

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
SEPTEMBER 2, 2010**

*Work Session
1:00 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, September 2, 2010, beginning at 1:00 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, Vice-Chairperson; Mr. Michael Brown; Mrs. Mary North Cooper; and Mr. Maximilian Tufts, Jr. Also present were Ms. Mary Catherine Sheridan, Assistant County Attorney; Mr. Andrew Hushour, Assistant Zoning Administrator/Secretary; and Ms. Sandra O'Connell, Senior Planner.

AGENDA REVIEW:

SPECIAL PERMIT #SPPT10-CR-027, CHARLES A. CARDINE, TRUSTEE (OWNER)/FATHER PATRICK CARDINE (APPLICANT) – SAINT PATRICK ORTHODOX CHURCH, INC.

Applicant is requesting renewal of an expired special permit to locate a place of worship in an existing building, PIN #6980-76-1190-000, located at 6588 Balls Mill Road, Cedar Run District, Bealeton, Virginia. (Andrew Hushour, Staff)

Mr. Hushour reviewed the application.

SPECIAL PERMIT #SPPT11-MA-004, THE DOMINICAN NUNS (OWNERS)/SAINT DOMINIC'S MONASTERY (APPLICANT) – SAINT DOMINIC'S MONASTERY

Applicant is requesting special permit approval for interment uses, PIN #6001-79-5633-000, located at 2636 Monastery Road, Marshall District, Linden, Virginia. (Sandra O'Connell, Staff)

Ms. O'Connell reviewed the application.

ZONING VARIANCE #ZNVA11-MA-002, CAROLYN A. CALARCO (OWNER/APPLICANT) – PEACEFUL HAVEN ALPACAS

Applicant is requesting special permit approval to reduce the required one hundred (100) foot setback to allow for the construction of a barn, PIN #6943-79-7680-000, located at 8046 Leeds Manor Road, Marshall District, Marshall, Virginia. (Andrew Hushour, Staff)

Mr. Hushour reviewed the application.

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

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

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, September 2, 2010, 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, Vice-Chairperson; Mr. Michael Brown; Mrs. Mary North Cooper; and Mr. Maximilian Tufts, Jr. Also present were Ms. Mary Catherine Sheridan, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Andrew Hushour, Assistant Zoning Administrator/Secretary; Ms. Sandra O'Connell, Senior Planner; and Mrs. Fran Williams, Administrative Specialist.

MINUTES:

On motion made by Mr. Tufts and seconded by Mrs. Cooper, it was moved to approve the August 5, 2010 minutes.

The motion carried unanimously.

LETTERS OF NOTIFICATION AND PUBLIC NOTICE:

Mrs. Williams read the Public Hearing protocol. Mr. Hushour stated that, to the best of his 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.

SPECIAL PERMIT #SPPT10-CR-022, MICHAEL E. & SANDRA L. GETZ (OWNERS/APPLICANTS) – CREEKSIDE KENNELS, INC.

Applicants are requesting an amendment to a previously approved special permit for a kennel to allow for a modification in the hours of operation, maximum number of dogs and an expansion of the fenced areas, PIN #6991-93-5470-000, located at 5566 Balls Mill Road, Cedar Run District, Midland, Virginia. (Wally Horton, Staff) *Note: Public hearing was closed on May 6, 2010.*

Postponed.

SPECIAL PERMIT #SPPT10-CR-027, CHARLES A. CARDINE, TRUSTEE (OWNER)/FATHER PATRICK CARDINE (APPLICANT) – SAINT PATRICK ORTHODOX CHURCH, INC.

Applicant is requesting renewal of an expired special permit to locate a place of worship in an existing building, PIN #6980-76-1190-000, located at 6588 Balls Mill Road, Cedar Run District, Bealeton, Virginia. (Andrew Hushour, Staff)

Mr. Hushour 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. Stephen Kyhl, 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. Tufts 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 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.

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 plans submitted with the special permit application except as specifically modified by the conditions below or necessary to meet Zoning Ordinance requirements.
2. A buffer consistent with that shown on the approved special permit plat shall be established in the southwest corner of the subject property for the benefit of screening the proposed parking area from the adjacent residential properties.

3. The applicant shall be required to fulfill all necessary landscaping requirements pursuant to Article 7 of the Zoning Ordinance. This shall include the 20 foot front yard buffer along Marsh Road/Route 17 to include three (3) canopy trees, three (3) understory trees and twenty-four (24) shrubs per one hundred (100) linear feet of frontage.
- ~~4. Signage for the place of worship shall be limited to thirty two (32) square feet. Any ground sign will be designed as a monument style sign and will not exceed a maximum height of six (6) feet.~~
5. No activity associated with the place of worship may be commenced on the subject property prior to site plan approval. Furthermore, the church edifice itself cannot be occupied until a Certificate of Occupancy has been issued by the Fauquier County Building Official.
6. Health Department approval for on-site water and sewage disposal is required prior to site plan approval.
7. The hours of operation for the place of worship are limited to Saturday evening hours, Sunday morning hours, and no more than one additional meeting per week to be held Monday through Friday.
8. No more than thirty (30) persons shall be allowed on the site at any one time, and no more than ninety (90) persons shall utilize the place of worship per week. However, upon modification of the existing sewage disposal system on-site, subject to Health Department approval, the existing disposal capacity may be increased and the number of persons allowed on-site per day and per week may be increased accordingly, although not to exceed forty-five (45) persons per day or one hundred and thirty-five (135) persons per week.
9. This Special Permit is approved for a period of one (1) year following the issuance of a Certificate of Occupancy by the Fauquier County Building Official.

After discussion, on motion made by Mr. Tufts and seconded by Mr. Russell, it was moved to amend the above motion to delete Condition #4, as follows:

- ~~4. Signage for the place of worship shall be limited to thirty two (32) square feet. Any ground sign will be designed as a monument style sign and will not exceed a maximum height of six (6) feet.~~

The motion carried unanimously, as amended.

ZONING APPEAL #ZNAP11-SC-002, WILSHIRE LIMITED PARTNERSHIP (OWNER)/CHARLES JENKINS (APPLICANT)

Applicant is appealing a Zoning Administrator's determination regarding display, a produce vendor, located in a required front yard, PIN #6995-88-5503-000, located at 5599 Lee Highway,

Scott District, Warrenton, Virginia. (Andrew Hushour, Staff) *Note: This is a public meeting, not a public hearing.*

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

Mr. Meadows opened the public meeting.

Frank Reynolds, Esquire, representative, stated that his presentation will not address the sign violation issues, but noted that when the produce stand was established needs to be determined. Mr. Reynolds also stated that in 1978 the property was zoned C-1 and the site plan, which was approved on January 12, 1978, does not limit the general retail uses to being conducted only within the building. Mr. Reynolds further stated that there have been outdoor sales and displays on the property for many years and this should be considered a legally non-conforming use.

After being sworn in, Mr. Charles Jenkins, appellant, stated that he has been operating the produce stand at this location since 1975 or 1976 and that he misspoke when he told staff that it had been in operation since 1982. Mr. Jenkins stated that although he did not have written leases, he first rented the property through Long and Foster and when the property was sold, he rented from the new owner for 15 years. Later the property was sold to the current owner, Wilshire Limited Partnership, from whom he has been renting for the past 15 years. Mr. Jenkins noted that when he first began renting the property there was an outside display of furniture being sold at this location. Mr. Jenkins also noted that Mrs. Carolyn Bowen, former Zoning Administrator, visited the property on several occasions but no notice of zoning violation was issued.

Mr. Brown requested clarification regarding Mr. Jenkins' statement that someone operated a business at this location prior to his doing so.

Mr. Jenkins stated that he was the first to open a produce stand at this location, but furniture was being sold outside when he began operating from the property in the 1970's.

Mr. Brown inquired if the appellant has ever been into the Zoning Office to file an application to have a produce stand at this location.

Mr. Jenkins replied that he has not done so.

Mr. Meadows asked the appellant if he has a business license to operate a produce stand at this location.

Mr. Jenkins said he was told that he is not required to have a business license to operate a produce stand since he grows his produce in Rappahannock County, where a business license is not necessary.

Mr. Meadows stated that while the produce may be grown in Rappahannock County, it is being sold in Fauquier County, which does require a business license.

Ms. Kimberley Johnson stated that a business license is required, but a fee is not necessary until a particular monetary threshold is reached.

Mr. Reynolds stated that he has just learned that documentation may exist regarding another produce stand that operated from this site prior to the appellant and requested that action on this item be postponed until the next regularly scheduled meeting to allow time to locate this additional information.

Ms. Johnson stated that since becoming Zoning Administrator in 2003, she has visited the site on three separate occasions and requested that the violations (i.e., trucks parked in the right-of-way, signs, etc.) be removed. Ms. Johnson noted that she did not officially deal with these particular issues because there were no complaints on file. Ms. Johnson also stated that whether the appellant has a lease is not the issue, but rather, that the produce stand is being operated in a location that blocks the access and an approved site plan requires landscaping to be.

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

After discussion, on motion made by Mr. Brown and seconded by Mr. Tufts, it was moved to postpone action on this item until the next regularly scheduled meeting, at the appellant's request, in order to allow him time to provide additional information.

The motion carried unanimously.

SPECIAL PERMIT #SPPT11-MA-004, THE DOMINICAN NUNS (OWNERS)/SAINT DOMINIC'S MONASTERY (APPLICANT) – SAINT DOMINIC'S MONASTERY

Applicant is requesting special permit approval for interment uses, PIN #6001-79-5633-000, located at 2636 Monastery Road, Marshall District, Linden, Virginia. (Saundra O'Connell, Staff)

Ms. O'Connell 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.

Sister Mary Fidelis Stoll, 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 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 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 as necessary to meet Zoning Ordinance requirements.

The motion carried unanimously.

ZONING VARIANCE #ZNVA11-MA-002, CAROLYN A. CALARCO (OWNER/APPLICANT) – PEACEFUL HAVEN ALPACAS

Applicant is requesting a variance to reduce the required one hundred (100) foot setback to allow for the construction of a barn, PIN #6943-79-7680-000, located at 8046 Leeds Manor Road, Marshall District, Marshall, Virginia. (Andrew Hushour, Staff)

Mr. Hushour 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. Carolyn Calarco, applicant, expressed agreement with the staff report.

Mrs. Cooper asked why the location of the proposed barn cannot be moved approximately 25' in a northwest direction toward the residence.

Ms. Calarco stated that there is a steep bank in that area and she was told that constructing a barn in this location would be more expensive and could cause drainage problems.

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

On motion made by Mr. Brown and seconded by Mr. Russell, it was moved to deny the variance, after due notice and hearing, as required by *Code of Virginia* §15.2-2204 and Section 13-402 of the Fauquier County Zoning Ordinance, based upon the following Board findings:

1. The strict application of the Ordinance does not produce unnecessary, unreasonable, or undue hardship to the property owner.
2. The granting of the variance does not result in substantial justice being done.

The motion carried unanimously.

OTHER BUSINESS:

On motion made by Mr. Brown and seconded by Mr. Tufts, it was moved to amend the July 1, 2010 minutes, as follows:

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On motion made by ~~Mr. Russell~~ *Mrs. Cooper* and seconded by ~~Mrs. Cooper~~ *Mr. Brown*, it was moved to postpone action on SPPT10-CR-027 (Saint Patrick Orthodox Church, Inc.), at the applicant's request, until the September 2, 2010 meeting, with the public hearing left open.

The motion carried unanimously.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:05 p.m.

John R. Meadows, Chairperson

Andrew B. Hushour, 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.