke County Board of Supervisors

Paul Mahoney, Chair  
Roanoke County Planning Commission

Donald E. Showalter  
 Glenn M. Hodge  
 Gregory T. St. Ours  
 Charles F. Hilton  
 Daniel L. Fitch  
 Thomas E. Ulrich  
 Stephan W. Milo  
 Humes J. Franklin, III  
 Jeffrey R. Adams

**WHARTON ALDHIZER & WEAVER<sup>PLC</sup>**  
**ATTORNEYS AT LAW**

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 Alexandra E. Humphreys  
 Lucas L. Pangle  
 Briana A. Stevens

*Reply to the Harrisonburg office*

FAX (540) 434-5502

WRITER'S DIRECT DIAL: (540) 438-5302  
 WRITER'S E-MAIL: JJOHNSON@WAWLAW.COM

March 23, 2018

Via US Mail and Email (PLUBECK@roanokecountyva.gov)

Peter S. Lubeck, Esq.  
 Senior Assistant County Attorney  
 County of Roanoke  
 5204 Bernard Dr.  
 Fourth Floor  
 Roanoke, VA 24018

Re: Development of Wildlife Center at 5985 Coleman Road  
 Permit Application #B-1800208

Dear Mr. Lubeck:

As you know, my firm represents landowners Stanley A. Seymour III and Jane L. Seymour. Mr. and Mrs. Seymour live in close proximity to property known as 5985 Coleman Road, tax map # 096.08-02-03.00, owned by 5985 Coleman Road LLC t/a Southwest Virginia Wildlife Center of Roanoke (the "SVWC Property"), located in the County of Roanoke. In response to your request of March 20, 2018 (the "Request"), this letter provides the County with reasons for the Seymours' opposition to further development of the SVWC Property. In your Request, you mentioned that Roanoke County staff members "do not know the reasons" for the Seymours' objections to the additional development of the SVWC Property. By way of enclosed Exhibit "A", I am including with this letter a copy of Mr. Seymour's correspondence to John Murphy dated February 27, 2018 in which Mr. Seymour sets forth some of his objections. My letter will provide you with a list of several apparent on-going issues concerning the SVWC Property, including additional issues not addressed in Mr. Seymour's February 27, 2018 letter.

By way of background, the Seymours own two nearby lots: (1) an improved lot known as 5942 Coleman Road, on which the Seymours' residence is situated ("Seymour Lot 1"), and (2) a second lot known as 5960 Coleman Road lying between Seymour Lot 1 and the SVWC Property ("Seymour Lot 2"). The SVWC Property's only access is over the public right of way known as Coleman Road shared with the public, including, but not limited to, the Seymours. The public portion of Coleman Road fronts the Seymours' residence on Seymour Lot 1 and comes to an end at a neighboring parcel owned by Adrian A. Maver and Blaine M. Creasy known as 5946 Coleman Road. Coleman Road then becomes a private road running from the private easement on Seymour Lot 2 to the SVWC Property. For further illustration, please find



Page 2  
Peter S. Lubeck, Esq.

enclosed herein as Exhibit "B" a picture labeling the physical features described in this paragraph.

The SVWC Property is zoned Agricultural/Residential or "AR". The facility residing on the SVWC Property is described as a wildlife rescue and rehabilitation facility operated by Southwest Virginia Wildlife Center of Roanoke (the "Clinic"). Mr. Seymour has inquired with County staff as to the official designation for use of the Clinic, but no one has been able to provide him with a satisfactory answer regarding the same. Indeed, a "wild life rescue center" use is not defined in the Roanoke County zoning ordinances ("Zoning Ordinance"). The Zoning Ordinance provides two categories of allowed uses within an AR district that deal with the treatment and boarding of animals. In order to be zoning compliant, the Clinic would need to be in conformance with one or both of: (a) a permissive "by right" commercial use of a "veterinary hospital/clinic" per Zoning Ordinance Sec. 30-34-2(A)(4); or (b) a specially permitted use of a "commercial kennel" per Zoning Ordinance Sec. 30-34-2(B)(3). County staff members have not provided Mr. Seymour with any approved special permits or variances, therefore, we must assume that the Clinic purports to permissively operate a "by right" commercial veterinary hospital/clinic use per Sec. 30-34-2(A) of Roanoke County Zoning Ordinance

Zoning Ordinance Sec. 30-29-5 defines a "veterinary hospital/clinic" as "any establishment rendering surgical and medical treatment of animals." Pursuant to said Zoning Ordinance, veterinary hospital/clinics may board animals, but such boarding "shall only be conducted indoors, on a short term basis, and shall only be incidental to such hospital/clinic use, unless [the establishment is] also authorized and approved as a commercial kennel." Mr. Seymour's concern is that the Clinic's use has exceeded the defined use for which the Clinic has been approved to operate under the Zoning Ordinance. This concern is based on the following:

First, the Clinic is currently boarding animals outdoors contrary to Zoning Ordinance Sec. 30-29-5. As mentioned previously, pursuant to the Zoning Ordinance, veterinary hospital/clinics which are not authorized and approved as "commercial kennels" may not board animals outdoors. Moreover, by virtue of Construction Permit Application #B-1800208, the Clinic is currently requesting a permit to build an additional outdoor "raptor cage" for the boarding of raptors in further violation of said Zoning Ordinance.

Second, Mr. Seymour believes that some of the outdoor boarding facilities described above were built recently without proper building permits.

Third, the Clinic's status as a commercial veterinary hospital/clinic per Zoning Ordinance Sec. 30-34-2(A)(4) is questionable. On the Clinic's own website, the Clinic is described as a charitable or civic organization devoted to the rehabilitation of wildlife. According to the Clinic's mission statement on its website, the Clinic's purposes do not conform to an allowable commercial veterinary hospital/clinic under the Zoning Ordinance.

Fourth, the Clinic does not appear to meet the definition of a "commercial kennel" either. Pursuant to Zoning Ordinance 30-29-5, a "commercial kennel" is defined as the "boarding, breeding, raising, grooming or training of two (2) or more *dogs, cats, or other household pets* of any age not owned by the owner or occupant of the premises, and/or for commercial gain." Because the Clinic does not purport to board "dogs, cats, or other household pets", the Clinic cannot be defined as a "commercial kennel". Moreover, the above notwithstanding, even if the

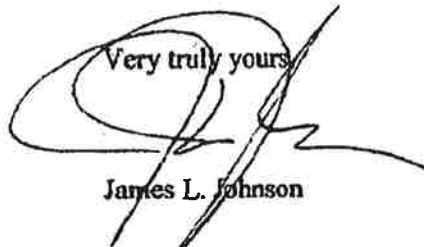
Page 3  
Peter S. Lubeck, Esq.

Clinic is categorized as a commercial kennel, commercial kennels must (a) have been permitted by a special use permit, (b) front a public right of way per Zoning Ordinance Sec. 30-85-18 (B)(4), and (c) be further subject to additional standards provided in Zoning Ordinance Sec. 30-85-18. The SVWC Property is not currently subject to or in compliance with the above standards.

Lastly, the Seymours also are concerned that the Clinic may be violating the private ingress/egress easement over Seymour Lot 2. When the private easement was originally granted, the SVWC Property was being used for merely residential purposes. The instrument granting the private easement does not contemplate the easement's current uses.

Taking the above information to its logical conclusion, the Clinic does not appear to conform with any specific allowable commercial or civic use (permitted or otherwise) provided for under the Zoning Ordinance. As such, any request for construction, administrative, or zoning permits should be denied. Additionally, the Seymours believe the potential zoning violations discussed herein should be investigated and dealt with by the County.

Given the facts stated above, please accept this as a formal notice and request to all departments within the Roanoke County Planning and Zoning Division, including the Planning Commission and the Board of Zoning Appeals, to take the necessary steps to deny any pending or future plan requests to develop the SVWC Property until such time the SVWC Property can be found to be conformance with the Zoning Ordinance.

Very truly yours,  
  
James L. Johnson

JLJ/kr  
18003436

February 27, 2018

Mr. John Murphy  
Zoning Administrator, Roanoke County  
5204 Bernard Drive  
Second Floor  
Roanoke, Virginia 24018

In Re: Southwest Virginia Wildlife Center (SVWC), 5985 Coleman Road  
Tax Parcel ID: 096.08-02-03.00-0000

Dear Mr. Murphy:

Thanks for meeting with me to review some of the Zoning Ordinances regarding the Wildlife Center (SVWC). I think saving and rehabilitating wildlife is a noble cause. However, I would like for SVWC to follow the same Code as the rest of the citizens. After considering the information provided carefully, I have additional questions and comments. I have reached out to SVWC on several occasions to no avail.

### **Nonconforming Use**

Please consider all of the Code in Section 30-23. By definition the land is landlocked and has no frontage on a Public Right-of-Way.

### **Zoning**

I would like to see the Zoning permit required under this Section for the April 2015 Occupancy.

The Use of Property under County Code as you stated it was a Veterinary/Clinic. The County Code requires animals to be kept indoors and if boarded indoors it must meet the zoning requirements for a Commercial Kennel.

Additionally, it appears that SVWC should fall under the Commercial Kennel Use because they have numerous cages outside for their animal patients, some of which exceed 250 square feet if you look at the Use and Design Standards Definition;



**SetBacks**

I remain in disagreement with your evaluation of the Front, Side and Rear setback lines. The code is written on the assumption that Properties are built on a State Maintained Roadway. This property is landlocked, has no road frontage, and is defined at best as a "pipe stem" property. Again the Code is written as if there is a paved road.

Code is very clear in the definition of the rear lot. It is the "Point farthest from the right of way". Reviewing the plat for this property clearly has only one point that is furthest away. The code also states that rear lot is opposite the front lot.

In our meeting, I told you that I have made more than 5 attempts to contact them and even dropped an information packet with a cover note in the mailbox. We had 3 conversations prior to the packet delivery, but since then they have been ignoring my attempts to contact. You also know that I did not raise the issue with zoning but now that it is active I am compelled to see it to an end. Please let me know your decision on the zoning issue with logic, the category they filed under to open the Clinic in 2015, and copies of any zoning/building permits they submitted for approval with dates.

Respectfully,

Stan Seymour

CC: Gregory T. Stours, Esq.  
Wharton, Aldhizer & Weaver.

Martha Hooker, Chair  
Roanoke County Board of Supervisors

Paul Mahoney, Chair  
Roanoke County Planning Commission

Exhibit "B"



1:4,131  
 0 0.035 0.07 0.14 m  
 0 0.05 0.1 0.2 km  
 Private Easement  
 Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNR/Airphoto, USDA/GlobePho, USDA, AeroGRID, IGN, and the GIS User Community

— private easement

- March 23, 2018
- 1 5942 Coleman Road, Tax Parcel ID 096.08.02.06.00-0000. Owned by Stanley A. Seymour III and Janis E. Seymour
  - 2 5940 Coleman Road, Tax Parcel ID 096.08.02.04.00-0000. Owned by Stanley A. Seymour III and Janis E. Seymour
  - 3 5946 Coleman Road, Tax Parcel ID 096.08.02.06.01-0000. Owned by Adrian A. Maves and Elaine M. Creasy
  - 4 5985 Coleman Road, Tax Parcel ID 096.08.02.01.00-0000. Owned by 5985 COLEMAN ROAD LLC.

All information based on County of Roanoke, VA Tax Parcel Viewer online system.

**WARNER & RENICK**  
PLC  
*Attorneys at Law*

G. Harris Warner, Jr., Esq.

P.O. Box 21584  
4648 Brambleton Avenue, SW  
Roanoke, Virginia 24018

*Staff*  
Melissa M. McKnight  
Carol C. Martin

540-777-4600 / Fax 540-777-4700

July 10, 2018

VIA EMAIL TO [PLUBECK@ROANOKECOUNTYVA.GOV](mailto:PLUBECK@ROANOKECOUNTYVA.GOV)  
AND FIRST CLASS MAIL

Peter S. Lubeck  
Senior Assistant County Attorney  
County of Roanoke  
5204 Bernard Drive, 4<sup>th</sup> Floor  
Roanoke, Virginia 24018

**Re: *Southwest Virginia Wildlife Center***  
***Pending Administrative Appeals to the Board of Zoning Appeals***

Dear Peter:

As you are aware, we represent Adrian Maver and Blaine Creasy, as appellants in the above-referenced appeals. Greg St. Ours and Jim Johnson with Wharton, Aldizer & Weaver, PLC, represent the co-appellants, Stan and Jane Seymour. The purpose of this letter, which is being submitted on behalf of all appellants, is to provide you with a list of our clients' concerns regarding the operations of the Southwest Virginia Wildlife Center ("SVWC") at the property located at 5985 Coleman Road in Roanoke County. Specifically, those concerns are as follows:

1. The location of improvements on the subject property, including existing and proposed structures/cages, outside of applicable setback requirements.
2. The absence of adequate landscaping buffers along common boundary lines and along the access easement adjacent to the Maver/Creasy property (the "Right-of-Way").
3. The volume of traffic on the Right-of-Way. The Right-of-Way is an appurtenant easement benefitting only the property utilized by SVWC. During the month of June 2018, the number of round trips to and from the SVWC in a single day ranged between 33 and 78.
4. The speed of traffic on the Right-of-Way. The Right-of-Way consists of a graveled, single-lane 476 foot long (less than 1/10 of a mile) roadway adjacent to the Maver/Creasy property. The speed of some vehicles on the Right-of-Way is estimated to be between 40-45 mph.

Peter S. Lubeck  
July 10, 2018  
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5. SVWC's long-term sheltering of animals without being subjected to the requirements imposed upon a commercial kennel, as that term is defined in the County Zoning Ordinances.
6. SVWC's placement of signage on adjacent parcels or within the Right-of-Way.
7. Maintenance of the Right-of-Way.
8. Disposal of carcasses, of medical and biological wastes, and of chemicals and hazardous substances to meet health and safety requirements and concerns and not by placing in curbside trash, placing onto or releasing into the land or air, or flushing or draining into septic fields.

Our hope is that the foregoing list of concerns will facilitate the pending settlement discussions. Of course, if you have questions regarding the list or need additional information, please do not hesitate to contact me.

Your consideration and assistance are very much appreciated.

Sincerely,

**WARNER & RENICK** PLC



G. Harris Warner, Jr.

GHWjr/m<sup>3</sup>

cc: *Adrian Maver and Blaine Creasy (via email)*  
*Greg St. Ours (via email)*  
*Jim Johnson (via email)*