

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 7, 2013**

*Site Visit  
11:30 a.m.  
Parking Lot – Corner of Lee Street and Marshall Street  
Warrenton, Virginia*

The Fauquier County Board of Zoning Appeals held an adjourned meeting on Thursday, February 7, 2013, beginning at 11:30 a.m. at the parking lot on the corner of Lee Street and Marshall Street, Warrenton, Virginia to attend a site visit at Canis Maximus Kennel, 6205 Beverleys Mill Road, Broad Run, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Harry Russell; and Mr. Maximilian Tufts, Jr. Also present were Ms. Holly Meade, Assistant Chief of Planning/Secretary; Mr. Don Del Rosso, Planner II; and Ms. René Austin. Joining them in attendance at the site were Mr. Jay Pinsky; Dr. Kristen Hitt; Ms. Kate Ryan; and Ms. Cindy Smith. Members absent were Mr. Michael Brown, Vice-Chairperson and Mrs. Mary North Cooper.

The meeting was adjourned at 12:20 p.m.

*Work Session  
1:10 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 7, 2013, beginning at 1:10 p.m. in the Warren Green Building, Second Floor Conference Room, 10 Hotel Street, Warrenton, Virginia. Members present were Mr. John Meadows, Chairperson; Mr. Harry Russell; and Mr. Maximilian Tufts, Jr. Also present were Ms. Holly Meade, Assistant Chief of Planning/Secretary; Ms. Mary Catherine Sheridan, Assistant County Attorney; Mr. Don Del Rosso, Planner II; and Mrs. Fran Williams, Administrative Manager. Members absent were Mr. Michael Brown, Vice-Chairperson and Mrs. Mary North Cooper.

**CLOSED MEETING:**

On motion made by Mr. Tufts and seconded by Mr. Meadows, it was moved to go into a closed meeting, pursuant to *Code of Virginia* Section 2.2-3711(A)(7) for the purpose of consultation with legal counsel pertaining to specific legal matters requiring the provision of legal advice by counsel relating to SPPT13-SC-011 (Canis Maximus Kennel).

The motion carried 3 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Tufts

NAYS: None

ABSTENTION: None

ABSENT: Mr. Brown, Mrs. Cooper

Upon reconvening from the closed meeting, Mr. Tufts read the following Certification of Closed Meeting:

The Fauquier County Board of Zoning Appeals, having adjourned into a closed meeting this day for the purposes stated in the resolution authorizing such meeting, does hereby certify that to the best of each member's knowledge:

1. Only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and
2. Only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting.

This certification shall be recorded in the minutes of the Board of Zoning Appeals on motion of Mr. Tufts and seconded by Mr. Meadows.

The motion carried 3 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Tufts

NAYS: None

ABSTENTION: None

ABSENT: Mr. Brown and Mrs. Cooper

**AGENDA REVIEW:**

**SPECIAL PERMIT #SPPT13-CR-012, C. DAVID LEE (OWNER)/V & D SHAH, LLC (APPLICANT) – IN AND OUT CONVENIENCE STORE**

Applicant is requesting special permit approval to allow for the operation of an automobile service station, PIN 7839-77-7270-000, located at 10847 Elk Run Road, Cedar Run District, Catlett, Virginia. (Don Del Rosso, Staff)

Mr. Del Rosso reviewed the application.

**SPECIAL PERMIT #SPPT13-SC-011, FRANKLIN C. H. & IRINA S. BARRETT (OWNERS)/IRINA BARRETT (APPLICANT) – CANIS MAXIMUS KENNEL**

Applicant is requesting special permit approval to allow for a kennel, PIN 7906-68-7287-000, located at 6205 Beverleys Mill Road, Scott District, Broad Run, 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 7, 2013, 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. Harry Russell; and Mr. Maximilian Tufts, Jr. Also present were Ms. Holly Meade, Assistant Chief of Planning/Secretary; Ms. Mary Catherine Sheridan, Assistant County Attorney; Mr. Don Del Rosso, Planner II; and Mrs. Fran Williams, Administrative Manager. Members absent were Mr. Michael Brown, Vice-Chairperson and Mrs. Mary North Cooper.

**LETTERS OF NOTIFICATION AND PUBLIC NOTICE:**

Mrs. Williams read the public hearing protocol. Ms. Meade stated that, to the best of her knowledge, the cases before the Board of Zoning Appeals for a public hearing have been properly advertised, posted, and letters of notification sent to adjoining property owners.

**AGENDA ORDER:**

Ms. Meade announced that the agenda would be revised to consider Item #3 (In and Out Convenience Store) as Item #2 and Item #2 (Canis Maximus Kennel) as Item #3.

**MINUTES:**

On motion made by Mr. Russell and seconded by Mr. Tufts, it was moved to approve the January 3, 2013 minutes.

The motion carried 3 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Tufts

NAYS: None

ABSTENTION: None

ABSENT: Mr. Brown, Mrs. Cooper

**REGULAR AGENDA:**

**SPECIAL PERMIT #SPPT13-CR-012, C. DAVID LEE (OWNER)/V & D SHAH, LLC (APPLICANT) – IN AND OUT CONVENIENCE STORE (Item #3)**

Applicant is requesting special permit approval to allow for the operation of an automobile service station, PIN 7839-77-7270-000, located at 10847 Elk Run Road, Cedar Run District, Catlett, 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.

Scott Braxton Puryear, Esquire, representative, expressed agreement with the staff report.

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

On motion made by Mr. Russell 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 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.

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 site 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 applicant shall be required to fulfill all necessary landscaping requirements pursuant to Article 7 of the Fauquier County Zoning Ordinance. Landscaping requirements shall be reviewed during the site plan process.
3. The hours of operation for the Automobile Service Station are limited to weekdays and weekends as specified in the applicant's Statement of Justification.
4. All new lighting on the site, including the canopy, shall comply with the Fauquier County Zoning Ordinance.
5. The underground fuel tank shall be installed at least fifty (50) feet from the existing on-site well.
6. All new signs on the site shall comply with the Fauquier County Zoning Ordinance.
7. The applicant shall remove all illegal signs prior to approval of a site plan.
8. The proposed fuel system shall comply with all pertinent Virginia Department of Environmental Quality (DEQ) installation, monitoring and record-keeping regulations.

The motion carried 3 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Tufts

NAYS: None

ABSTENTION: None

ABSENT: Mr. Brown, Mrs. Cooper

**SPECIAL PERMIT #SPPT13-SC-011, FRANKLIN C. H. & IRINA S. BARRETT (OWNERS)/IRINA BARRETT (APPLICANT) – CANIS MAXIMUS KENNEL (Item #2)**

Applicant is requesting special permit approval to allow for a kennel, PIN 7906-68-7287-000, located at 6205 Beverleys Mill Road, Scott District, Broad Run, 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. Del Rosso also stated that a site visit was made earlier in the day.

Mr. Meadows explained that while there may be other legitimate concerns, the Board has the responsibility of making a land use decision – determining if a kennel of any size is compatible with the neighborhood. Mr. Meadows also noted that should the application be approved and no time limit is stipulated, the approval would run with the land to the next owner.

Mr. Meadows opened the public hearing.

Ms. Irina Barrett, applicant, stated that a number of improvements have been made to reduce the impact on the neighborhood. Ms. Barrett also stated that she has reduced the number of dogs that she is requesting, that she loves the dogs in her care and that she is not operating a “puppy mill.” Ms. Barrett expressed concern that her excellent reputation has been tarnished by a report based on inaccuracies and requested that a decision be based on the facts.

Ms. Rebecca Kellert, Center District, spoke in opposition to approval of the application. Ms. Kellert noted that the Board made a site visit to the property earlier in the day and questioned if the applicant would have made the improvements if the site visit had not been scheduled. Ms. Kellert expressed concern about the large number of pets in animal shelters and also asked what will happen to the dogs while the applicant constructs a new kennel.

Mr. Russell requested clarification from staff if the applicant has been operating a kennel for 3½ years without a special permit.

Mr. Del Rosso stated that the applicant has been in operation for 3½ years without the necessary approvals.

Ms. Hilleary Bogley, Humane Investigator, stated that a great deal of misinformation has been circulating on the Internet and in the community. Ms. Bogley stated that after receiving a call of concern, she visited the site and found the applicant to be very cooperative. She also noted that the applicant was providing medical and daily care for her dogs and the conditions did not pose a “cruelty to animals” situation. Ms. Bogley also clarified that everything written in her report was discussed with the applicant. She stated that she offered to take some of the animals to the Middleburg Humane Foundation since the applicant indicated that she was trying to reduce the number of dogs in her care. The eleven dogs that were willfully released to the Middleburg Humane Foundation were examined by a licensed veterinarian and then placed in foster care, transferred to other rescue groups or are currently available for adoption. She stated that she does consider the applicant’s facility to be a “puppy mill” due to the large number of dogs and also expressed concern that many of the dogs were confined to crates. Ms. Bogley concluded by saying she promotes responsible breeding and if the application is approved that it should be done so with a restricted number of dogs in order to focus on the quality of care rather than the quantity of animals.

Mr. Meadows inquired about the number of dogs Ms. Bogley feels would be manageable for the applicant.

Ms. Bogley stated that, in her opinion, 12 dogs would be a responsible number for one person to care for.

Ms. Laura Wojtecki, a neighbor and letter carrier who drives past this property six days per week, spoke in opposition to the granting of this special permit. Ms. Wojtecki expressed concern about safety because of a dangerous hill and curve near the entrance. She also stated that over the past 3½ years, she has only seen dogs out in the enclosure less than a dozen times.

Mr. Henry Kievenaar, Jr., a neighbor, spoke in opposition, citing concerns that the kennel was established without the necessary approvals; the dogs are living in an abusive environment; it will require a great deal of expense to transform the kennel into an acceptable facility; and the noise infringes on the peace of adjacent property owners.

Mr. Charles Dennis, a neighbor, spoke in opposition, citing concerns about noise and the possible contamination of groundwater.

Ms. Etta Cantrell, who operates a rescue facility, spoke in opposition, citing concerns about the large number of dogs with only one person caring for them as well as the poor conditions under which the dogs are living.

Mr. Tom Carter spoke in opposition and expressed concern about the precedent that would be set if the application is approved since the applicant has knowingly violated County regulations.

Ms. Carrie Blair, Scott District, spoke in opposition, stating that no water, light, air, food or adequate space is abuse and constitutes a concentration camp for dogs.

Ms. Donna Piwetz spoke in opposition to the granting of this request, stating that some of the dogs she has received in her rescue organization were from clients who had purchased them from the applicant.

Mr. Jeff Khalatbari, next door neighbor, spoke in opposition to the granting of this special permit. Mr. Khalatbari stated that the applicant's fencing is inadequate and her dogs have come onto his property in a pack and cornered his horse. He also expressed concern about noise and safety. Mr. Khalatbari concluded by stating that constructing a new facility will not create a new mentality on the part of the applicant.

Dr. Kristen Hitt, a veterinarian, spoke in opposition to the granting of this special permit. Dr. Hitt expressed concern about public safety because of the dangerous curve and hill near the applicant's driveway; what appears to be inadequate ventilation; and unvaccinated dogs. Dr. Hitt also expressed concern about animal waste and suggested that an environmental impact study be conducted.

Ms. Cindy Smith, a neighbor, spoke in opposition to the granting of this special permit. Ms. Smith stated that she and her family are currently renting a house and considering purchasing property in the area, but she will not do so if the application is approved.

Ms. Carla Nammack, owner of Country Club Kennels, spoke in opposition to the granting of this special permit, echoing concerns of the previous speakers. Ms. Nammack stated that she has ten employees to help her properly care for 80 dogs on a 45-acre parcel.

Ms. René Austin spoke in opposition to approval.

Mr. André Sadowski, a Realtor and previous client of the applicant, spoke in opposition to the granting of this special permit, citing concerns about safety, poor conditions at the kennel, and the negative impact this facility will have on property values. Mr. Sadowski suggested that noise, traffic and environmental impact studies are needed.

Ms. Maureen Kievenaar, a neighbor, spoke in opposition. Ms. Kievenaar expressed concern about noise and the possible contamination of wells.

Ms. Beth Connell spoke in opposition to approval of the special permit.

Ms. Laura Ruehring, Prince William County, spoke in opposition, stating that the use is not compatible with the neighborhood. Ms. Ruehring also expressed concerns about liability, property values and the impact on groundwater.

Ms. Mary Haak asked who citizens can contact about the dogs until such time as a decision is made on the request.

Mr. Meadows stated that Planning staff members will be able to answer that question.

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

On motion made by Mr. Tufts and seconded by Mr. Russell, it was moved to postpone action on this item until the next regularly scheduled meeting, with the public hearing left open, due to the large number of emails that the Board received but has not had an opportunity to read.

The motion carried 3 – 0, as follows:

AYES: Mr. Meadows, Mr. Russell, Mr. Tufts

NAYS: None

ABSTENTION: None

ABSENT: Mr. Brown, Mrs. Cooper

**OTHER BUSINESS:**

Mr. Meadows requested that the Board review the proposed Zoning Appeals' procedures, which were distributed by Ms. Sheridan, for consideration at the next regularly scheduled meeting.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 3:40 p.m.

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John R. Meadows, Chairperson

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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.*