

#9

DEPARTMENT OF PLANNING
STAFF REPORT

BOARD OF SUPERVISORS PUBLIC HEARING

DATE OF HEARING: June 7, 2010
SPMI 2009- 0007, AGSI Archer Property
DECISION DEADLINE: July 31, 2010
ELECTION DISTRICT: Catoctin

PLANNER: John Merrithew

DIRECTOR: Julie Pastor

EXECUTIVE SUMMARY

Matthew D. and Jennifer K. Archer of Lovettsville, Virginia, have submitted a minor special exception per Sections 2-102 and 5-614, of the Revised 1993 Zoning Ordinance to permit a small business use in the AR-1 (Agricultural Rural-1) zoning district. The property consists of a single family detached house on 5.6 acres in the Waterford View Estates subdivision on Milltown Road. The proposed business, which distributes computer software and hardware, is an office-based service under the Ordinance, and would occupy approximately 1,000 square feet in this existing structure.

The minor special exception is needed because the property is less than ten (10) acres and because the applicant wishes to employ six non-resident people where the Ordinance permits 3 non-resident employees.

RECOMMENDATION

Staff finds that the application does not comply with the land use and rural policies of the Revised General Plan or the purpose and intent of the Zoning Ordinance. Staff cannot support the Applicant's request. The Planning Commission does not review or make recommendations on SPMI applications.

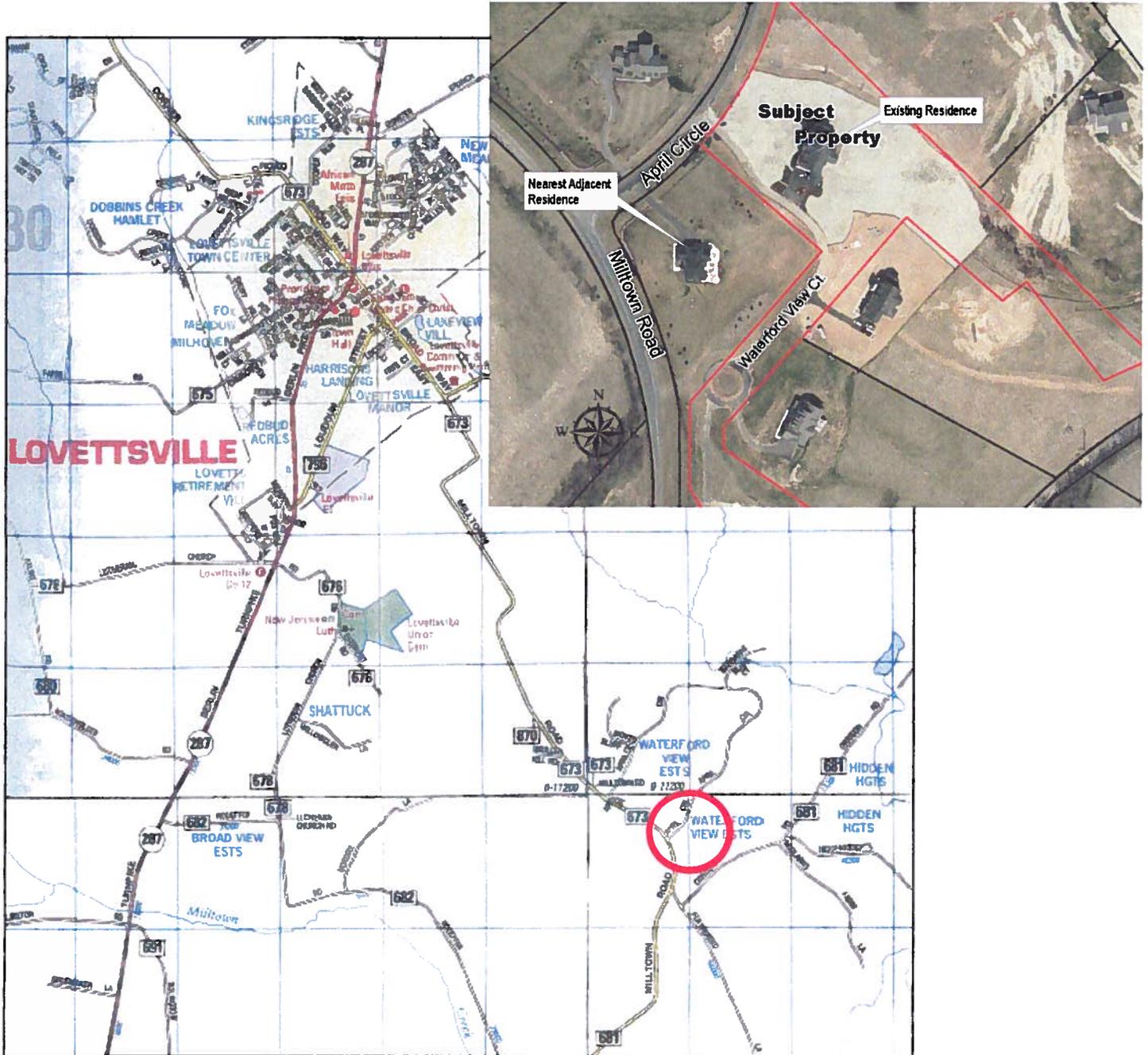
SUGGESTED MOTIONS

1. I move that the Board of Supervisors forward SPMI 2009-0007, AGSI Archer Property, to the July 7th, 2010 Business Meeting for action.

OR

2. I move an alternate motion.

VICINITY MAP



Directions: From Leesburg proceed west on Harry Byrd Highway (Route 7) approximately 3.5 miles to Clarkes Gap and the intersection with Charlestown Pike (Route 9). Proceed west on Route 9, then north on Clark Gaps Road (Route 662) to and through the village of Waterford (approximately 3 miles). Upon exiting Waterford, turn left (west) onto Old Wheatland Road, and then turn right (north) onto Milltown Road (Route 681). Follow Milltown approximately 4.5 miles to April Circle. Turn right onto April Circle; property is accessed by first shared access drive on the right.

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Applicant's residence and business location.

I. APPLICATION INFORMATION

APPLICANT: AGSI, LLC
Matt Archer, VP
13276 April Circle
Lovettsville, VA 22180
540-882-3535

OWNER: Matthew D. & Jennifer K. Archer
13276 April Circle
Lovettsville, VA 20180
540-882-3535
Email: matt@agsisystems.com

REPRESENTATIVE: Same as Applicant

PROPOSAL: A Minor Special Exception per Section 2-102 and 5-614(D), to allow a small business and to modify the applicable standards to allow up to (6) six non-resident employees on less than 10 acres in the AR-1 zoning district.

LOCATION/ADDRESS: 13276 April Circle, Lovettsville, VA 20180

TAX MAP/PARCEL: Tax Map—/18//17/////6/ MCPI— 336-40-7208-000

ZONING: AR-1

RESIDENTIAL UNITS: N/A

NON-RES. SQUARE FOOTAGE: Approximately 1,000 SF of a 6,000-square foot residence

SURROUNDING:	<u>ZONING</u>	<u>EXISTING & PLANNED LAND USE</u>
NORTH	AR-1	Residential/Single Family
SOUTH	AR-1	Residential/Single Family
EAST	AR-1	Residential/Single Family
WEST	AR-1	Residential/Single Family

ELECTION DISTRICT: Catoctin

II. SUMMARY OF DISCUSSION	
Topic/Issue Area	Issues Examined and Status
Comprehensive Plan	<ul style="list-style-type: none"> • Intensity of use is not appropriate for this property/location. UNRESOLVED.
Zoning	<ul style="list-style-type: none"> • Identify parking, one space per non-resident employee. UNRESOLVED, 3 garage spaces proposed, three on driveway. • Various notations on the SPEX plat. RESOLVED, see revised SPEX plat.
Transportation	<ul style="list-style-type: none"> • Commercial entrance standards for driveway. ISSUE RESOLVED, • Provide number of employees who will be driving to the property. RESOLVED – the number of trips expected from use do not require road improvements or mitigation.
Health	<ul style="list-style-type: none"> • Details on number of persons in house. RESOLVED – the proposed number of employees and the residents identified can be supported by the existing septic system.

III. FINDINGS FOR DENIAL

1. The proposed small business use is incompatible with the land use and rural policies of the Revised General Plan.
2. The proposed business is inconsistent with the Purpose and Intent of Section 5-614 of the Revised 1993 Zoning Ordinance.
3. The intensity of the proposed use is incompatible with the surrounding large lot residential uses in the Waterford View Estates subdivision.
4. The employee vehicle trips and anticipated number of commercial deliveries is incompatible with the residential subdivision.
5. The application to modify the current Zoning Ordinance standards of Section 5-614 fails to achieve an innovative design, improve upon the existing regulations, preserve the County's historic or archeological heritage, or otherwise exceed the public purpose of the existing regulation.
6. The requested intensity of six (6) non-resident employees would require fifty (50) or more acres according to Section 5-614(E)(1)(d).

IV. CONDITIONS OF APPROVAL

Should the Board of Supervisors wish to approve the application or allow the applicant time to relocate, the Conditions below propose to offer the applicant a transition period of three months in which to relocate the business. The applicant is not in agreement with the Conditions.

1. Location – The proposed use shall be conducted entirely inside the residence at 13276 April Circle, Lovettsville, Virginia 20180.
2. Number of Employees – The proposed use shall be limited to six (6) non-resident employees.
3. Days/Hours of Operation – The approved use shall only operate Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m.
4. Package Deliveries/Pick-ups – Commercial delivery and pick-up of items shall occur between 10:00 AM and 2:00 PM. Delivery vehicles shall not park on the shared driveway. Delivery vehicles with more than two axles are prohibited from making deliveries to the property via the shared driveway. It is the applicant's responsibility to inform the companies of these restrictions.
5. Employee Vehicles – No employee or resident vehicle shall park on the shared access drive serving the property.
6. Termination of Use - This minor special exception shall terminate without further action of the Board of Supervisors three (3) months after the approval of this application.

V. PROJECT REVIEW

A. CONTEXT

The Applicant is requesting a minor Special Exception (SPMI) to operate a small business with up to six (6) non-resident employees from a private residence located within the Waterford View Estates subdivision southeast of the Town of Lovettsville. The 6,178 square foot residence sits on a 5.6 acre property surrounded by other similar sized single-family homes on lots ranging from three-to-six acres. The lot configuration is unusual in that the residence sits on a 2.7 acre pad and the remaining 3 acres consists of long narrow extensions wrapping around neighboring parcels. The nearest residence is approximately 210 feet to the south/southeast of the subject property. The property accesses April Circle by an easement shared with three (3) other properties. The business occupies one room in the basement of the house and equipment is stored in the garage. The business involves receiving and resending computer equipment via delivery vehicles including tractor trailers.

In March 2009, the Applicant received a permit to operate a home occupation (allowing one non-resident employee) on the property. In May, after receiving a complaint, staff found the business was not in conformance with the Home Occupation permit and advised that the business required a special exception.

B. SUMMARY OF OUTSTANDING ISSUES

A small business use with up to six (6) non-resident employees on a 5.6 acre parcel does not comply with the land use and rural policies of the Revised General Plan or meet the purpose of the small business standards of the Zoning Ordinance.

The scale of the proposed ordinance modification doubles the number of permitted employees but does not meet or exceed the public purpose of the current standard.

There is insufficient space for parking and loading without parking on the shared driveway.

C. OVERALL ANALYSIS

LAND USE

The subject property is governed under the Rural policies of the Revised General Plan (Plan). The policies of the Revised General Plan support the establishment of uses in the Rural Policy Area that preserve the rural character of the landscape, that are compatible with the dominant rural agricultural land use pattern, and that promote opportunities for the expansion of the County's rural economic as well as environmental goals.

Plan policies support small businesses within the Rural Policy Area that are compatible in scale, use, and intensity with the surrounding land uses. The Zoning Ordinance offers more specific guidance, stating that the uses approved under the provisions of this section shall be temporary, intended to help start new businesses. Once a small business needs to expand its area, increase the number of employees, or attracts commercial and customer traffic beyond the capacity and character of the rural area, the business should relocate to a location appropriately zoned for commercial, business or employment uses. The AGSI business does not fall under the category of new business, having been established in West Virginia, and the proposal for six employees is an expansion of the existing business. The business does not attract customers to the site but deliveries occur on a regular basis and include the occasional tractor-trailer delivery. Since January the applicant estimates up to 3 deliveries per day.

The subject property is located in a rural subdivision (Waterford View Estates) where the nearest adjoining homes are located over 200' to the south. The entire residential subdivision, comprised of 48 lots, was developed by-right in 2002 through the provisions of the A-3 zoning district. A search of County records indicates three (3) other properties within the subdivision have "home occupations" (two interior decorators and a public relations firm).

The owners of the subject property currently have a Home Occupation Permit, which limits the business to one employee in addition to the residents. The applicant is in violation of the Ordinance and because of that, requested this Minor Special Exception to operate as a small business with originally five (5) but now six (6) non-resident employees on the property.

The Plan anticipates that as small home-based businesses located in the Rural Policy Area increase in size and number of employees, they will relocate to other properties within one of the existing towns and villages where the presence of adequate public facilities (water and wastewater), zoning (commercial), transportation (roadways and parking) and land resources exist to support non-residential activities.

Staff finds that the proposed scale and intensity of use, with up to six (6) non-resident employees on the subject property, is not compatible with the surrounding residential uses and rural residential character of the existing subdivision. Given the location of the property and the number of employees and vehicular trip generation (employees and deliveries) associated with the business use on the subject property, the proposed business use may be more appropriately located within the towns or villages where the use would be compatible with the dominant land-use pattern.

Should the Board wish to approve the application to allow the applicant time to relocate, staff has included a Condition of Approval that the use would expire after a period of three (3) months.

ZONING

This application is being processed as a Minor Special Exception pursuant to Table 2-102 of the Revised 1993 Loudoun County Zoning Ordinance, which lists *Small Business* as a use permitted in the AR-1 zoning district either by-right or with an approved minor special exception, subject to the additional regulations contained in Section 5-614 of the Ordinance. Section 5-614 stipulates that uses approved under these provisions shall be considered temporary for starting new businesses. Once a small business needs to expand its area, number of employees, or commercial and customer traffic beyond the capacity and character of the rural area, the business shall relocate to a location appropriately zoned for commercial, business or employment uses.

The Ordinance also states that expanding businesses which initially located in rural areas under the provisions of this Section, must locate in the County's industrial and commercial zoning districts where they will not adversely impact residential neighborhoods or agricultural activities.

AGSI is not a start-up business having previously received a permit to operate a home occupation. A Zoning Violation has been issued to the property owners due to a violation of the approved Home Occupation permit, allowing only (1) one non-resident employee at the home. Staff has suspended enforcement of the Zoning Violation until the Board takes action on the SPMI application.

Section 5-614(E)(1)(b) states that small businesses on parcels between 3 and 10 acres in size are permitted to have a maximum of three (3) non-resident employees. The applicant is requesting a modification of this Section, to allow up to six (6) non-resident employees on the premises. The requested intensity of six (6) non-resident employees normally requires fifty (50) or more acres.

Staff is generally concerned about the possible precedent that approval of this application could create. Such an intense use amidst a residential community could lead to future requests of a similar disruptive and dangerous nature.

HEALTH

The proposed use will utilize an alternative on-site sewage disposal system sized for five (5) bedrooms, which translates to a daily use of 750 gallons per day. Currently, the applicant and his wife and child reside at the house, which equates to a flow of 225 gallons per day, leaving 525 gallons of capacity available. The six (6) full-time employees who do not live in the house would account for 200 gallons per day, for a total demand of 425 gallons per day or 56% of the available capacity; within acceptable limits for the existing drain field and well.

TRANSPORTATION

34 daily vehicle trips would be generated from the site, including 24 trips from six (6) non-resident employee vehicles and 10 residential trips. The original submission proposed five (5) non-resident employees and proposed that parking be provided by four garage spaces. Since then the number of employees has risen to six (6). It has been determined that two garage bays are occupied by equipment storage and the owner's vehicle. This leaves two garage spaces and four driveway spaces available for employees and no defined loading area.

The proposed expansion clearly exceeds the capacity of the lot to accommodate both employee parking and daily truck deliveries. The resulting need for cars or trucks to park on the shared driveway during deliveries creates potential access issues for other residents on the driveway. The driveway is not wide enough for two vehicles to easily pass. The property also lacks maneuvering room for trucks, requiring they back up the shared driveway to the house. The applicant has not provided a record of the delivery schedule but estimates one to three deliveries per day since January 2010. These deliveries include tractor trailer deliveries.

The additional trips generated by the proposed use do not necessitate any roadway improvements or physical mitigation measures to the public road network.

D. ZONING ORDINANCE CRITERIA FOR APPROVAL

Section 6-1310 of the Loudoun County Zoning Ordinance states "In considering a special exception application, the following factors shall be given reasonable consideration. The Applicant shall address all the following in its statement of justification or special exception plat unless not applicable, in addition to any other standards imposed by this Ordinance":

Standard *Whether the proposed special exception is consistent with the Comprehensive Plan.*

Analysis The intensity of the proposed use makes the application inconsistent with several policies of the Revised General Plan regarding small businesses in the Rural Policy Area. The proposed use is not compatible with the dominant rural residential land use pattern within the Waterford View Estates subdivision because of the associated traffic.

Standard *Whether the proposed special exception will adequately provide for safety from fire hazards and have effective measures of fire control.*

Analysis The proposed use does not propose any new construction, and does not include activities not otherwise associated with the residential use or a legal home occupation use on the property.

Standard *Whether the level and impact of any noise emanating from the site, including that generated by the proposed use, negatively impacts the uses in the immediate area.*

Analysis The proposed use itself will not create any noise emanating from the residence, as the business would be contained within a dedicated workspace in the basement. Vehicles entering/exiting the property could create some noise, as could delivery trucks serving the business use.

Standard *Whether the glare or light that may be generated by the proposed use negatively impacts uses in the immediate area.*

Analysis The proposed use will generate no light or glare impacts. No business related lights are proposed.

Standard *Whether the proposed use is compatible with other existing or proposed uses in the neighborhood, and adjacent parcels.*

Analysis The biggest apparent impact of the use is the delivery trucks and employee cars using the shared driveway. The projected 34 trips per day for employees and residents is three times the typical residential traffic volume. The number of daily deliveries is unknown. The proposed intensity is not consistent with the established large lot residential uses in a rural setting. The site is poorly situated to minimize the impact of the

additional traffic. Access is by a narrow shared driveway, the lot is setback a considerable distance from April Circle, and the lot configuration does not offer any significant distance from adjacent houses.

Standard *Whether sufficient existing or proposed landscaping, screening and buffering on the site and in the neighborhood to adequately screen surrounding uses.*

Analysis The proposed use will be entirely within the existing residence. There is no visual screening separating the parking from surrounding properties.

Standard *Whether the proposed special exception will result in the preservation of any topographic or physical, natural, scenic, archaeological or historic feature of significant importance.*

Analysis The proposed use will be within the existing residence, and there will be no impact on these features.

Standard *Whether the proposed special exception will damage existing animal habitat, vegetation, water quality (including groundwater) or air quality.*

Analysis The proposed use will be entirely within the existing residence, and there will be no impact on these features.

Standard *Whether the proposed special exception at the specified location will contribute to or promote the welfare or convenience of the public.*

Analysis The proposed use neither contributes to nor promotes the welfare or convenience of the public. It does provide employment for several County residents.

Standard *Whether the traffic expected to be generated by the proposed use will be adequately and safely served by roads, pedestrian connections and other transportation services.*

Analysis The existing public road network can accommodate the expected traffic, and no improvements are necessary. However, maneuvering or parking delivery vehicles particularly tractor trailers on the shared driveway may impact traffic movement within the neighborhood.

Standard *Whether, in the case of existing structures proposed to be converted to uses requiring a special exception, the structures meet all code requirements of Loudoun County.*

Analysis The existing home has sufficient space for the use in the basement.

Standard *Whether the proposed special exception will be served adequately by essential public facilities and services.*

Analysis The existing home is served by all necessary public facilities and services.

Standard *The effect of the proposed special exception on groundwater supply.*

Analysis No effects on groundwater supply are expected; the on-site septic system has adequate capacity to serve the needs of the six non-resident employees that would come to the property for work five days a week.

Standard *Whether the proposed use will affect the structural capacity of the soils.*

Analysis There is no new construction or land disturbance related to the proposed use.

Standard *Whether the proposed use will negatively impact orderly and safe road development and transportation.*

Analysis Employee traffic from the use can be accommodated by the road infrastructure. Package delivery/pick-up vehicles may create bottlenecks on the shared driveway and on April Circle.

Standard *Whether the proposed special exception use will provide desirable employment and enlarge the tax base by encouraging economic development activities consistent with the Comprehensive Plan.*

Analysis The proposed use will provide seven (7) full-time jobs, including the resident-owner.

Standard *Whether the proposed special exception considers the needs of agriculture, industry, and businesses in future growth.*

Analysis The property, and neighborhood, is an established residential community. The use would occur within a residence, with no impact on agriculture.

Standard *Whether adequate on and off-site infrastructure is available.*

Analysis The property is served by adequate on and off-site infrastructure.

Standard *Any anticipated odors which may be generated by the uses on site, and which may negatively impact adjacent uses.*

Analysis No odors associated with the proposed use are expected.

Standard *Whether the proposed special exception uses sufficient measures to mitigate the impact of construction traffic on existing neighborhoods and school areas.*

Analysis There is no construction proposed with the proposed use.

VI. ATTACHMENTS		
1. Review Agency Comments		PAGE #
a. Building & Development, Zoning Administration	(04/09/10, 12/08/09)	A-01
b. Planning Department, Community Planning	(03/30/10, 12/07/09)	A-05
c. Office of Transportation Services (OTS)	(04/07/10, 12/18/09)	A-11
d. Virginia Department of Transportation (VDOT)	(11/30/09)	A-19
e. Health Services	(04/12/10, 11/20/09)	A-20
2. Statement of Justification	(dated August 20, 2009 revised through March 16, 2010)	A-22
3. Applicant's Response to Referral Comments	(03/16/10)	A-27
4. Disclosure of Real Parties in Interest	(signed 07/23/09)	A-30
5. Minor Special Exception Plat set	(Dated March 16, 2010)	A-35