

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
FEBRUARY 6, 2020**

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

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, February 6, 2020, beginning at 2:00 p.m. in the Warren Green Building, First Floor Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Maximilian Tufts, Jr., Vice-Chairperson; Mrs. Mary North Cooper; Mr. Benjamin Tissue, Jr.; and Mr. Lawrence G. McDade. Also present were Ms. Holly Meade, Director of Community Development; Mr. Adam Shellenberger, Chief of Planning; Ms. Heather Jenkins, Assistant Chief of Zoning/Development Services; Mr. Jonathan Rodman, Senior Planner; Ms. Kara Krantz, Planner II; Mrs. Stephanie Miller, Planner II; Ms. Mary Catherine Anderson, Senior Assistant County Attorney; and Mrs. Meredith Meixner, Planning Associate.

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. McDade, it was moved to approve the January 2, 2020 minutes.

The motion carried unanimously.

REGULAR AGENDA:

SPECIAL PERMIT – #SPPT-19-012351 – LILLIAN PETERSON LIVING TRUST/JEAN GALLOWAY BALL, TRUSTEE (OWNER/APPLICANT) – THREE PENNY ACRES – An application for a Category 3 Special Permit to operate a tourist home, PIN 6011-46-6292-000, located at 12590 Belle Meade Lane, Marshall District, Markham, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

Mr. Meadows opened the public hearing.

Jean Galloway Ball, Esq., representative, expressed agreement with the staff report.

Mr. Steve Calvert, a neighbor, spoke in opposition to granting approval. Mr. Calvert stated that there is a quarry on one side of this property and his farm surrounds the rest of it. He emphasized that this environmentally sensitive area should not include a hospitality business. Access to the Appalachian Trail and nature trails are from his property and he does not want strangers trespassing on his property. Mr. Calvert stated that he has had a long history with the property owners trespassing and using his property as their own private right-of-way.

Mr. Norman Gilbert, a neighbor who owns the parcel in front of the applicant's property, stated that he is in support of the proposal if a gate can be installed at the entrance, which is on his property, to the old road leading to the Appalachian Trail.

A discussion ensued as to whether the entrance to the property is a shared easement.

Mr. Meadows asked staff if the driveway belongs to the applicant or if it goes through someone else's property.

Ms. Krantz stated that, according to the application materials which were submitted, the driveway/entrance is located directly off Belle Meade Lane and is entirely on the applicant's property.

After additional discussion, on motion made by Mr. Meadows and seconded by Mr. McDade, it was moved to postpone action on this item until the next regularly scheduled meeting, with the public hearing left open, so that clarification can be obtained regarding ownership of the entrance.

Ms. Ball stated that she is the Trustee of the property and requested that Mr. Tom Peterson, a member of the owner's family, be allowed to address the Board.

Mr. Tom Peterson stated that the property was purchased by his mother in 1972. At that time, Route 66 had not been constructed. After its construction, Route 66 bisected the driveway that went to their property; however, the driveway originated on Mr. Gilbert's property. He stated that this driveway is still in place. The driveway terminates and then starts again on the other side of Route 66 for a short distance – approximately 50 yards to his mother's property. Mr. Peterson stated that his family has been able to use this right-of-way to access the property since it was purchased in 1972. He noted that it is his understanding that Mr. Gilbert's only concern is related to having unwanted visitors on his property. Mr. Peterson stated that he would be happy to do whatever is necessary to resolve this issue and make it clear to clients that they should not be on Mr. Gilbert's property.

Mr. Tissue stated that the Board cannot grant the use of another person's property for the applicant's project; therefore, he suggested that it might be prudent to have a survey done to avoid any legal issues.

After further discussion, Mr. Peterson requested an indefinite postponement until such time that additional information can be obtained regarding the easement.

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

Mr. Meadows rescinded his previous motion.

On motion made by Mr. Meadows and seconded by Mrs. Cooper, it was moved to postpone action on this item indefinitely, at the applicant's request, with the public hearing left open, until such time that additional information can be obtained regarding the easement.

The motion carried unanimously.

SPECIAL PERMIT #SPPT-19-012379 – BRUCE A. JENKINS & VANESSA E. WARD (OWNERS)/ERVIN JENKINS (APPLICANT) – MIDLAND OUTLAWS – An application for a Category 8 Special Permit to host a temporary event, PIN 7809-41-5259-000, 7809-41-3330-000 and 7809-41-8211-000, located at 11264 Rogues Road, Cedar Run District, Midland, Virginia. (Lauren Runyan, Staff)

Ms. Runyan reviewed the staff report.

Mr. McDade inquired if the applicant has written permission from the neighbors to have the trail ride go through their property.

Ms. Runyan confirmed that the applicant does have written permission.

After additional discussion, Mr. Meadows opened the public hearing.

Mr. Ervin Jenkins, applicant, expressed agreement with the staff report. Mr. Jenkins clarified that while some attendees may arrive on a motorcycle for the dinner, the event itself does not include motorcycles – only horses. Since the participants come from all over, they are fed prior to leaving. He also stated that he coordinates with the Sheriff's Office with reference to the music, which is turned down at 10:00 p.m. and off by midnight. Mr. Jenkins acknowledged that a raffle is held for a saddle. However, there are no outside vendors and no food or alcohol is sold. He emphasized that this is a non-profit organization.

Ms. Tracey Thrift, a neighbor, spoke in support of approval. Ms. Thrift stated that she has participated in this event, which brings members of the community together, for the past 10 years. She stated it is the applicant's way of giving back to the community and everyone who attends enjoys the trail ride, great food and camaraderie.

Ms. Judy Ball, a neighbor who owns the adjacent property to the south, spoke in support of approval. Ms. Ball stated that, while she does not ride horses, this is a wonderful event for the community. She also verified that the music is turned down at 10:00 p.m. and off at midnight.

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

Mr. Tufts stated that a letter of complaint was received by the Board, but since it was unsigned, it does not carry much weight.

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 and 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 temporary event 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 event shall be authorized for June 12, 13, and 14, 2020.
3. To ensure that adequate services are maintained on-site at all times, the event shall be approved in advance by the Fauquier County Department of Fire Rescue and Emergency Management (DFREM), Sheriff's Office, Health Department and VDOT. Copies of these approvals, including the type and number of security personnel, rescue or safety equipment and personnel, traffic control, and on-site sanitary and refreshment facilities required for the event shall be provided to the Zoning Administrator no later than May 29, 2020 at 1:00 p.m.

4. All parking areas shall be mowed and maintained prior to the event to minimize the risk of fire and prevent erosion.
5. There shall be no event parking or loading on Rogues Road (Route 602).

The motion carried unanimously.

SPECIAL PERMIT #SPPT-19-012382 – BWINDI MAZEY, LLC (OWNER)/DANIEL J. KENIRY (APPLICANT) – BWINDI MAZEY, LLC TOURIST HOME – An application for a Category 3 Special Permit to operate a tourist home, PIN 6071-89-3662-000 and 6072-80-6587-000, located at 7295 Old Carters Mill Road, Scott District, The Plains, Virginia. (Kara Krantz, Staff)

Ms. Krantz reviewed the staff report.

After discussion, Mr. Meadows opened the public hearing.

Mr. Daniel Keniry, applicant, expressed agreement with the staff report. Mr. Keniry stated that he has consulted with the Virginia Outdoors Foundation and the Fauquier County Department of Fire Rescue and Emergency Management. He also stated that the Virginia Department of Transportation (VDOT) has recommended approval of this proposal. Mr. Keniry stated that this proposal would only minimally impact roads in this area since there is currently non-resident traffic including guests of neighbors, activity from commercial horse farms, trucks, heavy construction equipment, waste management trucks for farms, motorcycles, cyclists and four-wheelers.

James Downey, Esq., representing a group of neighboring property owners who will be speaking individually at today's meeting, spoke in opposition to granting approval. Mr. Downey called into question the applicant's Statement of Justification, which is very vague about the hours of operation; the qualifications of the owners; and the fact that it contains no Traffic Impact Analysis (TIA) or traffic assessment. Mr. Downey stated that VDOT may say they have no objection to an application, but they do not make recommendations of approval. He also stated that the application does not meet the parking requirements outlined in the Zoning Ordinance. In addition, Mr. Downey stated that this property is surrounded by a very fragile road network, which has not been addressed by the applicant. Section 3-302 of the Zoning Ordinance states that the use shall be on a major collector unless the Board finds that the type and amount of traffic generated by the facility is such that it will not cause an undue impact on the neighbors or adversely affect safety of road usage. Mr. Downey urged the Board to deny this request.

Mr. McDade noted that the applicant has indicated that this proposed use would only add a minimal increase in traffic.

Mr. Downey stated that it is his belief that the applicant has understated the impact approval of this application would have on traffic in the area.

Ms. Jennifer Neff, a neighbor, spoke in opposition to granting approval of this request because of the impact it would have on those who make this area their full-time home. Ms. Neff stated that the new owners of this property, Cloverland Farm, are absentee landlords and are not part of this community. Rather, they wish to turn their property into a transient hotel for weekend revelers who do not know or care about the area. Ms. Neff stated that since her family shares a property line with the applicants, their concerns are particularly acute and that turning this property into a revolving door of strangers poses significant risks. Ms. Neff expressed concern about increased traffic on their fragile dirt road, noise and waste pollution, a risk of fire from smoking, fire pits, grills or campfires. In addition, the possible reckless use of firearms would pose a risk to people, animals and property in this area because it would be regularly occupied by transient guests who would likely be partying unsupervised.

Ms. Diane Russell, a neighbor, spoke in opposition to granting approval. Ms. Russell expressed concern about the proposed number of guests, the unsettling effect that noise from the property has already had on her dogs, and increased traffic. Ms. Russell also noted that some of the guests have used paper lanterns, which are unsafe in that they are fire hazards and pose a danger to her horses as well as wildlife in the area. She stated that the latest caretaker does not live on the property; therefore, it is impossible to monitor the guests and their actions.

Ms. Lauren Woolcott, a neighbor, spoke in opposition to granting approval, stating that a tourist home is not appropriate for this area and would expose property owners, children, those using the road and their thoroughbred horses to unacceptable dangers. Ms. Woolcott also expressed concern that neither the property owners nor the caretaker lives on-site.

Ms. Lisa Jawer, a neighbor, spoke in opposition to the proposal, stating that the one lane road is extremely dangerous due to hills, blind curves and damage from run-off. Ms. Jawer stated that this safety issue is even greater at night. She also expressed concern that no one lives on the property and the fact that the property owners have illegally been renting the property without the necessary approvals. Ms. Jawer also noted that unsightly trash has also been left behind by guests.

Ms. Stephanie Leupold, a neighbor who recently moved to the area, spoke in opposition to granting approval for this commercial use. She expressed concern about the dangerous, dark road as well as the health and safety risks of trash left behind by guests since there is no trash pick-up service in this area. Ms. Leupold encouraged the Board to deny this request and not set a precedent for future transient housing.

Ms. Gertraud Hechl, a neighbor, spoke in opposition to granting approval due to concerns about road safety.

Mr. William Russell, a neighbor, spoke in opposition to the proposal due to concerns about safety on this single one lane road with no shoulders. He expressed concern for the safety of the joggers, hikers, bikers, people walking dogs, those exercising horses, horse drawn carriages and trail riders who frequently use this road. Mr. Russell presented the Board with photographs, which were taken this past summer, showing the poor condition of Old Carters Mill Road.

Mr. Jim Thompson, a neighbor, spoke in opposition to granting approval due to the narrow roads in the area.

Mr. Tom Dungan, a resident who lives on Rock Hill Mill Road, spoke in opposition to granting approval. Mr. Dungan stated that while he recognizes the rights of property owners and he is not particularly opposed to tourist homes, he is concerned about investors who have no intention of getting to know the community and have no consideration for others living in the area. He noted that other jurisdictions, such as Fairfax, Virginia and Washington, D.C., require that those operating a tourist home occupy the property. Mr. Dungan urged the Board to deny the application due to safety concerns and for reasons highlighted by other speakers.

Georgia Herbert, Esq., fiduciary for Smitten Farm, which is adjacent to the property under consideration, spoke in opposition to granting approval. Ms. Herbert expressed concern about safety of the road and stated that residents who live on Old Carters Mill Road have a real reason to be concerned about this project. She noted that the property is not on a major collector and does not believe the Board can make a finding that the use will not adversely affect the community. Ms. Herbert also stated that GPS navigating systems have directed those trying to locate the subject property through Smitten Farm. She stated this would not have occurred if the tourist home were on a major collector. In conclusion, Ms. Herbert urged the Board to deny this request.

Mr. Carter Wiley, a neighbor, spoke in opposition to granting approval. Mr. Wiley stated that numerous surrounding properties are protected by conservation easements and expressed concern for future property values.

Ms. Anne Olgeirson, a neighbor, presented the Board with a comment letter outlining her opposition to approval because of the effect this would have on the numerous properties in the area that are currently under conservation easements. Mr. Olgeirson also presented a letter from Ms. Nancy Bedford who is opposed to approval due to concerns about safety, traffic, and the potential liabilities from the constant inflow of strangers.

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

On motion made by Mr. McDade and seconded by Mr. Tufts, 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 of neighboring properties; and
3. Vehicle traffic generated by the proposed use will be hazardous and conflict with existing patterns in the neighborhood.

The motion carried unanimously.

OTHER BUSINESS:

None.

ADJOURNMENT:

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

John R. Meadows, Chairperson

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.