

**MINUTES OF  
FAUQUIER COUNTY BOARD OF ZONING APPEALS  
DECEMBER 5, 2013**

*Work Session  
1:30 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, December 5, 2013, beginning at 1:30 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; Mr. Rick Klinc, Director of Information Technology; and Mrs. Fran Williams, Administrative Manager.

Mr. Klinc briefed the Board on email use.

The meeting was adjourned at 1:40 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, December 5, 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. 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; and Mrs. Fran Williams, Administrative Manager.

**PUBLIC HEARING PROTOCOL:**

Mr. Meadows stated that reading of the public hearing protocol would be dispensed with since the only item on the agenda is a public meeting rather than a public hearing.

**LETTERS OF NOTIFICATION AND PUBLIC NOTICE:**

Ms. Meade stated that, to the best of her knowledge, the case before the Board of Zoning Appeals for a public meeting has been properly advertised and posted.

**MINUTES:**

On motion made by Mr. Russell and seconded by Mr. Tufts, it was moved to approve the November 7, 2013 minutes.

The motion carried unanimously.

**REGULAR AGENDA:**

**ZONING APPEAL #ZNAP14-MA-005, SUNNYSIDE FARM TRUST (APPELLANT) – HANSEN ADMINISTRATIVE SUBDIVISION**

An appeal of a Zoning Administrator’s determination that the Hansen Administrative Division met the Zoning Ordinance requirement for street frontage. The Hansen properties, described as PIN 6054-95-1698-000 and 6054-95-2419-000, are located off John S. Mosby Highway, Marshall District, Upperville, Virginia. (Kimberley Johnson, Staff) *Note: This is a public meeting, not a public hearing.*

Mr. Meadows opened the public meeting.

**APPELLANT PRESENTATION**

Jim Downey, Esq., representative, stated that Sunnyside Farm Trust is the owner of a 250-acre property adjacent to the Village of Upperville. The Sunnyside Farm property is served by Lafayette Street, which is little more than a narrow pathway. Ms. Courtenay Hansen applied for a Special Exception to allow a private well and the waiver of the hydrogeological study requirement to permit her to administratively subdivide a lot that would utilize Lafayette Street. Mr. Downey stated that his client protested the Special Exception application at the January 10, 2013 Board of Supervisors’ public hearing, to no avail. The Special Exception was granted and the subsequent Administrative Subdivision was approved on May 21, 2013. Sunnyside appealed the approval of the subdivision plat to the Board of Supervisors and the Board denied that appeal on October 10, 2013. Mr. Downey noted that on June 17, 2013, he submitted a request to have the Zoning Administrator determine if an Administrative Subdivision can be approved if the resulting lot does not connect to a 50 foot right-of-way. A response to this request was not received until October 3, 2013.

In reviewing the grounds for this appeal, Mr. Downey stated that it is not a matter of interpretation whether the street is “public” or “private.” He stated that the Zoning Administrator determined that the street is neither a “private” nor “public” street, but then went on to define it as “public,” under the case of *Barton Foundation, Inc. v. Widener*, which declared a new type of street (“public way”) that fits neither definition. Lafayette Street has

never had any public oversight or maintenance exercised over it. He stated that it is his position that the Zoning Administrator applied erroneous principles of law in finding that Lafayette Street is a “public” street. No decision should have been rendered classifying it as “public” without the full process of a Zoning Ordinance text amendment. Utilizing that process would have required the Board of Supervisors to take up the issue as one involving legislative policy.

Mr. Downey also noted that Article 15 of the Zoning Ordinance defines a “public street” as: *“A platted street, dedicated for the use of the general public, graded and paved in order that every person has the right to pass and to use it at all times, for all purposes of travel, transportation or parking to which it is adapted and devoted, and **currently maintained by the State of Virginia.**”* Mr. Downey stated that Lafayette Street is not currently maintained by the State of Virginia.

Mr. Downey further argued that contrary to the Zoning Administrator’s determination, right-of-way width of 50 feet is required for Lafayette Street before a new lot can use it for access, regardless of whether the street is “public” or “private.” The Zoning Ordinance imposes the 50 foot width requirement on both “public” and “private” streets. The Subdivision Ordinance (Section 17) also refers to “Typical Section Without Curb and Gutter, Local Street.” According to the plat submitted by Ms. Hansen with the Special Exception application, Lafayette Street is only 26 feet wide at the end of the street abutting her property. Ms. Hansen’s attempt to remedy the 50 foot width requirement by dedicating a 10 foot strip of her yard for public use does not result in a 50 foot right-of-way along her property line. Nor does that dedication create the required width along the rest of Lafayette Street. One of the conditions of the Resolution of Approval for the Special Exception was for Ms. Hansen to “demonstrate the legal right to access Lafayette Street prior to the approval of the Administrative Subdivision.” Because of the insufficient right-of-way width on Lafayette Street, this condition remains unsatisfied, and the Board of Zoning Appeals retains jurisdiction to so rule.

Mr. Downey further stated that his client is concerned because of the drainage issues in this area and the significant financial impact his client must solely bear to maintain the road.

In conclusion, Mr. Downey stated that the Zoning Administrator’s determination is in error and he respectfully requested that the Board overturn it.

### **COUNTY PRESENTATION**

Mr. Chuck Floyd, Assistant Chief of Zoning/Development Services, stated that the County’s position is rather simple and was clearly articulated in its response to Mr. Downey’s appeal. The Zoning Ordinance contains two types of streets: 1) Public streets, which are defined as *“A platted street, dedicated for the use of the general public, graded and paved in order that every person has the right to pass and to use it at all times, for all purposes of travel, transportation or parking to which it is adapted and devoted and currently maintained by the State of Virginia.”*; and 2) Private Streets, defined as *“A local or collector street, not a component of the state primary or secondary system, which is guaranteed to be maintained by a private corporation and is subject to the provisions of Part 3 of Article 7.”* Since Lafayette

Street does not fully meet either of the definitions, the proper classification of Lafayette Street required an interpretation by the Zoning Administrator.

When the Zoning Administrator reviewed the totality of the evidence before her, she reached the logical conclusion that Lafayette Street is a “public” street for the purposes of the Hansen Administrative Subdivision. This conclusion was based on the following facts: 1) Lafayette Street is public in character as it is used by the public, including customers of the Upperville Post Office and visitors to Trinity Episcopal Church; 2) Lafayette Street does not have a separate tax map number; 3) No individual or entity has ownership of the street; and 4) No individual or entity pays taxes on the street or treats it as private property.

In researching Mr. Downey’s request for an interpretation, the Zoning Administrator found case law that addressed this specific issue. Virginia case law has recognized and classified such streets like Lafayette, which are open to public passage but not maintained by the Virginia Department of Transportation (VDOT) or a local government, as “public ways” over which the public at large has a right of passage. In *Barton Foundation, Inc. v. Widener*, a case which involved streets that had been platted but not maintained or formally accepted by the governing body, the Court found that the general public had the right to use the property for passage and therefore characterized the street as a “public way.”

Mr. Floyd stated that Zoning Administrator used case law in conjunction with the other facts to help determine the appropriate classification of Lafayette Street, which is that Lafayette Street is a “public” street.

Mr. Floyd stated that the Appellant also argued that the Zoning Administrator should not have rendered a decision classifying Lafayette Street as “public” without the full process of a Zoning Ordinance text amendment, which would have required the Board of Supervisors to take up the issue as one involving legislative policy. This argument is not relevant to the case as the decision made by the Zoning Administrator was an interpretation of the Zoning Ordinance—not a policy decision. The Zoning Administrator was asked whether Lafayette Street is a “public” or “private” street and she answered the question. In no instance was the Zoning Administrator making a more arching policy decision.

Mr. Floyd also stated that the question is whether or not Lafayette is a “public” or “private” street. Neither party is arguing over the definitions of a “private” or “public” street nor are we in disagreement over the requirement contained in Section 2-405, which states: “*Except as provided for in Section 404 above, each lot created subsequent to the adoption of this Ordinance shall have frontage on a public street (or on a private street authorized by the provisions of Part 3 of Article 7) wherever a minimum lot width is specified in Part 4 of Article 3, which frontage shall be not less than said minimum lot width. The required frontage shall be measured at the rear of the minimum required front yard.*” The crux of the issue is that the Zoning Administrator classified Lafayette Street as a “public” street not a “private” street. In this case, the Zoning Administrator made the only logical determination.

Further, the issue related to the argument about the right-of-way width and the provisions contained in the Subdivision Ordinance was adjudicated by the Board of Supervisors on October 10, 2013 in their denying the appeal related to the Hansen Subdivision. In denying Mr. Downey’s appeal of the Hansen Subdivision approval, the Board found that the plat was

in compliance with the Subdivision Ordinance. These issues are not under the Board of Zoning Appeals' purview.

Mr. Floyd noted that since Lafayette Street does not fully meet the definition of a "public" or "private" street as set forth in the Zoning Ordinance, the proper classification required interpretation by the Zoning Administrator. The Zoning Administrator based her determination on all the facts in combination with Virginia case law and reached the only logical determination—that Lafayette Street is a "public" street for the purpose of the Hansen Administrative Subdivision.

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

### **ACTION**

Mr. Brown inquired if the Zoning Administrator has consistently made this determination in the case where a street does not technically meet the definition of being "public" or "private."

Mr. Floyd confirmed that the Zoning Administrator has consistently done so in the past. Mr. Floyd gave the example of an abandoned right-of-way portion of Old Culpeper Road near Lovers Lane, which the Zoning Administrator has determined is a "public" street even though it clearly has not been maintained by VDOT since the 1960s.

Ms. Cooper inquired about the E-911 address for the Sunnyside Farm Trust property.

Mr. Meadows requested that Mr. Pete Scamardo, applicant, answer this question.

Mr. Scamardo confirmed that the E-911 address is 9098 John S. Mosby Highway, but that Lafayette Street would be used by emergency personnel to access the property.

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

On motion made by Mr. Brown and seconded by Mr. Russell, it was moved to affirm 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-MA-005, finding that the Zoning Administrator correctly determined that the Hansen Administrative Subdivision approved by the County on May 21, 2013 has frontage on a public street and that the requirements set forth in Section 7-302(1)(A)(3) requiring a private street to be fifty (50) feet in width does not apply in this case.

The motion carried unanimously.

**OTHER BUSINESS:**

Mr. Meadows stated that the January 2, 2014 meeting has been cancelled since there are no cases scheduled.

**ADJOURNMENT:**

There being no further business, the meeting was adjourned at 2:50 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.*