

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
FEBRUARY 6, 2014**

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

The Fauquier County Board of Zoning Appeals held a work session on Thursday, February 6, 2014, beginning at 1:15 p.m. in the Warren Green Building, Second Floor Conference Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Michael Brown, Vice-Chairperson; Mrs. Mary North Cooper; Mr. Harry Russell; and Mr. Maximilian Tufts, Jr. Also present were Ms. Holly Meade, Assistant Chief of Planning; Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services; Ms. Marianne Primeau, Senior Assistant County Attorney; Mr. Don Del Rosso, Planner II; Mr. Chris Pettit, Planner; Mr. Rob Walton, Senior Planner; and Mrs. Fran Williams, Administrative Manager.

AGENDA REVIEW:

SPECIAL PERMIT #SPPT14-MA-014, D & T ASSOCIATES LIMITED PARTNERSHIP (OWNER/APPLICANT) – MARSHALL FORD CAR WASH ADDITION

Applicant is requesting an amendment to a previously approved Special Permit to allow the expansion of an existing motor vehicle wash, PIN 6969-68-6810-000, located at 8325 West Main Street, Marshall District, Marshall, Virginia. (Chris Pettit, Staff)

Mr. Pettit reviewed the application.

SPECIAL PERMIT #SPPT14-MA-015, DIANA L. WEBBER, SOLE TRUSTEE OF THE WEBBER LIVING TRUST & ANGELIC J. WEBBER, SOLE TRUSTEE OF THE ANGELIC WEBBER LIVING TRUST (OWNERS/APPLICANTS) – WEBBERPACK ANIMAL ADOPTION AND GETAWAY (WAAAG)

Applicant is requesting Special Permit approval to allow an animal shelter, PIN 6042-52-2679-000, located at 2581 Winchester Road, Marshall District, Delaplane, Virginia. (Don Del Rosso, Staff)

Mr. Del Rosso reviewed the application.

The meeting was adjourned at 1:50 p.m.

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

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, February 6, 2014, beginning at 2:00 p.m. in the Warren Green Meeting Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Michael Brown, Vice-Chairperson; Mrs. Mary North Cooper; Mr. Harry Russell; and Mr. Maximilian Tufts, Jr. Also present were Ms. Holly Meade, Assistant Chief of Planning; Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services; Ms. Marianne Primeau, Senior Assistant County Attorney; Mr. Don Del Rosso, Planner II; Mr. Chris Pettit, Planner; Mr. Rob Walton, Senior Planner; and Mrs. Fran Williams, Administrative Manager.

Mr. Meadows opened the meeting, which was then turned over to Ms. Primeau to initiate the election of officers.

ELECTION OF OFFICERS:

a. Secretary

On motion made by Mr. Brown and seconded by Mrs. Cooper, it was moved to nominate Ms. Meade as Secretary.

The motion carried unanimously.

b. Vice-Chairperson

On motion made by Mr. Tufts and seconded by Mrs. Cooper, it was moved to nominate Mr. Brown as Vice-Chairperson.

The motion carried unanimously.

c. Chairperson

On motion made by Mrs. Cooper and seconded by Mr. Tufts, it was moved to nominate Mr. Meadows as Chairperson.

The motion carried unanimously.

The meeting was then turned over to Mr. Meadows, Chairperson.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mrs. Williams read the public hearing protocol.

Ms. Meade stated that the items before the Board of Zoning Appeals for public hearing were advertised and posted. However, due to the closing of County offices for inclement weather, the adjacent property owner letters of notification related to the two Special Permit cases (SPPT14-MA-014 and SPPT14-MA-015) on the agenda were not mailed. Therefore, action cannot be taken on the two Special Permits at today's meeting.

Ms. Meade also stated that the March 6, 2014 regularly scheduled meeting will be held at the Warrenton Visitor Center, 33 North Calhoun Street, Warrenton, Virginia.

MINUTES:

On motion made by Mr. Brown and seconded by Mr. Russell, it was moved to approve the December 5, 2013 minutes.

The motion carried unanimously.

REGULAR AGENDA:**SPECIAL PERMIT #SPPT14-MA-014, D & T ASSOCIATES LIMITED PARTNERSHIP (OWNER/APPLICANT) – MARSHALL FORD CAR WASH ADDITION**

Applicant is requesting an amendment to a previously approved Special Permit to allow the expansion of an existing motor vehicle wash, PIN 6969-68-6810-000, located at 8325 West Main Street, Marshall District, Marshall, Virginia. (Chris Pettit, Staff)

Mr. Pettit reviewed the staff report, a copy of which is attached to and made a part of these official minutes.

Mr. Meadows opened the public hearing.

Mr. David Baird, applicant, expressed agreement with the staff report.

In that there were no further speakers, Mr. Meadows adjourned the public hearing until the next regularly scheduled meeting.

SPECIAL PERMIT #SPPT14-MA-015, DIANA L. WEBBER, SOLE TRUSTEE OF THE WEBBER LIVING TRUST & ANGELIC J. WEBBER, SOLE TRUSTEE OF THE ANGELIC WEBBER LIVING TRUST (OWNERS/APPLICANTS) – WEBBERPACK ANIMAL ADOPTION AND GETAWAY (WAAAG)

Applicant is requesting Special Permit approval to allow an animal shelter, PIN 6042-52-2679-000, located at 2581 Winchester Road, Marshall District, Delaplane, Virginia. (Don Del Rosso, Staff)

Mr. Del Rosso reviewed the staff report, a copy of which is attached to and made a part of these official minutes.

Mr. Meadows opened the public hearing.

Ms. Angelic Webber, applicant, expressed agreement with the staff report.

In that there were no further speakers, Mr. Meadows adjourned the public hearing until the next regularly scheduled meeting.

ZONING APPEAL #ZNAP14-LE-006, MARY C. DECARLO (APPELLANT) – LUCK STONE CORPORATION/DECARLO

An appeal of a Zoning Administrator's determination that the Luck Stone Corporation (Bealeton Quarry) is not in violation of Zoning Ordinance Section 4-407.3, PIN 6898-27-5594-000, located at 6319 Cedar Ridge Road, Lee District, Bealeton, Virginia. (Chuck Floyd, Staff) *Note: This is a public meeting, not a public hearing.*

Mr. Meadows opened the public meeting.

APPELLANT PRESENTATION

Jonathan Shoemaker, Esq., representative, requested permission to submit new material, including a timeline and photographs. The Board declined the request.

Mr. Shoemaker stated that his client, Ms. Mary DeCarlo, owns the property located at 11271 Remington Road which is adjacent to the Luck Stone facility in Bealeton. Mr. Shoemaker presented the following arguments:

On January 12, 2006, Luck Stone obtained Special Exception approval, subject to a number of conditions. Condition #31 stated: *“A detailed analysis of the impact of the encroachment of fill material, placed by Luck Stone, into the floodplain shall be performed by Luck Stone in conformance with County standards. This study shall be submitted to the County for review and approval and then to FEMA for consideration. The as-built floodplain analysis must be compared with the pre-developed flooding condition. In general, the floodplain analysis should begin at approximately the confluence of Craig Run with Marsh Run and be computed upstream to the point at which the post-developed flooding condition ties to the pre-developed flooding condition. The study shall be initiated immediately and submitted to the County for*

review within one (1) year of the Board of Supervisors' action date. Upon approval by the County, Luck Stone shall submit to FEMA within 60 days."

Mr. Shoemaker noted that this condition was not complied with since the detailed analysis, prepared by Carson Ashley & Associates, was not submitted until June 2008. This analysis, which was reviewed by the County's own engineers, showed a 1.5 foot high increase in the floodplain that resulted in a 75 foot expansion of the floodplain onto his client's property.

Since these materials indicated that there *had* been an increase in the floodplain, which is a clear violation of the Zoning Ordinance (Section 4-407.3), Ms. DeCarlo submitted a complaint letter dated November 12, 2009, requesting a determination from the Zoning Administrator. In an April 7, 2010 letter, the previous Assistant Zoning Administrator, Mr. Andrew Hushour, determined that Luck Stone Corporation "*is clearly in violation of Section 4-407.3 of the Zoning Ordinance.*"

In May 2010, Luck Stone filed an appeal of this determination. However, this appeal was never brought before the Board of Zoning Appeals. Ms. DeCarlo then received a letter dated December 10, 2013 which was issued by Mr. Chuck Floyd, the current Assistant Zoning Administrator, reversing the initial determination based upon supplemental reports.

This appeal is being made for two reasons. First, the Zoning Administrator lacked the authority to issue a revised determination. Second, the Zoning Administrator ignored the plain language of the Zoning Ordinance in making a revised determination that Luck Stone was not in violation of Section 4-407.3.

The *Code of Virginia* (§15.2-2311.C) states: "*In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator...*"

His client, in good faith, relied on the initial determination letter dated April 7, 2010 and engaged in settlement negotiations with Luck Stone.

Mr. Shoemaker stated that Luck Stone commissioned a supplemental study by Timmons Group, which found there was an increase of 0.02 feet (i.e., 0.25 inches) by selectively referencing the following portion of the VDOT Drainage Manual: "*Show changes in calculated water surface elevations to the nearest 0.1 (tenth) ft. or 0.01 (hundredth) meters.*" Timmons Group's reliance on the VDOT Drainage Manual is misleading based on its decision to use the imperial measurement methodology instead of the metric measurement methodology. Using the imperial measurement methodology, Timmons Group argues that there was a 0.0 foot increase as specified by VDOT reporting standards. If Timmons Group used the metric measurement methodology by converting the 0.25 inch increase in the floodplain to the nearest hundredth meter, it could not have concluded that there was a 0.00 meter increase to the floodplain. Rather, using the metric measurement methodology, Timmons Group's findings evidence a 0.01 meter *increase* to the floodplain using VDOT reporting standards. Therefore, the conclusion that the increased flooding caused by the

development of the Luck Stone property is “statistically insignificant” is contradicted by the VDOT Drainage Manual's use of both standard and metric measurement methodologies.

Mr. Shoemaker emphasized that Luck Stone is in violation of Zoning Ordinance Section 4-407.3 since it plainly prohibits *any* increase in the floodplain.

In conclusion, Mr. Shoemaker stated that the second determination made by the Zoning Administrator is in error and he respectfully requested that the Board reverse it, affirm the first determination, and direct the Zoning Administrator to take such action as is necessary to cause Luck Stone to abate its violation of the Zoning Ordinance.

COUNTY PRESENTATION

Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services, stated that he was employed by Carson Ashley & Associates during 2008, but he did not work on the Luck Stone project.

Mr. Floyd stated that the main issue in question is if he was correct in determining that the use and development of the Luck Stone property did not increase the height of the floodplain on the adjoining property owned by Ms. DeCarlo.

The County does not dispute the language contained within the Zoning Ordinance (Section 4-407.3), which specifically states: “*Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch or any other facility or system which would increase flood heights and/or velocities.*” Furthermore, the County agrees that the most recent floodplain study performed by the Timmons Group for Luck Stone shows a 0.02 foot increase in the flood heights on Ms. DeCarlo’s property. However, at issue is whether or not the 0.02 foot increase in the flood heights is an actual increase when considering: (1) the accuracy and precision of the hydrologic and hydraulic models used in the calculations that determine the flood heights; (2) the variables in the factors used in the calculations; and (3) the professional engineering judgment and discretion used in determining the factors required for the calculations.

The 2008 Carson Ashley & Associates study showed a 1.5 foot increase to the floodplain. In 2012, because of the use of engineering judgment in defining the impact and the parameters of the floodplain study, the impact on Ms. DeCarlo’s property decreased to 0.02 feet. A subsequent sensitivity analysis performed by the Timmons Group shows that Luck Stone’s development actually decreased the height of the floodplain on Ms. DeCarlo’s property. All of these results, which are vastly different, occurred because of the amount of engineering judgment and discretion permitted in floodplain modeling.

While the Zoning Ordinance states that under no circumstances shall any use or development increase the flood heights or velocities, it does not contain any precision or accuracy standards by which water surface elevations and velocities are to be determined. Therefore, the accuracy and precision by which water surface elevation and velocities are calculated fall under the Zoning Administrator’s scope and authority to interpret the Zoning Ordinance. In this instance, a commonly accepted engineering level of precision, found in the Virginia Department of Transportation’s Drainage Manual, was used. The VDOT Drainage Manual

requires that changes in water surface elevations be shown to the nearest tenth of a foot. When the determination that the development of Luck Stone did not constitute a zoning violation was made, it was based on VDOT's level of precision as it is commonly used throughout the state and within the acceptable margin of error. As the noted change in water surface elevation in the Timmons Group engineering report is within the acceptable margins of error for calculations of this nature, there is insufficient proof available to determine and defend the existence of a zoning violation.

In closing, Mr. Floyd stated that his determination that the 0.02 foot change to the floodplain elevation caused by the development of the Luck Stone property is statistically insignificant, outside the reasonable precision of floodplain models, and did not constitute a zoning violation was correct. Furthermore, the Zoning Administrator's use of a commonly accepted level of precision used by VDOT was and is perfectly acceptable and within the scope and purview of the duties of the Zoning Administrator.

Mr. Floyd concluded by respectfully requesting that the Board affirm the Zoning Administrator's determination.

REBUTTAL

Mr. Shoemaker reiterated that even though there are many different ways to calculate water issues, both the Carson Ashley & Associates and Timmons Group floodplain studies found that there has been an increase in the floodplain levels. No one else has been called to task by the Zoning Administrator for the floodplain increase on his client's property.

Mr. Floyd stated that the Federal Emergency Management Agency (FEMA) maps were most recently updated in February 2008. Prior to that, they had not been updated since 1979. During the period between 1979 and 2008, there has been a great deal of development in the Bealeton area so it is difficult to say that Luck Stone caused the issues in question.

ACTION

Mr. Brown inquired if the Appellant has an issue with Mr. Floyd having been employed by Carson Ashley & Associates during the time the floodplain study was done in 2008.

Mr. Shoemaker replied that he does not have a problem with this since Mr. Floyd has indicated that he was not involved in this project.

Mr. Brown expressed concern that Luck Stone and staff spent approximately three years discussing this issue administratively rather than referring it to the Board for resolution.

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

After discussion, on motion made by Mr. Brown and seconded by Mr. Russell, it was moved to overturn the decision of the Zoning Administrator, after due notice and hearing as required by the Fauquier County Zoning Ordinance and *Code of Virginia* in Appeal #ZNAP14-LE-006, finding that: (1) The initial Appeal filed by Luck Stone of the Assistant Zoning

Administrator’s determination was not referred to the Board of Zoning Appeals in accordance with the provisions of *Code of Virginia* §15.2-2311.A; and (2) The Assistant Zoning Administrator exceeded the scope of his authority in issuing the second determination letter in violation of the provisions of *Code of Virginia* §15.2-2311.C.

The motion carried 3 – 2, as follows:

AYES: Mr. Brown, Mr. Russell, Mr. Tufts

NAYS: Mrs. Cooper, Mr. Meadows

ABSTENTION: None

ABSENT: None

OTHER BUSINESS:

- Mr. Meadows stated that Mr. Harry Russell is leaving the Board of Zoning Appeals and this will be his last meeting. Mr. Meadows expressed appreciation for Mr. Russell’s more than six years of dedicated service and presented him with the following Resolution:

A RESOLUTION TO RECOGNIZE HARRY R. RUSSELL FOR HIS SERVICE TO THE FAUQUIER COUNTY BOARD OF ZONING APPEALS AND THE CITIZENS OF FAUQUIER COUNTY

This resolution was adopted at a regular meeting of the Fauquier County Board of Zoning Appeals, held in the Warren Green Building, First Floor Meeting Room, 10 Hotel Street, Warrenton, Virginia, on Thursday, February 6, 2014.

WHEREAS, Harry R. Russell, has served as a member of the Fauquier County Board of Zoning Appeals since July 6, 2007; and

WHEREAS, his concern for the citizens and knowledge of Fauquier County contributed significantly to the Board of Zoning Appeals' efforts to apply the zoning regulations of this County in a fair and impartial manner to the benefit of all who came before the Board of Zoning Appeals; and

WHEREAS, the Board of Zoning Appeals, on behalf of all the citizens of Fauquier County, wishes to express its appreciation for his service to the citizens of Fauquier County and his devotion and dedication to the betterment of the County; now, therefore, be it

RESOLVED, That the Fauquier County Board of Zoning Appeals does hereby offer its highest appreciation and extends its best wishes to Harry R. Russell in all future endeavors; and, be it

FURTHER RESOLVED, That this Resolution be placed within the minutes of the Board of Zoning Appeals in recognition of Harry R. Russell’s distinguished service to

Fauquier County.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:30 p.m.

John R. Meadows, Chairperson

Holly Meade, Secretary

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