

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS  
MAY 2, 2019**

*Work Session  
1:15 p.m.  
Warren Green Building  
10 Hotel Street  
Warrenton, Virginia*

The Fauquier County Board of Zoning Appeals held a work session on Thursday, May 2, 2019, beginning at approximately 1:15 p.m. in the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mrs. Mary North Cooper; Mr. Lawrence G. McDade; and Mr. Benjamin Tissue, Jr. Also present were Mr. Adam Shellenberger, Chief of Planning; Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Ms. Mary Catherine Anderson, Senior Assistant County Attorney; Mr. Ben Holt, Planner II; Ms. Kara Krantz, Planner; and Mrs. Meredith Meixner, Planning Associate.

**INTRODUCTION:**

Mr. Meadows introduced and welcomed Mr. Lawrence McDade, who was recently appointed to the Board of Zoning Appeals.

**MINUTES:**

Board members reviewed the March 7, 2019 minutes.

**AGENDA ITEMS:**

**SPECIAL PERMIT #SPPT-19-010886 – SHEFFIELD EDWARDS III (OWNER/APPLICANT) – EDWARDS CUSTOM POOLS, LLC** – An application for a Category 2 Special Permit to operate a small contracting business as a major home occupation, PIN 7806-51-3382-000, located at 13256 Golden Drive, Lee District, Sumerduck, Virginia. (Ben Holt, Staff)

Mr. Holt reviewed the application.

**SPECIAL PERMIT #SPPT-19-010888 – J & C THOMPSON, LLC (OWNER/APPLICANT) – J & C THOMPSON, LLC** – An application for a Category 2 Special Permit to operate a small contracting business as a major home occupation, PIN 6897-

19-0471-000, located at 12149 Old Grassdale Road, Lee District, Remington, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the application.

**SPECIAL PERMIT #SPPT-19-010945 – THOMAS W. (JR.) & TIFFANY LORRAINE MAJEWSKI (OWNERS)/THOMAS W. MAJEWSKI, JR. (APPLICANT) – THOMAS CUSTOM, INC.** – An application for a Category 2 Special Permit to operate a gunsmithing business as a major home occupation, PIN 7823-97-6965-000, located at 14509 Spring Mill Road, Lee District, Fredericksburg, Virginia. (Ben Holt, Staff)

Mr. Holt reviewed the application.

**SPECIAL PERMIT #SPPT-19-010948 – DONALD H. & LINDA P. LECHER, TRUSTEES OF THE LECHER FAMILY TRUST (OWNERS/APPLICANTS) – TOP DOG RESORT & INN** – An application for a Category 3 Special Permit to operate a tourist home, PIN 7931-45-2390-000, located at 2591 Carriage Ford Road, Cedar Run District, Catlett, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the application.

The meeting was adjourned at approximately 1:45 p.m.

***Regularly Scheduled Meeting  
2:00 p.m.  
Warren Green Building  
10 Hotel Street  
Warrenton, Virginia***

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, May 2, 2019, beginning at 2:00 p.m. in the Warren Green Building, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mrs. Mary North Cooper; Mr. Lawrence G. McDade; and Mr. Benjamin Tissue, Jr. Also present were Mr. Adam Shellenberger, Chief of Planning; Ms. Amy Rogers, Chief of Zoning/Development Services; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Ms. Mary Catherine Anderson, Senior Assistant County Attorney; Mr. Ben Holt, Planner II; Ms. Kara Krantz, Planner; and Mrs. Meredith Meixner, Planning Associate.

**INTRODUCTION:**

Mr. Meadows introduced and welcomed Mr. Lawrence McDade, who was recently appointed to the Board of Zoning Appeals.

**LETTERS OF NOTIFICATION AND PUBLIC NOTICE:**

Mrs. Meixner read the public hearing protocol.

Mr. Shellenberger stated that, to the best of his knowledge, the cases before the Board of Zoning Appeals for public hearing have been properly advertised, posted and letters of notification sent to adjoining property owners.

**MINUTES:**

On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to approve the March 7, 2019 minutes.

The motion carried 4 to 0, as follows:

AYES: Mr. Meadows, Mr. Tufts, Mrs. Cooper, Mr. Tissue

NAYS: None

ABSENT: None

ABSTENTION: Mr. McDade

**REGULAR AGENDA:**

**APPEAL #AZAD-18-009065 – JUDE J. COVAS & KATHLEEN M. FLAHERTY, TRUSTEES OF THE RAYMOND C. HAWKINS CHILDREN'S TRUST II/FBO MICHAEL SHAWN HAWKINS (OWNER/APPLICANT) – HAWKINS' PROPERTY –**

An appeal of a Zoning Administrator's determination regarding outdoor storage in excess of allowable limits, construction of a building without a permit, commercial vehicles in excess of allowable numbers, operation of a business without the required Special Permit, and land disturbance without the required permit. The property is located 15223 Copperhead Road, Cedar Run District, Catlett, Virginia. (PIN 7838-79-6029-000 and 7838-89-3177-000) (Heather Jenkins, Staff) *Note: This is a public meeting, not a public hearing.*

Ms. Anderson left the dais.

Mr. Meadows reviewed the Rules of Procedure Regarding Appeals and opened the public meeting.

## **COUNTY PRESENTATION**

Ms. Jenkins stated that the Appeal before the BZA is in reference to a Notice of Zoning Violation and Corrective Order issued on March 8, 2018 by Mr. Robert F. Walton, Zoning Administrator. The Zoning Administrator found that on March 8, 2018, the property was in violation of the Fauquier County Zoning Ordinance by having more than 100 square feet of outdoor storage located on the property; construction of a garage without a zoning permit; commercial vehicles parked on the property in excess of the permitted one per occupant/operator; a business being run from the property without the required Special Permit for a major home occupation; and land disturbance without the required zoning and land disturbing permits. The Appeal to the March 8, 2018 Notice of Violation was filed on April 4, 2018 by Merle W. Fallon, Esq. Mr. Fallon included a letter requesting that the Appeal hearing be delayed until such time as an application for a Category 2 Special Permit to authorize a major home occupation be approved or denied by the Board of Zoning Appeals (BZA). On April 12, 2018, the Appeal was placed on hold as requested by Mr. Fallon to await the BZA's decision on the Special Permit application. The Special Permit for the major home occupation was denied by the BZA on August 2, 2018.

The subject property consists of two parcels totaling 30.59 acres and is located at 15223 Copperhead Road. Surroundings include Agricultural zoned properties, with residential and agricultural uses and an unnamed tributary to the perennial stream, Town Run, flows through the property. The property is developed with a single-family residence and several outbuildings, including a hoop house and a garage.

Areas of the property have been cleared of wooded cover and graded, and fill has been imported. The importation of fill to this property is a separate code enforcement case through the Zoning Office, and was heard by the BZA on appeal on February 7, 2019.

The residence was constructed under a valid building and zoning permit. Other structures located on the property do not have a zoning or building permit issued to authorize either construction or use, and are part of the Appellant's appeal before the BZA today.

On July 9, 2015, zoning staff conducted a site visit in response to confidential complaints of land disturbance and commercial vehicle traffic. Photos taken during this site visit show land disturbance associated with the construction of an entrance and permanent gravel access road extending off Waite Lane. Ms. Jenkins stated that this access road was constructed without the required zoning or land disturbing permits. She presented further photo documentation which included multiple commercial vehicles entering and exiting the property via the gravel access road. Per the photo documentation, it was determined that the Appellant was the party responsible for the land disturbance on the property and the commercial vehicle traffic.

Following the site inspection on July 9, 2015, a letter was sent to the property owners, Nicholas and Barbara Zaines. The letter requested that the property owners meet with staff to discuss obtaining the required zoning and land disturbing permits.

On July 31, 2015, the Appellant submitted a zoning permit application for an "agreement in lieu" of a land disturbing plan for 4.8 acres of land disturbance to clear and grade for a single-

family residence. The zoning permit application was submitted without an associated building permit application for a residence. The zoning permit was not issued as changes made to the Virginia Stormwater Management Program (VSMP) regulations, effective statewide on July 1, 2014, no longer allowed the issuance of a stand-alone grading permit in Fauquier County. In order to issue a permit for clearing, grading, and other land disturbance activities associated with the construction of a single-family residence, a building permit for construction of the actual residence is required.

As no progress had been made by the Appellant or the property owners to apply for and receive the appropriate permit to allow the land disturbing activities, on September 4, 2015, Mr. Charles A. Floyd, Zoning Administrator, issued a Notice of Zoning Violation and Corrective Order to the Appellant as the responsible party, with a copy sent to the property owners, Nicholas and Barbara Zaimes.

After the Notice of Violation, the Appellant submitted three building and zoning permit applications for improvements to the property, to include a three bedroom single-family residence on one parcel (PIN 7838-89-3177-000), a 60-foot by 100-foot garage on the adjacent parcel (PIN 7838-79-6029-000) as an accessory structure to the residence, and an accessory dwelling unit.

The building and zoning permit for the single-family residence addressed as 15223 Copperhead Road was issued and received a Certificate of Use and Occupancy on June 6, 2016. As this permit included necessary land disturbance for construction of a home, the zoning permit that was submitted on July 31, 2015 and never approved, was withdrawn and all application fees were refunded to the Appellant.

The permit application for the garage was placed on hold after building division staff indicated that additional information was never provided for this application. On March 14, 2016, the Appellant submitted a building and zoning permit application that included a Farm Structure Affidavit for a 60-foot by 100-foot agricultural use structure. The permit for the garage was closed out, with all fees refunded and documents returned to the Appellant. The permit application for the farm structure was placed on hold and not issued to permit construction. When the application was submitted, unresolved land disturbing issues remained on the property, zoning and land disturbing permits had not been applied for or issued to account for all site disturbance that had occurred on the property since the initial letter had been sent to the Zaimes and the Notice of Violation had been sent to the Appellant and the property owners. As the property remained in violation of Section 13-501 of the Zoning Ordinance by not having the required zoning permit for land disturbance and grading, the permit to allow construction of the farm structure was not issued.

On December 16, 2015, ownership of the property transferred from Nicholas and Barbara Zaimes to the Trustees of the Raymond C. Hawkins Children's Trust II.

On September 14, 2016, Zoning staff met with the Appellant on-site and inspected the subject property. The site inspection showed that the property was in violation of the Zoning Ordinance by:

- Having outdoor storage in excess of the permitted 100 square feet;
- Commercial vehicles parked on the property in excess of the allowable one per occupant/operator;
- Operation of a contractor's office and materials storage yard as a major home occupation without the required Special Permit;
- Construction of a 60-foot by 100-foot building without issuance of a zoning and building permit; and
- The original land disturbance, as cited in the September 4, 2015 Notice of Violation, had been increased in scope without a zoning or land disturbing permit.

On September 6, 2017, Zoning staff again inspected the property, finding that conditions remained substantially unchanged. Ms. Jenkins referred to slides containing photographs from the September 14, 2016 inspection. The photographs and inspection document that:

- A hoop house was constructed without a permit;
- A shed, which does not have a permit, was placed on the property; however, it has not been determined if the shed is greater than 256 square feet, which triggers the permit requirement;
- A 60-foot by 100-foot metal building was constructed without a permit;
- The number of commercial vehicles (9) is in excess of the operators that reside in the single-family residence as stated by the Appellant in the Appeal response (Appellant, son, and wife);
- Multiple pieces of small equipment, to include nine snow plows, stored on the site;
- A tractor trailer is parked on the site.

Ms. Jenkins noted that the site conditions documented on September 14, 2016 are substantially the same as the conditions of the site as was seen by members of the Board of Zoning Appeals during the June 7, 2018 site visit in connection with the Special Permit application.

The history of the property, as documented through inspections dating back to the initial inspection on July 9, 2015 depict a pattern of repeated, unresolved violations of the Ordinance. As no progress had been made by the Appellant to address the outstanding violations, and upon continued receipt of complaints, on March 8, 2018, Mr. Robert F. Walton, Zoning Administrator, issued a Notice of Zoning Violation and Corrective Order to the Appellant.

The Zoning Administrator determined that the subject property contained more than 100 square feet of outdoor storage, to include:

- Multiple enclosed trailers, as shown on the September 14, 2016 inspection photos, consisting of a white trailer, blue trailer, and an orange trailer;
- Large pieces of earth-moving equipment, including a grader and bulldozer;
- Various small pieces of equipment such as the nine detached snow plows shown in the September 2016 inspection photos, and multiple salt spreaders stored at the property;
- Stored materials such as tires along the rear of the hoop house, piles of gravel and various construction materials, such as culvert pipes.

Ms. Jenkins stated that the Appellant is arguing that Section 6-102.19 of the Zoning Ordinance is misconstrued and misinterpreted, alleging that the Ordinance only limits outdoor storage within Residential districts.

The Appellant's interpretation of the Ordinance would allow a property in an Agricultural or Conservation District the ability to amass an unlimited amount of outdoor storage, completely without limit or requirement for screening so as to reduce the potential negative impacts to adjacent property owners. Per longstanding, consistent interpretation, all outdoor storage, regardless of the zoning district in which it may be located, must be screened from view. Additionally, unless outdoor storage is permitted as a primary or accessory use allowed by the Chart of Uses in Section 3-300, outdoor storage may not exceed 100 square feet on any property. The portion of this section that requires outdoor storage or inoperable/junk vehicles to be located in the rear half of the lot is the portion of the Ordinance that refers only to Residential districts.

As the property clearly contained outdoor storage of more than 100 square feet of commercial-use equipment and various materials, the Zoning Administrator cited the Appellant with this violation of the Ordinance.

The Zoning Administrator determined that the 60-foot by 100-foot metal building had been constructed without the required zoning and building permits. The Appellant argues that since an application for the construction of this building was submitted, it only needs to be processed by the County to resolve the violation. Ms. Jenkins stated that two permit applications were submitted by the Appellant for the metal building:

- 1) A zoning and building permit application for a detached garage accessory to the proposed single-family residence; and
- 2) A zoning permit application for an agricultural building, to include a Farm Structure Affidavit.

The first application for the detached garage was later closed out, with all application materials and fees returned to the Appellant when the second application was submitted for the agricultural building approximately six months later. The permit included a Farm Structure Affidavit, with a *sworn statement* that the property at that time was being used for the production and sale of horticultural and forestry products, and that the building would be used to store and/or process horticultural and forestry products to include wood, plants and animals, and to store or maintain equipment used as part of the horticultural/forestry operation, and therefore the structure was exempt from the requirement to meet building codes, receive a building permit or complete building inspections. The property continued to be in violation of Section 13-501 of the Zoning Ordinance, as a permit had not been properly applied for or issued to permit all of the grading and land disturbance that had taken place on the property. As there continued to be unresolved land disturbing issues, the zoning permit for the farm structure was placed on hold and it remains on hold to this day.

As part of the September 14, 2016 site inspection, the inspector observed no evidence of the bona-fide production and sale of agricultural or forestal products, nor was any evidence

provided by the Appellant to support this claim either at the time of the application, during the inspection, or at any time following.

Later site visits to the property, to include the site visit conducted by the Board of Zoning Appeals on June 7, 2018, showed that the interior of the structure was used to store inoperable personal and commercial vehicles, an ice cream truck, various construction equipment and auto repair equipment, and a finished office space, all built and completed by the Appellant without an issued permit or evidence to support the agricultural use statement sworn to in the Farm Structure Affidavit.

As the metal structure was clearly completed and in use without the issuance of a zoning or building permit, the Zoning Administrator cited the Appellant for this violation. The sole permit application on file for this building is a zoning permit for a farm-use structure, which cannot be issued until the land disturbing violation is addressed and sufficient evidence is submitted that this building is used for a bona-fide agricultural purpose, and not as part of a commercial operation taking place on the property.

The Zoning Administrator determined that the property contained more than the allowable number of commercial vehicles. The Appellant argues that, at the time of the Appeal application, the property was in compliance with the Ordinance as there were three operators residing in the single-family home, to include the Appellant, his wife and son. The Appellant argues that the number of commercial vehicles parked on the property is in conformance with the Zoning Ordinance, using the definition of “Commercial Vehicle” found in Section 46.2-341.4 of the *Code of Virginia*. Per the definition in the State Code, this would limit commercial vehicles to those with a gross vehicle rating of 26,000 pounds or more.

Article 15 of the Fauquier County Zoning Ordinance does not define “Commercial Vehicle.” Therefore, the common meaning of “Commercial” is relied upon to give meaning to the term. As provided in Merriam-Webster, “Commercial” is defined as “anything occupied or engaged in commerce; and anything suitable, adequate or prepared for or characteristic of commerce.”

Using the common understanding of what is a commercial vehicle, this would be any tractor trailer and any vehicle engaged in commercial purposes, such as dump trucks, plow trucks, and trucks marked with commercial signage that leave the site for commercial purposes. Any such vehicle would therefore count toward the maximum allowable number of commercial vehicles that can be parked on a property in relation to the number of operators residing on the property. If the number of commercial vehicles parked on the property is limited to the three operators the Appellant stated are living on the property, then there would not be a violation. However, the September 14, 2016 and later site inspections have found an assortment of commercial vehicles parked near the metal garage building – exceeding the number that would be allowed for the three occupants. Therefore, the Zoning Administrator cited the Appellant for this violation.

The Zoning Administrator determined that a business was operating from the property, to consist of a contractor’s office, shop and materials storage yard. The September 2016 site inspection and later inspections showed multiple commercial vehicles, equipment and materials stored on the property. Complaints received and site visits by inspection staff

indicate that the Appellant operates a business from the property, with employees coming to the site, and commercial vehicles mobilizing on the property.

The Appellant argues that no business is being run from the property; however, the Appeal documents state that a Special Permit application would be submitted to resolve the issue.

On May 2, 2018, the Appellant submitted an application for a Category 2 Special Permit to allow the operation of a small contracting business as a major home occupation. The application materials showed the area of the property used to store materials and equipment for the contracting business, that a portion of the building would be used for business purposes to include a shop and an office, and that the business operations conducted at and from the site included five employees.

On June 7, 2018, the Board of Zoning Appeals conducted a site visit as part of the public hearing process. The site visit showed multiple snow plows, salt spreaders, dump trucks, earth moving equipment, a water truck and a portable construction light displayed on the site in addition to various other pieces of equipment and materials related to the business. The Appellant verbally disclosed, during the site visit, that many of these items were used as part of the business.

Given that site inspections showed the property was used to park multiple commercial vehicles, store commercial-use equipment and materials, and mobilize employees, vehicles and equipment for the Appellant's contracting business, the Zoning Administrator cited the Appellant for this violation.

The Zoning Administrator determined that land disturbance had taken place on the site without the required zoning permit to authorize grading, and without the required land disturbing permit for non-exempt disturbance exceeding 10,000 square feet.

The Appellant argues that all land disturbance completed on the property is exempt from regulation, per the *Code of Virginia*, as it was for the purpose of clearing land for agricultural purposes, and to convert forest land to a bona-fide agricultural or improved pasture use. The Appellant further argues that the County's stormwater ordinance, found in Chapter 11 of the Fauquier County Code, is void *ab initio*, as the County Code does not meet the State Code regulations that authorizes localities to adopt more stringent ordinances under certain circumstances.

*Code of Virginia* Subsection 15:34 exempts clearing specifically for certain agricultural purposes from stormwater management regulations, and a portion of the disturbance that took place does appear to be intended to establish a pasture. However, the permanent access roadway, gravel contractor's storage yard area, 60-foot by 100-foot structure, and other areas not directly contributing to a bona-fide agricultural use of the property, do not qualify for this exemption from regulation. Section 13-501 of the Zoning Ordinance requires a zoning permit for all grading and excavation regardless of size. Chapter 11 of the County Code requires a land disturbing permit for all non-exempt land disturbance of 10,000 square feet or greater.

*Code of Virginia* Subsection 15:33 authorizes localities to adopt more stringent ordinances than the State stormwater management program regulations under certain circumstances. The

Appellant argues that the County stormwater ordinance is completely void as the ordinance is more stringent than the State Code, without the requirements for more stringent ordinances in that “*studies were not completed and findings were not made.*” The Appellant asserts that the County threshold requiring a land disturbing permit at 10,000 square feet or more of land disturbance is stricter than allowed by Subsection 15.33. Staff believes the Appellant has misread both the State Code and County Code.

*Code of Virginia* Subsection 15:51 – Definitions – sets the threshold at which localities are **required** to regulate land disturbance at 10,000 square feet; the County Code complies with this state-mandated threshold. The Appellant’s statement that the County Code is more stringent than the State Code in that a land disturbing permit is required at 10,000 square feet, is incorrect.

*Code of Virginia* Subsection 15:34 – Regulated Activities; Exemptions – exempts certain agricultural activities from regulation, and additionally Item C of this subsection sets the regulatory threshold at which a stormwater management plan is **required** at one acre or more of disturbance. The County Code complies with this state-mandated threshold as well.

In one aspect, the County Code is more stringent than the State Code – in that the County regulates impervious areas of 10,000 square feet or greater. However, this aspect of the County Code is **not** in violation of the State Code. Subsection 15:33, Item E, specifically states that “*any provisions of a local stormwater management program in existence before January 1, 2013, that contains more stringent provisions than this article shall be exempt from the requirements of this section. However, such provisions shall be reported to the Board at the time of the locality’s VSMP approval package.*”

The 10,000 square foot impervious threshold in Chapter 11 of the County Code was included in adopted County stormwater management regulations prior to 2013. This previously existing threshold was transferred from the existing regulations to the stormwater management regulations that were adopted to conform to the changes in State stormwater law that went into effect on July 1, 2014. This pre-2013 10,000 square foot impervious threshold was included in the Virginia Stormwater Management Program (VSMP) approval package that was reviewed and approved by the Department of Environmental Quality (DEQ), as shown by the letter of approval from DEQ dated March 27, 2015. Therefore, the Appellant’s argument that the County’s stormwater ordinance is void *ab initio* as it is stricter than the State Code, is incorrect.

On March 8, 2018, non-exempt land disturbance that had taken place on the property exceeded 10,000 square feet; therefore, the Zoning Administrator cited the Appellant with a violation of this section.

Ms. Jenkins stated that the issue before the Board of Zoning Appeals is whether the Zoning Administrator was correct in issuing the Notice of Zoning Violation and Corrective Order on March 8, 2018, where it was determined that the Appellant was in violation of the Ordinance.

Ms. Jenkins noted that, to date, no progress has been made by the Appellant to address the outstanding violations found on the property. Further, subsequent site inspections have documented continued violations of the Ordinance to include additional land disturbance with

grading of the site and importation of fill, construction of an additional structure without the required permit, and the continued operation of a contracting business from the property.

In conclusion, Ms. Jenkins respectfully requested that the Board of Zoning Appeals uphold the March 8, 2018 Notice of Zoning Violation and Corrective Order in that it was based upon substantial evidence, warranted, and was a correct determination.

### **QUESTIONS FROM THE BOARD**

Mr. McDade inquired about the procedure for obtaining a land disturbance permit after a project has been started.

Ms. Jenkins stated that the application would be submitted along with the plan showing the areas that have been disturbed. The County would determine which areas are exempt as a bona-fide agricultural use and which are not. The County would regulate the areas that are not exempt, issue the permit, inspect the site, and proceed as if the disturbance had not occurred prior to the issuance of the permit.

Mr. McDade requested clarification on the regulation regarding more than 100 square feet of outdoor storage since this property is in an agricultural area and the Ordinance refers to residential districts.

Ms. Jenkins noted that Section 6-102.19 uses both commas and semi-colons, stating: *"Storage outside, to include a compost pile, farm equipment and inoperable and junk vehicles on any lot as provided for in Section 2-508, provided such storage and/or vehicle in a Residential District is located on the rear half of the lot; is screened from view from the first story window of any neighboring dwelling; and the total area for such outside storage, excluding the area occupied by one (1) junk vehicle, does not occupy more than 100 square feet."* Ms. Jenkins stated that the wording prior to the semi-colon is the only portion which mentions that the storage should be located on the rear half of the property and not in the front part of the property.

### **APPELLANT PRESENTATION**

Mr. Michael Hawkins, Appellant, introduced himself.

Mr. Meadows inquired if the Appellant had received a copy of the Rules of Procedure Regarding Appeals and was aware that he would be allowed 20 minutes to present his case.

Mr. Hawkins responded that he did receive a copy of the Rules of Procedure Regarding Appeals and was aware of the amount of time for his presentation.

Mr. Hawkins stated that this Appeal is related to a Notice of Zoning Violation and Corrective Order dated March 8, 2018. He stated that he did not realize what took place on the property in 2015 and 2016 would be discussed nor does he feel it is relevant.

According to the Statement of Appeal, the alleged violation of having more than 100 square feet of outdoor storage, misconstrues and misinterprets the Zoning Ordinance and is not applicable to the Appellant's property.

Section 6-101 states: *"Accessory uses and structures are permitted in any zoning district, unless qualified below, but only in conjunction with, incidental to, and on the same lot with a principal use or structure which is permitted within such district. Notwithstanding the above, when several adjacent lots are used as one place of residence, accessory structures may be placed on the property provided all other standards are met."*

Section 6-102 states: *"Accessory uses and structures shall include, but are not limited to, the following uses and structures, provided that such uses or structure shall be in accordance with the definition of Accessory Use contained in Article 15."*

Section 6-102.19 goes on to say: *"Storage outside, to include a compost pile, farm equipment and inoperable and junk vehicles on any lot as provided for in Section 2-508, provided such storage and/or vehicle in a Residential District is located on the rear half of the lot; is screened from view from the first story window of any neighboring dwelling; and the total area for such outside storage, excluding the area occupied by one (1) junk vehicle, does not occupy more than 100 square feet."*

Thus, *"storage outside to include a compost pile, farm equipment and inoperable junk vehicles on any lot"* is permitted in an Agricultural District. The qualification of how that storage can occur applies only to a Residential District. The Section that references *"does not occupy more than 100 square feet"* is a subordinate clause relating to and modifying the reference to restrictions that apply in a Residential District. This property is located in an Agricultural District, thus outdoor storage is specifically permitted. An interpretation of the Ordinance applying it to agricultural districts would automatically throw every farm in the county into violation of the 100 square foot limitation. Mr. Hawkins stated if the 100 square foot limitation applied to an agricultural district, a John Deere tractor with an attached 10 foot bush-hog sitting next to a barn, would be in violation of the Ordinance. It is his position that this does not apply to his property, which is over 30 acres.

Regarding the alleged violation of the construction of a garage without a zoning permit, the Statement of Appeal explains that "Mr. Hawkins applied for a building permit to construct the relevant garage on three separate occasions. The County wrongfully refused to issue said permit. The application has never been withdrawn and the engineered plans for said garage are in the possession of the County. It can resolve the alleged violation simply by processing the application and building plans in its possession. The alleged reason for the County refusing to issue a building permit to Mr. Hawkins was that the proposed garage was not on the same lot as the residential structure which was then under construction. However, Section 6-101 clearly provides: "When several adjacent lots are used as one place of residence, accessory structures may be placed on the property provided all other standards are met." The County has wrongfully refused to issue a building permit and has cited Mr. Hawkins for a violation that the County caused and can cure simply by processing plans in its possession."

The Statement of Appeal addresses the alleged violation of Section 6-102.11(B) by saying: "Mr. Hawkins lives on a parcel adjacent to the structure used as a garage. He lives with his

wife and two sons, one of whom is of driving age. There are not more than three commercial motor vehicles on either the residential or garage lot. The County Zoning Ordinance contains no definition of a commercial vehicle. The Virginia Code at Section 46.2-2-341.4 defines a "commercial motor vehicle" as one that has a gross vehicle weight rating of 26,001 or more pounds or meets one of several other alternative definitions, none of which are applicable to the vehicles operated out of the Hawkins' property." Mr. Hawkins stated that the County has never requested to see any of his vehicle registrations nor have they asked him how much his vehicles weigh. Rather, they have assumed that since there are snow plows attached to them and there is a company name on them, that they are commercial vehicles. However, neither of these things constitute a "commercial vehicle." He noted that there is a motor home, which is not a commercial vehicle, parked on his property. All of the other vehicles are either Chevrolet 3500 or GMC 4500 series and there are no commercial vehicles over 1½ ton currently located on his property. He stated that the vast majority (90%) of the equipment seen during the Board of Zoning Appeals' site visit was relocated to a rented commercial space once the Special Permit application was denied.

According to the Statement of Appeal related to allegedly running a business from the house or property, "Mr. Hawkins disagrees that he is running a business "from the house or property." He runs his business by cell phone generally from his pickup truck which is mobile and moves from location to location..." Mr. Hawkins stated that he is not operating a business from the property. Each morning, he gets up, goes to his truck, and leaves for work just as most people do. He may have a couple of people meet him there and then get in the truck with him; however, this does not constitute running a business.

The Statement of Appeal refers to the alleged disturbance of over 10,000 square feet without a required zoning permit and land disturbance permit by stating: "Mr. Hawkins maintains that any and all land disturbing done on either of the parcels is exempt from regulation pursuant to the exemptions contained in Virginia Code Section 62.1-44.15:34. Additionally, the violation notes a 10,000 square foot limit on what can be disturbed pursuant to County Code. Mr. Hawkins maintains that the County Code is stricter than state law which contains a one acre allowed disturbance area and, as such, the County was required to perform certain studies and make certain findings in order to adopt a stricter ordinance than is specified by state law. See Virginia Code Section 62.1-44.15:33. The County has not conducted those studies, nor has it made the findings. Thus, its Ordinance is void *ab initio*. Additionally, the exemptions in state law apply to "clearing of lands specifically for agricultural purposes and the management...of agricultural...operations..." Mr. Hawkins has cleared forested land (pursuant to a Virginia Department of Forestry approved plan) to convert previously forested land into "bonafide agricultural or improved pasture use." The management of any farm requires that an area around a barn or storage facility be subject to increased farm traffic for farm vehicles, tractors, etc. Placing gravel as a management tool on that property is not a disturbance of the land and is exempt from the stormwater regulations referenced by the County in the Notice of Violation. Additionally, the reference to Zoning Ordinance Section 13-502 has no relevance to land disturbance; therefore, it is simply not applicable. Zoning Ordinance Section 4-400 has no content other than a heading of "Floodplain District (FP)." Zoning Ordinance Section 4-400 contains 11 subparts set forth on five different pages. It is impossible to tell from the reference in the "Description of Violation" what violation the County is claiming has occurred; the alleged violation is therefore void for vagueness. Additionally, Section 4-405 provides that agricultural uses are permitted in floodplain districts. Any use that Mr. Hawkins

has made of his property is a permitted use (without the requirement for a permit) and as such does not constitute a violation of the Ordinance."

Mr. Hawkins stated that in the County presentation, Ms. Jenkins said: "As part of the September 14, 2016 site inspection, the inspector observed no evidence of the bona-fide production...of agricultural...products..." Mr. Hawkins clarified that he had just harvested the timber off the property. He noted that the *Code of Virginia* allows up to one year from the time of harvest to show the intent of being a bona-fide agricultural use. He further stated that the 10,000 square feet of land disturbance regulation does not apply when converting from a forestry use to a pasture. The Virginia Stormwater Management Program (VSMP) does not regulate anything over one acre having to do with farming for any reason or in any jurisdiction.

In conclusion, Mr. Hawkins respectfully requested that the Board of Zoning Appeals overturn the March 8, 2018 Notice of Zoning Violation and Corrective Order issued by the Zoning Administrator.

### **COUNTY REBUTTAL**

None.

### **QUESTIONS FROM THE BOARD**

Mr. McDade stated that the Appellant indicated he does have permits for the garage and the agricultural building and requested clarification from Ms. Jenkins.

Ms. Jenkins replied that an application was submitted; however, it could not be processed due to incomplete information (i.e., no Health Department verification). In addition, it could not be issued because of the continued land disturbance violations on the property.

Mrs. Cooper noted that the Appellant and the County have differing opinions on what constitutes a commercial vehicle.

Mr. Tissue indicated that he owns a GMC 2500 series truck, which is designated as a commercial vehicle by the County.

### **ACTION**

In that there was no further comment, Mr. Meadows closed the public meeting.

On motion made by Mr. Tissue and seconded by Mrs. Cooper, after due notice and hearing as required by the Fauquier County Zoning Ordinance and *Code of Virginia*, it was moved to affirm the decision of the Fauquier County Zoning Administrator in Appeal #AZAD-18-009065.

After discussion, the motion carried 4 to 1, as follows:

AYES:                    Mr. Meadows, Mr. Tufts, Mrs. Cooper, Mr. Tissue

NAYS: Mr. McDade

ABSTENTION: None

ABSENT: None

**SPECIAL PERMIT #SPPT-19-010886 – SHEFFIELD EDWARDS III (OWNER/APPLICANT) – EDWARDS CUSTOM POOLS, LLC** – An application for a Category 2 Special Permit to operate a small contracting business as a major home occupation, PIN 7806-51-3382-000, located at 13256 Golden Drive, Lee District, Sumerduck, Virginia. (Ben Holt, Staff)

Ms. Anderson returned to the dais.

Mr. Holt reviewed the staff report.

Mr. Meadows opened the public hearing.

Mr. Sheffield Edwards, applicant, expressed agreement with the staff report and reviewed the proposal.

Mr. McDade noted that the Statement of Justification indicates that *"During peak season, there will be approximately 2 material deliveries, which are delivered by flatbed tractor trailers, per week."* However, he stated that correspondence received from one of the neighbors expresses concern about multiple heavy trucks constantly traveling up and down the road. He asked the applicant how many deliveries he usually receives.

Mr. Edwards responded that he usually averages two deliveries per week. He did, however, receive 12 deliveries in April and a few more may be needed in May.

Mr. Tissue inquired if there are other property owners who help maintain Golden Drive.

Mr. Edwards stated that one neighbor has also helped with road maintenance.

Mr. James Randall, a neighbor, spoke in opposition to granting approval and presented a petition, signed by all but two neighbors. Mr. Randall stated that the applicant is not abiding by the previously imposed conditions and expressed concern about noise from trucks being loaded prior to 6:00 a.m., as well as operating on Sundays. He further stated that, while the applicant agreed to maintain the road, he has only done so a few times. Mr. Randall expressed dismay that the neighborhood has been irreparably changed by the operation of this business.

Ms. Kristy Fraser, a neighbor, spoke in opposition to approval, noting that she moved to the neighborhood in 1978 and it was a quiet area until now. She expressed concerns about safety for pedestrians on the road due to truck traffic; the vast amount of dust; and the early morning start times.

Ms. Judy Brewster, a neighbor, spoke in opposition to granting approval. She stated that when her family moved to the area 12 years ago, they enjoyed riding horses along the road. However, the applicant's business has been very disruptive to their residential neighborhood. Ms. Brewster cited concerns about the speed of the trucks as well as the dust.

Ms. Ann Handwork, a neighbor, spoke in opposition to approval, citing concerns about safety because of the trucks traveling too fast as well as possible health issues due to excessive dust.

Mr. Brian Cornell, a neighbor, spoke in opposition to granting approval due to safety concerns related to trucks traveling too fast along the roadway.

Mr. James Garnett, a neighbor, spoke in opposition to approval because of speeding truck traffic associated with the business.

In that there were no further speakers, Mr. Meadows closed the public hearing.

After discussion, on motion made by Mr. McDade and seconded by Mrs. Cooper, it was moved to deny the Special Permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The applicant has other reasonable use of the property.
2. The proposed use will adversely affect the use or development of neighboring properties or will impair the value of nearby land.
3. Pedestrian and vehicular traffic generated by the proposed use will be hazardous or conflict with existing patterns in the neighborhood.

After further discussion, the motion was rescinded by Mr. McDade.

On motion made by Mr. McDade and seconded by Mr. Tissue, it was moved to postpone action on this item until the next regularly scheduled meeting, with the public hearing reopened, to allow the applicant an opportunity to resolve the issues raised by the neighbors.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT-19-010888 – J & C THOMPSON, LLC**  
**(OWNER/APPLICANT) – J & C THOMPSON, LLC** – An application for a Category 2 Special Permit to operate a small contracting business as a major home occupation, PIN 6897-19-0471-000, located at 12149 Old Grassdale Road, Lee District, Remington, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

Mr. Meadows opened the public hearing.

Mr. Jack Thompson, applicant, expressed agreement with the staff report.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mr. Tufts and seconded by Mr. Tissue, it was moved to grant the Special Permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties or will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for Special Permits.
7. The type and amount of traffic generated by the use is such that it will not cause an undue impact on neighbors or adversely affect the safety of road usage.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The use shall be in general conformance with the information and drawings submitted with the Special Permit application, except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. The use shall be limited to the portion of the property zoned Rural Agriculture (RA).
3. The hours of on-site operation of the small contracting business shall be generally limited to 6:00 a.m. to 6:00 p.m., Monday through Friday, with the exception of emergency calls which may occur outside of these hours.
4. There shall not be any public contact on the property associated with the use.
5. A maximum of five (5) employees, including the owner/applicant, shall be permitted to engage in the on-site operation of the business.

6. Not more than three (3) vehicles in excess of 1½ ton and/or pieces of equipment shall be operated from the site or stored there overnight.
7. Indoor storage in connection with the small contracting business shall be limited to 3,000 square feet and shall be clearly indicated on the Site Plan.
8. Outdoor storage in connection with the small contracting business shall be limited to 2,500 square feet and shall be clearly indicated on the Site Plan.
9. All parking and loading spaces, open storage and loading areas, and structures related to the small contracting business shall be located not less than fifty (50) feet from any lot line. Additionally, these areas shall be effectively screened from view.
10. No manufacturing, processing or assembly shall occur in conjunction with the small contracting business.
11. All applicable zoning, building and land disturbance permits shall be obtained prior to establishment of the use.
12. A Site Plan shall be approved and an Occupancy Permit shall be issued for the proposed residence prior to the establishment of the use.
13. This Special Permit shall be issued for a period of one (1) year. Per Zoning Ordinance Section 5-202.10, the permittee may apply annually for one (1) year renewals by the Zoning Administrator. The application for renewal shall be received at least sixty (60) days prior to the expiration of the Special Permit. If the permittee does not apply for the renewal, the permit shall expire at the end of the one (1) year period.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT-19-010945 – THOMAS W. (JR.) & TIFFANY LORRAINE MAJEWSKI (OWNERS)/THOMAS W. MAJEWSKI, JR. (APPLICANT) – THOMAS CUSTOM, INC.** – An application for a Category 2 Special Permit to operate a gunsmithing business as a major home occupation, PIN 7823-97-6965-000, located at 14509 Spring Mill Road, Lee District, Fredericksburg, Virginia. (Ben Holt, Staff)

Mr. Holt reviewed the staff report.

Mr. Meadows opened the public hearing.

Mr. Thomas Majewski, Jr., applicant, expressed agreement with the staff report.

In that there were no further speakers, Mr. Meadows closed the public hearing.

After discussion, on motion made by Mrs. Cooper and seconded by Mr. Tufts, it was moved to grant the Special Permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties or will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for Special Permits.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The use shall be in general conformance with the information and drawings submitted with the Special Permit application except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. All gunsmith client visits to the site shall be by appointment only and limited to a maximum of five (5) client visits per week. No more than one (1) client shall be permitted to visit the property at any one time.
3. Client visits to the property shall be limited to the hours between 4:00 p.m. and 6:00 p.m., Monday through Friday, and between 12:00 p.m. and 4:00 p.m., Saturday and Sunday.
4. Non-resident employees shall not be permitted.
5. There shall be no on-site advertising or signage associated with the use.
6. All liquids associated with the use shall be properly disposed of off-site.
7. The inventory of firearms being serviced or sold shall not exceed fifty (50) guns at any given time.
8. All firearms inventory stored on-site shall be stored in a safe or similar lockable container, approved for such purpose by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives. The safe shall be bolted to the ground.

9. No firearms associated with the commercial activity shall be fired on the subject property.
10. All applicable Zoning and Building Permits shall be obtained prior to establishment of the use.
11. This Special Permit is conditional upon the Applicant obtaining and maintaining all federal, state and local permits applicable to this use.

The motion carried unanimously.

**SPECIAL PERMIT #SPPT-19-010948 – DONALD H. & LINDA P. LECHER, TRUSTEES OF THE LECHER FAMILY TRUST (OWNERS/APPLICANTS) – TOP DOG RESORT & INN** – An application for a Category 3 Special Permit to operate a tourist home, PIN 7931-45-2390-000, located at 2591 Carriage Ford Road, Cedar Run District, Catlett, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

Mr. Meadows opened the public hearing.

Mrs. Linda Lecher, applicant, expressed agreement with the staff report.

In that there were no further speakers, Mr. Meadows closed the public hearing.

On motion made by Mr. Tissue and seconded by Mrs. Cooper, it was moved to grant the Special Permit, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 5-009 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The proposed use will not adversely affect the use or development of neighboring properties or will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for Special Permits.

7. The type and amount of traffic generated by the use is such that it will not cause an undue impact on neighbors or adversely affect the safety of road usage.

The Special Permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The use shall be in general conformance with the information and drawings submitted with the Special Permit application, except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. The use shall be limited to three (3) guest rooms in the existing residence and the maximum occupancy shall not exceed six (6) guests. Upon demonstration that the septic system can support the use, no more than ten (10) guests shall be on the property at once and a maximum of four (4) bedrooms may be used. At no time shall the total number of occupants exceed the number allowed by the Building Code and Occupancy Permit.
3. One of the owners shall reside on the property at any time the tourist home is open to guests.
4. All applicable Virginia Department of Health permits and certification that the well and septic facilities are adequate shall be provided to the Zoning Administrator prior to commencement of the use.
5. A bacteriological water sample shall be provided to the Health Department annually. Copies of all reports shall be provided to the Zoning Administrator.
6. No food service shall be provided on-site.
7. All applicable building/zoning permits shall be obtained prior to commencement of the use.
8. Signage related to the use shall be limited to a maximum of six (6) square feet. Illumination of signage shall be prohibited.
9. A Site Plan shall be approved prior to the establishment of the use.

The motion carried unanimously.

**OTHER BUSINESS:**

None.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at approximately 3:45 p.m.

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John R. Meadows, Chairperson

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Fran Williams, Secretary

*Copies of all files and materials presented to the BZA are attached to and become part of these minutes. A recording of the meeting is on file for one (1) year.*